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TITLE 110 – ATTORNEY GENERAL

CHAPTER 40 – CONSUMER PROTECTION UNIT

SUBCHAPTER 00 – N/A

PART 4 – Rules and Regulations for Real Estate Time Share/Interval Ownership Sales and Practices

4.1 Introduction

4.1.1 Authority

These regulations are adopted pursuant to R.I. Gen. Laws § 6-13.1-1 *et. seq.*, the Deceptive Trade Practices Law, specifically R.I. Gen. Laws § 6-13.1-7(c).

4.1.2 Purpose

These regulations are for the purpose of determining, regulating and/or prohibiting certain conduct, terminology and/or representations concerning real estate time share sales and practices which are, or may, involve unfair methods of competition or unfair or deceptive acts or practices as defined in R.I. Gen. Laws § 6-13.1-1 and as prohibited by R.I. Gen. Laws § 6-13.1-2.

4.1.3 Scope

These regulations apply to all time share interests in real estate or any phase of time share interests except for any such interest governed solely by R.I. Gen. Laws § 34-38-1 *et. seq.*, entitled "Regulation of Out of State Real Estate Sales and Dispositions." It should be noted that the Rhode Island Condominium Act also governs time share condominium units under certain conditions. These regulations are also intended to be consistent with R.I. Gen. Laws § 34-36.1-1 *et. seq.* entitled the "Rhode Island Condominium Act." These regulations apply only to transactions which occur after these regulations become effective.

4.2 Definitions

- A. As used in these Rules and Regulations, the following words shall have the following meanings:
1. "Act" or "Practice" - an act or practice shall include any threat or attempt to perform such act or practice.
 2. "Advertisement," "Advertising," or "Advertise" means a commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio,

television, public address system, or made in person, in direct mail literature or other printed material, or any point of transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever.

3. "Affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer.

a. A person "controls" a developer if the person:

- (1) is a general partner, officer, director, or employer of the developer,
- (2) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, own, controls, holds with power to vote, or holds proxies representing, more than twenty percent,
- (3) controls in any manner the election of a majority of the directors of the developer, or
- (4) has contributed more than twenty percent (20%) of the capital of the developer.

b. A person "is controlled by" a developer if the developer:

- (1) is a general partner, officer, director, or employer of the person,
- (2) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or hold proxies representing, more than twenty percent (20%) of the voting interest in the person,
- (3) controls in any manner the election of a majority of the directors of the person, or
- (4) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

4. "Conspicuous" - A term is conspicuous when it is so written that person against whom it is to operate ought to have noticed it. Language in the body of a form is "conspicuous" if it is in larger or contrasting type or color.

5. "Conversion building" means a building that at any time before the disposition of any time share was occupied wholly or partially by persons other than purchasers and person who occupied with the consent of purchasers.
6. "Deceptive warranty" - For the purposes of this chapter a "deceptive warranty" is:
 - a. A guarantee or warranty that contains an affirmation, promise, description, or representation that is either false, fraudulent, or that, in the light of all the circumstances, would mislead the consuming public; or fails to contain the necessary information to avoid misleading the consuming public; or,
 - b. A guarantee or warranty created by the use of such terms as "guarantee" or "warranty" if the terms and conditions of such guarantee or warranty so limit its scope and application as to render the representation illusory, as where any costs or charges to the consumer attendant upon such work are prohibitive or approach the costs for the repairs absent any warranty or guarantee.
7. "Developer" means any person who
 - a. offers to dispose of or disposes of his interest in a time share not previously disposed of, or succeeds to any special developer right, or
 - b. applies for registration of the time share under these regulations.
8. "Dispose" or "Disposition" means a voluntary transfer of any legal or equitable interest in a time share, but does not include the transfer or release of a security interest.
9. "Dwelling unit" means any building or structure, or any unit therein or part thereof, and all the common areas inside and outside such building or structure, occupied or intended for occupancy as a residence by one or more individuals; including a mobile home or a lot therefor.
10. "Managing entity" means the manager or, if there is no manager, the association.
11. "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire a time share, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a time share in a unit not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the unit or units are located; such

offering shall contain the following language in bold-faced print "THIS IS NOT AN OFFERING PROTECTED BY THE RULES AND REGULATIONS FOR REAL ESTATE TIME SHARE SALES AND PRACTICES;" provided, however, if the subject time-share property is registered pursuant to § 4.3 of this Part, such language need not be printed on the offering.

