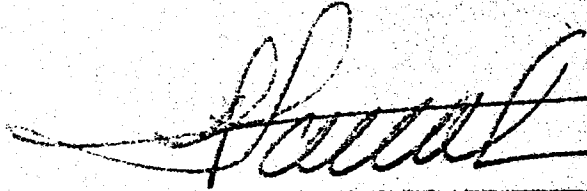


SIXTEENTH GUAM LEGISLATURE
1931 (FIRST) Regular Session

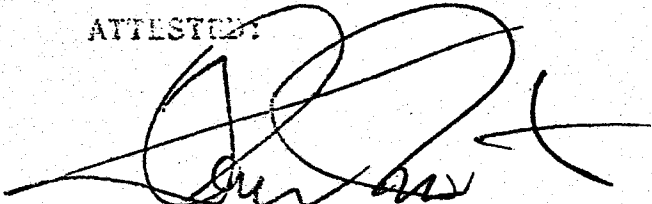
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 17, "An Act to add a new Title VII to Division Second, Part IV of the Civil Code relative to time-share ownership of real property," was on the 5th day of May 1931, duly and regularly passed.



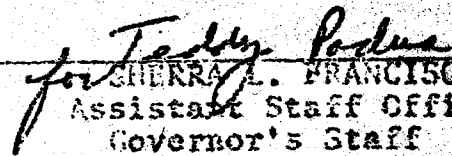
THOMAS V. C. TABORA
Speaker

ATTESTED:



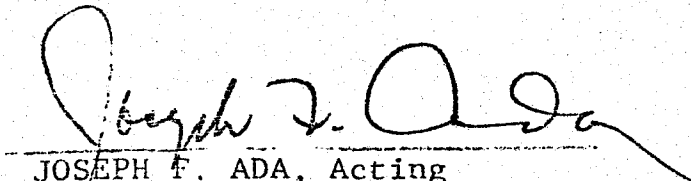
THOMAS C. CRISOSTOMO
Legislative Secretary

This Act was received by the Governor this 5th day of
JUNE, 1931, at 2:30 o'clock P.M.



JERRY L. FRANCISCO
Assistant Staff Officer
Governor's Staff

APPROVED:



JOSEPH F. ADA, Acting
Governor of Guam

DATE: 6-16-81 8:35 AM

P.L. 16-20

SIXTEENTH GUAM LEGISLATURE
1981 (FIRST) Regular Session

Bill No. 17
(As Amended by
the Committee on
Economic Development)

Introduced by: J. H. Underwood, F. F. Blas, A. C. Lamorena III

F. J. Quitugua
J. F. Quan

AN ACT TO ADD A NEW TITLE VII TO DIVISION SECOND,
PART IV OF THE CIVIL CODE RELATIVE TO TIME-SHARE
OWNERSHIP OF REAL PROPERTY.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. A new Title VII is added to Division Second,
3 Part IV of the Civil Code to read:

4 "TITLE VII

5 Time-Share Ownership

6 Chapter I

7 General Provisions

8 Section 1350. Definitions. As used in this Title and
9 unless otherwise required by the context or expressly
10 provided in any governing instruments, laws or other govern-
11 mental regulations:

12 " (1) 'Acquisition Agent' means a person who by
13 means of telephone, mail, advertisement, inducement,
14 solicitation or otherwise attempts directly to en-
15 courage any person to attend a sales presentation for
16 a time-share program;

17 (2) 'Agency' means the Department of Land Manage-
18 ment;

19 (3) 'Developer' means, in the case of any given
20 property, any person or entity which is in the business
21 of creating or which is in the business of selling its
22 own time-share intervals in any time-share program.
23 Developer does not include a person acting solely
24 as a sales agent;

1 (4) 'Development', 'Project' or 'Property' means
2 all of the real property subject to a project instru-
3 ment and containing more than one (1) unit;

4 (5) 'Exchange Agent' means a person who exchanges
5 or offers to exchange time-share intervals in an
6 exchange program with other time-share intervals;

7 (6) 'Managing Agent' means a person who under-
8 takes the duties, responsibilities and obligations of
9 the management of a time-sharing program;

10 (7) 'Offering' means any offer to sell, sollicita-
11 tion, inducement or advertisement whether by radio,
12 television, newspaper, magazine or by mail, whereby
13 a person is given an opportunity to acquire a time-
14 share interval. Any offering of a time-share interval
15 which is not located in this territory shall not be
16 an offering if such offer states that the time-share
17 program is in compliance with the law of the jurisdic-
18 tion in which the time-share interval is located;

19 (8) 'Person' means one or more natural persons,
20 corporations, partnerships, associations, trusts, other
21 entities or any combination thereof;

22 (9) 'Project Instrument' means one or more
23 recordable documents applicable to the whole project
24 by whatever name denominated, containing restrictions
25 or covenants regulating the use, occupancy or disposi-
26 tion of an entire project, including any amendments to
27 the document, but, excluding any law or governmental
28 regulation;

29 (10) 'Public Offering Statement' means that state-
30 ment required by Section 1362 of this Title;

1 (11) 'Purchaser' means any person other than a
2 developer or lender who acquires an interest in a
3 time-share interval;

4 (12) 'Sales Agent' means a person who sells or
5 offers to sell 'Time-Share Intervals' in a 'Time-Share
6 Program' to a purchaser;

7 (13) 'Time-Share Estate' means an ownership or
8 leasehold estate in real property devoted to a time-
9 share fee (tenants in common, time-span ownership,
10 interval ownership) and a time-share lease;

11 (14) 'Time-Share Instrument' means any document
12 by whatever name denominated, creating or regulating
13 time-share programs, but, excluding any law or govern-
14 mental regulation;

15 (15) 'Time-Share Interval' means a time-share
16 estate or a time-share use;

17 (16) 'Time-Share Program' means any arrangement
18 for time-share intervals whereby the use, occupancy or
19 possession of real property has been made subject to
20 either a time-share estate or time-share use whereby
21 such use, occupancy or possession circulates among
22 purchasers of the time-share intervals according to
23 a fixed or floating time schedule on a periodic basis
24 occurring annually over any period of time in excess
25 of three (3) years in duration;

26 (17) 'Time-Share Project' means any real property
27 that is subject to a time-share program;

1 (18) 'Time Share Use' means any contractual right
2 to exclusive occupancy which is not a 'time-share
3 estate' including, without limitation, a vacation
4 license, prepaid hotel reservation, club membership,
5 limited partnership or vacation bond; and

6 (19) 'Unit' means the real property or real
7 property improvement in a project (which is divided in-
8 to time-share intervals).

9 Section 1351. Status of Time-Share Estates With
10 Respect to Real Property Interests. (a) A 'time-share
11 estate' is an estate in real property and has the character
12 and incidents of an estate in fee simple at common law or
13 an estate for years, if a leasehold, except as expressly
14 modified by this Title. The provisions of this Title shall
15 supercede any contrary rule at common law.

16 (b) A document transferring or encumbering a time-
17 share estate in real property shall not be rejected for
18 recordation because of the nature or duration of that
19 estate or interest.

20 Section 1352. Separate Titles. Each time-share
21 estate constitutes for purpose of title a separate estate
22 or interest in property except for real property tax pur-
23 poses.

24 Section 1353. Time of Taking Effect. The provisions
25 of this Title shall take effect sixty (60) days after its
26 approval as to any time-share program hereafter created or
27 commenced and sixty (60) days after its approval as to
28 any time-share program heretofore created or commenced
29 with respect to the requirements of Chapters 3 and 4.

1 (6) any restrictions on the use, occupancy,
2 alteration or alienation of time-share intervals;

3 (7) the ownership interest, if any, in personal
4 property and provisions for care and replacement; and

5 (8) any other matters the developer deems
6 appropriate.

7 Section 1357. Time-Share Estate Management. The
8 time-share instruments for a time-share estate program shall
9 prescribe reasonable arrangements for management and opera-
10 tion of the time-share program and for the maintenance, re-
11 pair and furnishing of units, which shall include, but need
12 not be limited to provisions for the following:

13 (1) creation of an association of time-share
14 estate owners;

15 (2) adoption of by-laws for organizing and
16 operating the association;

17 (3) payment of costs and expenses of operating
18 the time-share program and owning and maintaining
19 the units;

20 (4) employment and termination of employment of
21 the managing agent for the association;

22 (5) preparation and dissemination to owners of
23 an annual budget and of operating statements and other
24 financial information concerning the time-share pro-
25 gram;

26 (6) adoption of standards and rules of conduct
27 for the use and occupancy of units by owners;

28 (7) collection of assessments from owners to
29 defray the expenses of management of the time-share
30 program and maintenance of the units;

1 (8) comprehensive general liability insurance
2 for death, bodily injury and property damage arising
3 out of, or in connection with, the use of units by
4 owners, their guests and other users;

5 (9) methods for providing compensating use
6 periods or monetary compensation to an owner if a unit
7 cannot be made available for the period to which the
8 owner is entitled by schedule or by confirmed reserva-
9 tion;

10 (10) procedures for imposing a monetary penalty
11 or suspension of an owner's rights and privileges in
12 the time-share program for failure of the owner to
13 comply with provisions of the time-share instruments or
14 the rules of the association with respect to the use
15 of the units. Under these procedures, an owner must
16 be given notice and the opportunity to refute or
17 explain the charges against him in person or in writing
18 to the governing body of the association before a
19 decision to impose discipline is rendered; and

20 (11) employment of attorneys, accountants and
21 other professional persons as necessary to assist in
22 the management of the time-share program and the units.