12. "Owner" means any person who holds title to one or more dwelling units in any manner including but not limited to a partnership, corporation or trust. For purposes of these regulations the term "owner" shall include one who manages, controls, and/or customarily accepts rent on behalf of the owner.
13. "Person" means a natural person, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. (In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.)
14. "Place of business" means the main or permanent branch office or fixed location for doing business of a seller. A booth at a fair or other temporary, stationary or mobile selling point does not constitute a place of business for the purpose of these regulations.
15. "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a time share other than as security for an obligation.
16. "Time share" means, whenever referred to herein, a time share estate or a time share license or any form of interval ownership in real estate.
17. "Time share estate/interval ownership" means a right to occupy a unit or any of several units during five (5) or more separated time periods over a period of at least five (5) years, including renewal options, coupled with a freehold estate or an estate for years in a time share property or a specified portion thereof.
18. "Time share expenses" means expenditures, fees, charges, or liabilities:
 - a. incurred with respect to the time shares by or on behalf of all time share owners in one time share property, and
 - b. imposed on the time share units by the entity governing a project of which the time share property is a part, together with any allocations to reserves, but excluding purchase money payable for time shares.

19. "Time share instrument" means one or more documents, by whatever name denominated, creating or regulating time shares.
20. "Time share license" means a right to occupy a unit or any of several units during five (5) or more separated time periods over a period of at least five (5) years, including renewal options, not coupled with a freehold estate or an estate for years.
21. "Time share owner" means a person who is an owner or co-owner of a time share other than as security for an obligation.
22. "Time share property" means one or more time share units subject to the same time share instrument, together with any other real estate or rights therein appurtenant to those units.
23. "Time share unit" means a unit in which time shares exist.
24. "Unfair methods of competition and unfair or deceptive acts or practices" means any activity as defined in R.I. Gen. Laws § 6-13.1-1(6)(i)-(xx) and amendments thereto.
25. "Unit" means real property, or a portion thereof, designated for separate use.
26. "Warranty" or "guarantee" - The terms "warranty" or "guarantee" or any term connoting a warranty or guarantee as used in these regulations are synonymous. The terms apply also to purported warranties and guarantees and to any promise or representation in the nature of a warranty or guarantee. A warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

4.3 Consumer Protection

4.3.1 Applicability

A. Exemptions

1. These regulatory requirements apply to all time shares subject to these Regulations, except as provided in § 4.3.1(A)(2) of this Part.
2. Neither a public offering statement nor the materials required by § 4.3.9 of this Part (Resale of Time Shares) need be prepared or delivered in the case of:
 - a. a gratuitous disposition of a time share;
 - b. a disposition pursuant to court order;

- c. a disposition by a government or governmental agency;
- d. a disposition by foreclosure or deed in lieu of foreclosure;
- e. a disposition that may be cancelled at any time and for any reason by the purchaser without penalty;
- f. a disposition of time share in a unit situated wholly outside this State pursuant to a contract executed wholly outside this State, if there has been no offering within this State;
- g. an offering by a developer of time shares in no more than one time share unit at any one time; or
- h. a disposition of a time share property or all time shares therein to one purchaser