23 Section 1358. Developer Control. (a) The time-share
24 instruments for a time-share estate program may provide
25 for a period of time, hereafter referred to as 'developer
26 control period', during which the developer or a managing
27 agent selected by the developer may manage the time-share
28 program and the units in the time-share program.

1 (b) If the time-share instruments for a time-share
2 estate program provide for the establishment of a developer
3 control period, they shall include provisions for:

4 (1) termination of the developer control period
5 by action of the association;

6 (2) termination of contracts for goods and
7 services for the time-share program or for units in the
8 time-share program entered into during the developer
9 control period; and

10 (3) a regular accounting by the developer to
11 the association as to all matters that significantly
12 affect the interests of owners in the time-share pro-
13 gram.

14 Section 1359. Instruments for Time-Share Use. Pro-
15 ject instruments and time-share instruments creating time-
16 share uses shall contain:

17 (1) identification by name of the time-share pro-
18 ject and street address where the time-share project
19 is situated;

20 (2) identification of the time periods, type
21 of units and the units that are in the time-share
22 program and the length of time that the units are
23 committed to the time-share program;

24 (3) in case of a time-share project, identifica-
25 tion of which units are in the time-share program and
26 the method whereby any other units may be added,
27 deleted or substituted; and

1 (4) any other matters that the developer deems
2 appropriate.

3 Section 1369. Time-Share Use Management. The time-
4 share instruments for a time-share program shall prescribe
5 reasonable arrangements for management and operation of the
6 time-share program and for the maintenance, repair and
7 furnishing of units which shall ordinarily include, but need
8 not be limited to provisions for the following:

9 (1) standards and procedures for upkeep, repair
10 and interior furnishing of units and for providing
11 of maid, cleaning, linen and similar services to the
12 units during use periods;

13 (2) adoption of standards and rules of conduct
14 governing the use and occupancy of units by owners;

15 (3) payment of the costs and expenses of opera-
16 ting the time-share program and owning and maintaining
17 the units;

18 (4) selection of a managing agent to act on
19 behalf of the developer;

20 (5) preparation and dissemination to owners of
21 an annual budget and of operating statements and other
22 financial information concerning the time-share pro-
23 gram;

24 (6) procedures for establishing the rights of
25 owners to the use of Units by prearrangement or under
26 a first-reserved, first-served priority system;

27 (7) organization of a management advisory board
28 consisting of time-share use owners including an
29 enumeration of rights and responsibilities of the
30 board;

1 (3) procedures for imposing and collecting
2 assessments or use fees from time-share use owners
3 as necessary to defray costs of management of the
4 time-share program and in providing materials and
5 services to the units;

6 (9) comprehensive general liability insurance
7 for death, bodily injury and property damage arising
8 out of, or in connection with, the use of units by
9 time-share use owners, their guests and other users;

10 (10) methods for providing compensating use
11 periods or monetary compensation to an owner if a
12 unit cannot be made available for the period to which
13 the owner is entitled by schedule or by a confirmed
14 reservation;

15 (11) procedures for imposing a monetary penalty
16 or suspension of an owner's rights and privileges in
17 the time-share program for failure of the owner to
18 comply with the provisions of the time-share instru-
19 ments or the rules established by the developer with
20 respect to the use of the units. The owner shall be
21 given notice and the opportunity to refute or explain
22 the charges in person or in writing to the management
23 advisory board before a decision to impose discipline
24 is rendered; and

25 (12) annual dissemination to all time-share use
26 owners by the developer, or by the managing agent of a
27 list of the names and mailing addresses of all
28 current time-share use owners in the time-share pro-
29 gram.

Section 1361. Partition. No action for partition of a unit may be maintained except as permitted by the time-share instrument.