4.3.2 Liability for Public Offering Statement Requirements

- A. Except as provided in §§ 4.1.3 and 4.3.2(B) of this Part, a developer, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of these regulations.
- B. A developer may transfer responsibility for preparation of all or a part of the public offering statement to a successor developer or to a person in the business of selling real estate who intends to offer time share in the time share property for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of § 4.3.2(A) of this Part.
- C. Any developer or other person in the business of selling real estate who offers a time share for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in § 4.3.3 of this Part. The person who prepared all or a part of the public offering statement is liable under § 4.3.16 of this Part, and R.I. Gen. Laws § 6-13.1-1 *et seq.* for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a developer did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.
- D. If a time share property is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of §§ 4.3.2, 4.3.3, and 4.3.4 of this Part as those requirements relate to all real estate regimes in which the time share property is located, and to

any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two (2) or more public offering statements.

4.3.3 Public Offering Statement: General Provisions

A. A public offering statement must contain and fully and accurately disclose:

1. the name and principal address of the developer and the location of the time share property;
2. a general description of the time share property and the time share units, including without limitation the number of units, including without limitation the number of units in the time share property and in any project of which it is a part, and the schedule of commencement and completion of all improvements;
3. as to all units owned or offered by the developer in the same project:
 - a. the types and number of units;
 - b. identification of units that are time share units;
 - c. the types and duration of the time shares, including minimum durations;
 - d. the maximum number of units that may become part of the time share property; and
 - e. a statement of the maximum number of time shares that may be created or a statement that there is no maximum;
4. copies and a brief narrative description of the significant features of the time share instrument and any documents referred to therein (other than any plats and plans), copies of any contracts or leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the owners of time share estates;
5. the identity of the managing entity and the manner, if any, whereby the developer may change the managing entity or its control;
6. a current balance sheet and a projected budget for the association, if there is an association, either within or as an exhibit to the public offering statement, for one year after the date of the first transfer to a purchaser, and thereafter the current budget, a statement of who prepared the budget, and a statement of the budgetary assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

- a. a statement of the amount of money, or a statement that there is no money, included in the budget as a reserve for repairs and replacement;
 - b. a statement of any other monetary reserves;
 - c. the projected time share expense liability by category of expenditures for the times share units, and
 - d. the projected time share expense liability for each time share;
- 7. a description of
 - a. the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed,
 - b. the current amounts assessed, and
 - c. the method and formula for altering charges in the future;
- 8. any services which the developer provides or expenses he pays and which he expects may become at any subsequent time a time share expense of the time shares, and the projected time share expense liability attributable to each of those services or expenses for each time share;
- 9. any initial or special fee due from the purchaser at closing, together with a description of the purpose of the fee and the method of its calculation;
- 10. a statement of the effect on the time share owners of liens, defects, or encumbrances on or affecting the title to the time share units;
- 11. a description of any financing offered by the developer;
- 12. the terms and significant limitations of any warranties provided by the developer, including statutory warranties and limitations on the enforcement thereof or on damages;
- 13. a statement that:
 - a. within three (3) days (excluding Sundays and Holidays) after receipt of a public offering statement a purchaser, before transfer, may cancel any contract for purchase of a time share from a developer,
 - b. if a developer fails to provide a public offering statement to a purchaser before transferring a time share, the purchaser is entitled to recover from the developer ten percent (10%) of the sales price of the time share, and

- c. if a purchaser receives a public offering statement more than three (3) days (excluding Sundays and Holidays) before signing a contract, he cannot cancel the contract for failure timely to receive the public offering statement;
- 14. a statement of any unsatisfied judgments against the developer or the managing entity, the status of any pending suits involving the sale or management of real estate to which the developer or an affiliate of the developer or the managing entity is a defending party, and the status of any pending suits of which the developer has actual knowledge of significance to the time share units;
- 15. a statement that any deposit made in connection with the purchase of a time share will be held in an escrow (or trust) account until expiration of the time for rescission or any later time specified in the contract to purchase the time share and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 4.3.8 of this Part;
- 16. any restraints on transfer of time shares or portions thereof;
- 17. a description of the insurance coverage provided for the benefit of time share owners;
- 18. any current or expected fees or charges to be paid by time share owners for the use of any facilities related to the project;
- 19. the extent to which financial arrangements have been provided for completion of all promised improvements pursuant to § 4.3.18 of this Part;
- 20. the extent to which a time share unit may become subject to a tax or other lien arising out of claims against other time share owners of the same time share unit;
- 21. a description of the rights and remedies available in the time share instrument of a time share owner who is prevented from enjoying exclusive occupancy of a time share unit, or a statement that there are none provided in the instrument; and
- 22. all unusual and material circumstances, features, and characteristics of the project.

B. As used in this subsection, “exchange company” means a person operating a program of the kind described in this subsection. If the time share owners are to be permitted or required to become members of or to participate in a program for the exchange of occupancy rights among themselves or with the time share owners of other time share units or both, the public offering statement or a supplement delivered therewith must contain or fully and accurately disclose:

1. whether membership or participation in the program by a timeshare owner is voluntary or mandatory;
2. the name and address of the exchange company and whether the exchange company is an affiliate of the developer; or whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or manager for any time share property participating in the exchange program;
3. the names of all officers, directors, and shareholders owning five percent (5%) or more of the outstanding stock of the exchange company;
4. the terms and conditions of the contractual relationship between the time share owner and the exchange company;
5. the procedures whereby that contractual relationship can be changed or terminated, and whether it can be terminated or otherwise affected by action or inaction of the developer or the managing entity or by other factors beyond the control of the time share owner;
6. a complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the program, a clear description of the manner in which they are applied;
7. the procedures to qualify for and effectuate exchanges, and the manner in which exchanges are arranged by the exchange company;
8. whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the program;
9. whether and under what circumstance a time share owner, in dealing with the exchange company, may lose the use and occupancy of his time share in any properly applied for exchange without his being provided with substitute accommodations by the exchange company;
10. the fees or range of fees for participation by time share owners in the program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;
11. the name and address of the site of each time share property, accommodations or facility that is participating in the program;

12. the number of units in each time-share property participation in the program that are available for occupancy and that qualify for participation in the program, expressed within the following numerical groupings: 1-5; 6-10; 11-20; 21-50; and 51 and over; and a statement of the criteria used to determine those units that are available for occupancy;
13. the number of owners with respect to each time share property who are eligible to participate in the program expressed within the following numerical groupings: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those time share owners who are currently eligible to participate in the program;
14. the disposition made by the exchange company of time shares deposited with the program by time share owners eligible to participate in the program and not used by the exchange company in effecting exchanges;
15. the following information which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountant:
 - a. the number of time share owners eligible to participate in the program. Such numbers shall disclose the relationship between the exchange company and time share owners as being either fee paying or gratuitous in nature;
 - b. the number of time share properties, accommodations or facilities eligible to participate in the exchange program categorized by those having a contractual relationship between the developer or the managing entity and the exchange company and those having solely a contractual relationship between the exchange company and owners directly;
 - c. the percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;
 - d. the number of time shares for which the exchange company has an outstanding obligation to provide an exchange to a time share owner who relinquished a time share during the year in exchange for a time share in any future year; and
 - e. the number of exchanges confirmed by the exchange company during the year.