Chapter III

Protection of Purchasers

Section 1362. Public Offering Statement: General Provisions. (a) A public offering statement shall be provided to each purchaser of a time-share interval. The statement shall fully and accurately disclose:

(1) the name of the developer and the principal address of the developer and the time-share intervals offered in the statement;

(2) a general description of the units including, without limitation, the developer's schedule of commencement and completion of all buildings, units, and amenities or if completed that they have been completed;

(3) as to all units offered by the developer in the same time-share project:

(i) the types and number of units;

(ii) identification of units that are subject to time-share intervals; and

(iii) the estimated number of units that may become subject to time-share intervals;

(4) a brief description of the project;

(5) if applicable, any current budget and a projected budget for the time-share intervals for one (1) year after the date of the first transfer to a purchaser. The budget shall include, without limitation:

1 (i) a statement of the amount, or a state-
2 ment that there is no amount, included in the bud-
3 get as a reserve for repairs and replacement;

4 (ii) the projected common expense liability,
5 if any, by category of expenditures for the time-
6 share intervals;

7 (iii) the projected common expense liability
8 for all time-share intervals; and

9 (iv) a statement of any services not re-
10 flected in the budget that the developer provides,
11 or expenses that it pays;

12 (5) any initial or special fee due from the
13 purchaser at closing, together with a description of
14 the purpose and method of calculating the fee;

15 (7) a description of any liens, defects, or
16 encumbrances on or affecting the title to the time-
17 share intervals;

18 (8) a description of any financing offered by
19 the developer;

20 (9) a statement that within three (3) days after
21 receipt of a public offering statement prominently
22 displayed in at least ten-point type, a purchaser
23 may cancel any contract for purchase of a time-share
24 interval from a developer;

25 (10) a statement of any pending suits material to
26 the time-share intervals of which a developer has
27 actual knowledge;

1 (11) any restraints on alienation of any number
2 or portion of any time-share intervals;

3 (12) a description of the insurance coverage, or
4 a statement that there is no insurance coverage, pro-
5 vided for the benefit of time-share interval owners;

6 (13) any current or expected fees or charges to
7 be paid by time-share interval owners for the use of
8 any facilities related to the property;

9 (14) the extent to which financial arrangements
10 have been provided for completion of all promised
11 improvements; and

12 (15) the extent to which a time-share unit may
13 become subject to a tax or other lien arising out of
14 claims against other owners of the same unit.

15 (b) If the owners of time-share intervals are to be
16 permitted or required to become members of or to participate
17 in any program for the exchange of occupancy rights among
18 themselves or with the owners of time-share intervals of
19 other time-share projects or both, the public offering
20 statement or a supplement delivered therewith shall fully
21 and accurately disclose:

22 (1) the identity of the person operating the
23 exchange program and whether that person is an
24 affiliate of the developer;

25 (2) a general description of the procedures to
26 qualify for and effectuate exchanges, including any
27 stated or practiced priorities and restrictions, and
28 the extent to which changes thereof may be made,
29 whether membership or participation in the exchange
30 program, or both, are voluntary or mandatory, and a
31 statement of the disposition, if any, of the unused
32 exchange time-share interval, of the exchange agent;

1 (3) the expenses, or ranges of expenses, to the
2 time-share interval owners of membership in the ex-
3 change program including the expenses, if any, of
4 exchanging as of a date not more than one (1) year
5 before the public offering statement is delivered to
6 the purchaser, and the person to whom those expenses
7 are payable;

8 (4) whether and how any of the expenses specified
9 in item (3) of this subsection may be altered and, if
10 any of them are to be fixed on a case-by-case basis,
11 the manner in which they are to be fixed in each case;

12 (5) with respect to the owners of time-share
13 intervals in the exchange program, the geographical
14 location of each time-share project and the minimum
15 duration of time-share intervals and number of time-
16 share interval owners in the exchange program at
17 each project during a calendar year ending not more
18 than fifteen (15) months before the public offering
19 statement is delivered to the purchaser;

20 (6) the percentage of exchanges properly applied
21 for by members of participants in the exchange program
22 that were fulfilled during a calendar year ending not
23 more than fifteen (15) months before the date of the
24 public offering statement is delivered to the pur-
25 chaser, together with a statement of the criteria used
26 to determine whether an exchange was properly applied
27 for and fulfilled;

1 (7) the number of persons applying for an ex-
2 change as a percentage of the number of members in the
3 exchange program as a whole during the calendar year
4 ending not more than fifteen (15) months before the
5 public offering statement is delivered to the pur-
6 chaser; and

7 (3) in those cases where the exchange agent is
8 not an affiliate of the developer, the exchange agent
9 shall provide the developer with all of the information
10 contained in items (2) through (7) of this Subsection
11 which it shall certify as being true, accurate and
12 complete in all particulars. The developer shall in-
13 clude the certified information in the public offering
14 statement as replacement for the developer's dis-
15 closures required by this subsection.

16 Section 1363. Escrow of Deposits. Any deposit made
17 in connection with the purchase or reservation of a time-
18 share interval from a developer must be placed in escrow
19 and held in this territory in an account designated solely
20 for the purpose, in an institution whose accounts are in-
21 sured by a governmental agency or instrumentality until (1)
22 delivered to the developer at the expiration of the time
23 for rescission or any later time specified in any contract
24 of sale; (2) delivered to the developer because of the
25 purchaser's default under a contract to purchase the time-
26 share interval; or (3) refunded to the purchaser.

27 Section 1364. Mutual Rights of Cancellation. (a) Be-
28 fore transfer of a time-share interval and no later than
29 the date of any sales contract, the developer shall provide

1 the intended transferee with a copy of the public offering
2 statement and any amendments and supplements thereto. The
3 contract is voidable by the purchaser until he has received
4 the public offering statement and for three (3) calendar
5 days thereafter. Cancellation is without penalty, and all
6 payments made by the purchaser before cancellation shall be
7 refunded within thirty (30) days after receipt of the
8 notice of cancellation as provided in Subsection (c) of
9 this Section.

10 (b) Up to three (3) days after the receipt by the pur-
11 chaser of the public offering statement, developer may
12 cancel the contract of purchase without penalty to either
13 party. The developer shall return all payments made, the
14 purchaser shall return all materials received in good condi-
15 tion, reasonable wear and tear excepted. If such materials
16 are not returned, the developer may deduct the cost of the
17 same and return the balance to the purchaser.

18 (c) If either party elects to cancel a contract pur-
19 suant to Subsection (a) or (b) of this Section, he may do
20 so by hand-delivering notice thereof to the other party or
21 by mailing notice thereof by prepaid United States mail to
22 the other party or to his agent for service of process.

23 Section 1365. Other Filings not Required. (a) Any
24 time-share program in which a public offering statement has
25 been prepared does not require registration under the
26 following:

27 (1) The Uniform Securities Act of Guam (Title
28 XLI of the Government Code); or

29 (2) Any other territorial law which requires
30 the preparation of a public offering statement or sub-
31 stantially similar document for distribution to pur-
32 chaser.

1 (b) Any time-share program that fails to restrict the
2 price at which an owner may sell or exchange his time-share
3 interval shall not by virtue of such failure cause the
4 time-share interval to become a security under the provi-
5 sions of the Uniform Securities Act nor shall an exchange
6 agent offering such a time-share interval for exchange be
7 construed to be offering a security under such Act.

8 Section 1366. Exemptions. (a) The developer shall
9 not be required to prepare and distribute a public offering
10 statement if the developer has registered and there has
11 been issued a public offering statement or similar dis-
12 closure document which is provided to purchasers under the
13 following:

14 (1) Securities and Exchange Act of 1933;

15 (2) Federal Interstate Land Sales Full Disclosure
16 Act in which the time-share program is made a part of
17 the subdivision that is being registered; or

18 (3) Any other federal or local act which requires
19 a federal or local public offering statement or similar
20 disclosure document to be prepared and provided to
21 purchasers.

22 (b) A public offering statement need not be prepared
23 or delivered in the case of:

24 (1) any transfer of a time-share interval by any
25 time-share interval owner other than the developer or
26 his agent;

27 (2) any disposition pursuant to court order;

28 (3) a disposition by a government or governmental
29 agency;

1 (4) a disposition by foreclosure or deed in lieu
2 of foreclosure;

3 (5) a disposition of a time-share interval in a
4 time-share project situated wholly outside this terri-
5 tory provided that all solicitations, negotiations and
6 contracts took place wholly outside this territory and
7 the contract was executed wholly outside this territory;

8 (6) a gratuitous transfer of a time-share inter-
9 val; or

10 (7) group reservations made for fifteen (15) or
11 more people as a single transaction between a hotel
12 and travel agent or travel groups for hotel accommoda-
13 tions, where deposits are made and held for more than
14 three (3) years in advance.

15 Section 1367. Material Change. The Developer shall
16 amend or supplement the public offering statement to re-
17 port any material change in the information required by
18 Section 1362 of this Title. As to any exchange program,
19 the developer shall use the current written materials that
20 are supplied to it for distribution to the time-share inter-
21 val owners as it is received.

22 Section 1368. Liens. (a) Unless the purchaser
23 expressly agrees to take subject to or assume a lien prior
24 to transferring a time-share interval other than by deed
25 in lieu of foreclosure, the developer shall record or
26 furnish to the purchaser releases of all liens affecting
27 that time-share interval, or shall provide a surety bond
28 or insurance against the lien.

1 (c) Unless a time-share interval owner or his pre-
2 decessor in title agrees otherwise with the lien or, if a
3 lien other than an underlying mortgage or deed of trust
4 becomes effective against more than one (1) time-share
5 interval in a time-share project, any time-share interval
6 owner is entitled to a release of his time-share interval
7 from the lien upon payment of the amount of the lien
8 attributable to his time-share interval. The amount of the
9 payment shall be proportionate to the ratio that the time-
10 share interval owner's liability bears to the liabilities
11 of all time-share interval owners whose interests are
12 subject to the lien. Upon receipt of payment, the lien-
13 holder shall promptly deliver to the time-share interval
14 owner a release of the lien covering that Time-Share Inter-
15 val. After payment, the managing entity may not assess or
16 have a lien against that time-share interval for any por-
17 tion of the expenses incurred in connection with that
18 lien.

19 Section 1369. Effect of Violations on Rights of Action;
20 Attorney's Fees and Criminal Penalties. If a developer
21 or any other person subject to the provisions of this Title
22 violates any provision thereof or any provision of the pro-
23 ject instruments, any person or class of persons adversely
24 affected by the violation has a claim for appropriate
25 relief. Punitive damages may be awarded for a willful
26 violation of this Title. The court may also award reason-
27 able attorney's fees. Any developer or any other person
28 subject to this Title who offers or disposes of a time-
29 share interval without having complied with this Title or

1 who violates any provision of this Title shall be guilty of
2 a misdemeanor punishable by a fine not exceeding Five
3 Thousand Dollars (\$5,000) or by imprisonment not exceeding
4 one (1) year, or by both such fine and imprisonment.

5 Section 1370. Statute of Limitations. A judicial
6 proceeding where the accuracy of the public offering state-
7 ment or validity of any contract of purchase is in issue
8 and a rescission of the contract or damages is sought must
9 be commenced within four (4) years after the date of the
10 contract of purchase, notwithstanding that the purchaser's
11 terms of payments may extend beyond the period of limita-
12 tion. However, with respect to the enforcement of provi-
13 sions in the contract of purchase which require the con-
14 tinued furnishing of services and the reciprocal payments
15 to be made by the purchaser, the period of bringing a
16 judicial proceeding will continue for a period of four (4)
17 years for each breach, but the parties may agree to reduce
18 the period of limitation to not less than two (2) years.

19 Section 1371. Financial Records. The person or entity
20 responsible for making or collecting common expense assess-
21 ments or maintenance assessments shall keep detailed
22 financial records. All financial and other records shall
23 be made reasonably available for examinations by any time-
24 share interval owner or his authorized agents.

25 Chapter IV

26 Administrative and Registration

27 Section 1372. General Powers and Duties of Agency.

28 (a) The agency may adopt, amend, and repeal rules or
29 regulations and issue orders consistent with, and in

1 furtherance of the objectives of this Title. The agency
2 may prescribe forms and procedures for submitting informa-
3 tion to the agency.

4 (b) The agency may accept grants-in-aid from any
5 governmental source and may contract with agencies charged
6 with similar functions in this or other jurisdictions, in
7 furtherance of the objectives of this Title.

8 (c) The agency may cooperate with agencies performing
9 similar functions in this and other jurisdictions to develop
10 uniform filing procedures and forms, uniform disclosure
11 standards, and uniform administrative practices, and may
12 develop information that may be useful in the discharge of
13 the agency's duties.

14 (d) The agency may initiate private investigations
15 within or outside this territory.

16 (e) The agency after notice and hearing, may issue
17 a notice of suspension if any of the following conditions
18 exist:

19 (1) any representation in any document or infor-
20 mation filed with the agency is false or misleading;

21 (2) any developer or agent of developer has en-
22 gaged or is engaging in any unlawful act or practice;

23 (3) any developer or agent of developer has
24 disseminated or caused to be disseminated orally, or
25 in writing, any false or misleading promotional
26 materials in connection with a time-share program;

27 (4) any developer or agent of developer has
28 concealed, diverted, or disposed of any funds or
29 assets of any person in a manner impairing rights of
30 purchasers of time-share intervals in the time-share
31 program;

1 (5) any developer or agent of developer has
2 failed to perform any stipulation or agreement made to
3 induce the agency to issue an order relating to that
4 time-share program; or

5 (6) any developer or agent of developer has
6 otherwise violated any provision of this Title or the
7 agency's rules, regulations or orders.

8 (f) The agency may issue a cease and desist order if
9 the developer has not registered the time-share program as
10 required by this Title.

11 (g) The agency, after notice and hearing, may issue
12 an order revoking the registration of a time-share program
13 upon determination that a developer or agent of developer
14 has failed to comply with a notice of suspension issued by
15 the agency affecting the time-share program.

16 Section 1373. Registration Required. (a) Unless
17 exempted by Section 1378 of this Chapter, a developer may
18 not offer or dispose of a time-share interval unless the
19 time-share program is registered with the agency; provided,
20 however, that a developer may accept a reservation together
21 with a deposit if the deposit is placed in an escrow account
22 with an institution having trust powers and is refundable
23 at any time at the purchaser's option. In all cases, a
24 reservation shall require a subsequent affirmative act by
25 the purchaser via a separate instrument to create a binding
26 obligation. A developer may not dispose of or transfer a
27 time-share interval while an order revoking or suspending
28 the registration of the time-share program is in effect.

1 (b) An acquisition agent including the developer if
2 it is also the acquisition agent shall register with the
3 agency the time-share program or programs that it is pro-
4 viding prospective purchasers for, its principal office
5 address and telephone number and designate who its respon-
6 sible managing employee is. The acquisition agent shall
7 furnish evidence that a bond of Five Thousand Dollars
8 (\$5,000) has been placed with a surety company or a cash
9 bond with the agency to cover any violations of any solici-
10 tation law, zoning law, building codes or other regulations
11 governing the use of the premise or premises in which the
12 time-share program is promoted.

13 (c) A sales agent including the developer if it is
14 also the sales agent, shall register with the agency the
15 time-share program or programs that it is selling, its
16 principal office address and telephone number and designate
17 who its responsible managing employee is and any special
18 escrow accounts set up for the deposit and collection of pur-
19 chasers' funds. The sales agent shall furnish evidence
20 that a bond of Five Thousand Dollars (\$5,000) has been
21 placed with a surety company or a cash bond with the agency
22 to cover any defalcations of the sales agent.

23 (d) A managing agent including the developer if it is
24 also the managing agent, shall register with the agency the
25 time-share program or programs that it is managing, its
26 principal office address and telephone number and designate
27 who its responsible managing employee is. The managing
28 agent shall furnish evidence that a bond of Five Thousand
29 Dollars (\$5,000) has been placed with a surety company or a

1 cash bond with the agency to cover any default of the
2 managing agent of his duties and responsibilities.

3 (e) In the event that the acquisition agent, sales
4 agent and management agent are under the control of, sub-
5 sidiary of, or affiliate of the developer or any person, the
6 bond can be consolidated and reduced to Ten Thousand Dollars
7 (\$10,000) provided that there is a disclosure of the
8 affiliation and the disclosure as provided above.

9 (f) An exchange agent including the developer if it
10 is also the exchange agent, shall file a statement with the
11 agency containing a list of the time-share program or
12 programs that it is offering exchange services for, its
13 principal office address and telephone number and designate
14 who its responsible managing employee is or the person to
15 whom any contact is to be made.

16 (g) The acquisition agent and sales agent shall each
17 maintain ~~their~~ respective records of any independent con-
18 tractors employed by them, their addresses and commissions
19 paid for the immediately preceding two (2) calendar years.

20 Section 1374. Application for Registration. An appli-
21 cation for registration shall contain the public offering
22 statement, a brief description of the property, copies of
23 time-share instruments and any documents referred to
24 therein (other than tract maps, plats and plans), and such
25 other information required by the agency's rules and regu-
26 lations and be accompanied by any reasonable fees required
27 by agency.

28 Section 1375. Agency Regulation of Public Offering
29 Statement. (a) The agency, at any time, may require a
30 developer to alter or supplement the form or substance of

1 a public offering statement to assure adequate and accurate
2 disclosure to prospective purchasers.

3 (b) The public offering statement may not be used
4 for any promotional purposes before registration and after-
5 wards only if it is used in its entirety. No person may
6 advertise or represent that the agency has approved or
7 recommended the time-share program, the disclosure state-
8 ment, or any of the documents contained in the application
9 for registration.

10 Section 1376. Receipt of Application; Effectiveness
11 of Registration. (a) Except as hereinafter provided, the
12 effective date of the registration, or any amendment there-
13 to, shall be the 45th day after the filing thereof or such
14 earlier date as the agency may determine, having due regard
15 to the public interest and the protection of purchasers.
16 If any amendment to any such registration is filed prior
17 to the effective date, the registration shall be deemed
18 to have been filed when such amendment was filed.

19 (b) If it appears to the agency that the application
20 for registration, or any amendment thereto, is on its face
21 incomplete or inaccurate in any material respect, the
22 agency shall so advise the developer prior to the date the
23 registration would otherwise be effective. Such notifica-
24 tion shall serve to suspend the effective date of the filing
25 until the 45th day after the developer files such additional
26 information as the agency shall require. Any developer,
27 upon receipt of such notice of suspension may request a
28 hearing, and such hearing shall be held within thirty (30)
29 days of receipt of such request.

1 Section 1377. Amendment. A developer shall amend or
2 supplement its registration to report any material change
3 in the information required by Section 1374 of this Chapter.

4 Section 1375. Exemptions. (a) No registration with
5 the agency shall be required if the developer is registered
6 and there has been issued a public offering statement of
7 similar disclosure document which is provided to purchasers
8 under the following:

9 (1) Securities and Exchange Act of 1933;

10 (2) Federal Interstate Land Sales Full Disclosure
11 Act in which the time-share program is made a part of
12 the subdivision that is being registered; or

13 (3) any other federal or territorial act which
14 requires a federal or territorial agency to review a
15 public offering statement or similar disclosure docu-
16 ment which is required to be distributed to purchasers.

17 (b) ~~No~~ registration with the agency shall be required
18 in the case of:

19 (1) any transfer of a time-share interval by any
20 time-share interval owner other than the developer or
21 his agent;

22 (2) any disposition pursuant to court order;

23 (3) a disposition by a government or governmental
24 agency;

25 (4) a disposition by foreclosure or deed in
26 lieu of foreclosure;

27 (5) a disposition of a time-share interval in a
28 time-share project situated wholly outside this
29 territory provided that all solicitations, negotia-
30 tions, and contracts took place wholly outside this
31 territory and the contract was executed wholly outside
32 this territory;

1 (6) a gratuitous transfer of a time-share
2 interval; and

3 (7) group reservations made for fifteen (15) or
4 more people as a single transaction between a hotel
5 and travel agent or travel groups for hotel accommoda-
6 tions, where deposits are made and held for more than
7 three (3) years in advance.

8 Chapter V

9 Financing

10 Section 1379. Financing of Time-Share Programs. In
11 the financing of a time-share program, the developer shall
12 retain financial records of the schedule of payments re-
13 quired to be made and the payment made to any person or
14 entity which is the holder of an underlying blanket mort-
15 gage; deed of trust, contract of sale or other lien or
16 encumbrance ('lien holder'). Any transfer of the
17 developer's interest in the time-share program to any third
18 person shall be subject to the obligations of the developer.

19 Section 1380. Rights Under Foreclosure. The developer
20 whose project is subject to an underlying blanket lien or
21 encumbrance shall protect non-defaulting purchasers from
22 foreclosure by the lien holder by obtaining from the lien
23 holder a non-disturbance clause, subordination agreement
24 or partial release of the lien as the time-share intervals
25 are sold. In the alternative, the developer may obtain the
26 agreement of the lien holder to take the project in the
27 event of default by the developer subject to the rights
28 of the non-defaulting purchasers by posting a bond, equal
29 to fifty percent (50%) of the amount owed to the lien

holder, making an assignment of receivables equal to one hundred twenty-five percent (125%) of the principal amounts due from purchasers, pledging collateral security equal to one hundred percent (100%) of the amount owed to the lien holder or entering into any other financing plan or escrow agreement acceptable to the lien holder.

Section 1581. Protection of Lien Holder. The lien holder in any time-share program shall have the following rights:

(1) A lien holder shall have his lien rights preserved as against any purchaser of time-share interval claiming that the time-share instrument is invalid, void or voidable, thirty (30) days after written notice by certified mail or personal delivery has been given by the developer to the purchaser. Said notice shall state that developer has assigned the receivables to the lien holder and that purchaser has thirty (30) days within which to object and specify the invalidity or defect contained within such instrument; and

(2) Any purchaser who fails to indicate the invalidity, void or voidableness as provided in Subparagraph (1) of this Section waives or is stopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lien holder."

Section 2. This Act shall become effective one hundred twenty (120) days after enactment.