16. a statement in boldfaced type to the effect that the percentage described in § 4.3.3(B)(15)(c) of this Part is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.
- C. In the event an exchange company offers a program directly to the purchaser or time share owner, the exchange company shall deliver to each purchaser or time share owner, prior to the execution of any contract between the purchaser or time share owner and the company offering the program, the information set forth in § 4.3.3(B) of this Part above. The requirements of this paragraph shall not apply to any renewal of a contract between a time share owner and an exchange company, unless there are significant changes in the information required by § 4.3.3(B) of this Part since the execution of the prior contract.
 - D. Each exchange company offering a program to purchasers in this state must include the statement set forth in § 4.3.3(B)(16) of this Part on all promotional brochures, pamphlets, advertisements, or other material disseminated by the exchange company which also contain the percentage of confirmed exchanges described in § 4.3.3(B)(15)(c) of this Part.
 - E. As used in this subsection, "multi-location developer" means a developer creating or selling its own time shares in more than one time share property under a program permitting time share owners, by reservation or other similar procedure, to occupy time share units in more than one timeshare property. If time share owners are to be permitted or required to participate in a multi-location program, the public offering statement or a supplement delivered therewith must contain or fully and accurately disclose:
 1. a complete and accurate description of the procedure to qualify for an effectuate use rights in time share units in the multi-location program;
 2. a complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the multi-location program, including, but not limited to, limitations on reservations, use or entitlement rights based on seasonality, unit size, levels of occupancy or class of owner, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the multi-location program, a clear description of the manner which they are applied;
 3. whether use is arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for use are made by the multi-location developer;

4. the name and address of the site of each time share property included in the multi-location program;
5. the number of time share units in each time share property which are unavailable for occupancy; with respect to each such time share unit, the interest which the multi-location developer has therein (e.g. fee ownership, leasehold, option to purchase), and if less than fee ownership a statement of all relevant terms of the multi-location developer's interest therein; and with respect to each such time share unit, whether it may be withdrawn from the multi-location program;
6. the following information which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants:
 - a. the number of time share owners in the multi-location program;
 - b. for each time share property in the multi-location program, the number of properly made requests for use of time share units in such time share property; and
 - c. for each time share property, the number of owners who received the right to use a unit in such time share property as a percentage of the time share owners who properly requested such use in the time share property.
7. A statement in boldfaced type to the effect that the percentages described in § 4.3.3(E)(6) of this Part do not indicate a purchaser's probabilities of being able to use any time share unit since availability at individual locations may vary.

F. A developer shall promptly amend:

1. the public offering statement to report any material change in the information required by §§ 4.3.3(A) and (B) of this Part, and
2. the public offering statement or any supplement thereto to report any material change known to him in the information required by § 4.3.3(B) of this Part, except that:
 - a. any material change in information required by §§ 4.3.3(B)(2), (3) and (11) of this Part shall be reported to purchasers within thirty (30) days after the change occurs. No liability shall be attributed to any person in the change is reported within the thirty (30) day period; and

- b. the information required by §§ 4.3.3(B)(13), (14), and (15) of this Part shall be calculated, at the minimum, from the records of the exchange company for the preceding calendar year, and need not be updated than on a yearly basis, and
3. the public offering statement or may supplement thereto to report any material change in the information required by § 4.3.3(E) of this Part, except that the information required by §§ 4.3.3(E)(4), (5), and (6) of this Part shall be calculated, at the minimum, from the records of the multilocation developer for the preceding calendar year, and need not be updated more than on a yearly basis;
4. insofar as the developer relies in good faith on information provided by others in making disclosures required by § 4.3.3(B) of this Part, he is responsible for a misrepresentation only if he has knowledge of its falsity; and
5. an exchange company shall be treated as a developer for the purposes of determining liability under these rules for any program in which the exchange company contracts directly with the purchaser, and in which it has no contract with the time share developer.

4.3.4 Public Offering Statement

- A. If a conversion building that includes or is to include one or more time share units is more than ten (10) years old and the developer or any affiliates of the developer own or control more than fifty percent (50%) of all units in the project, the public offering statement must contain, in addition to the information required by § 4.3.3 of this Part:
 1. a statement by the developer, based on a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the time share units;
 2. a statement the developer of the expected useful life of each item reported on in § 4.3.4(A)(1) of this Part or a statement that no representations are made in that regard; and
 3. a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.
- B. this section applies only to unit in which use as a dwelling or for recreational purposes, or both, is permissible.

4.3.5 Public Offering Statement; Time Share Securities

If a time share is currently registered with the Securities and Exchange Commission of the United States, a developer satisfies all requirement relating to the preparation of public offering statement of this Act if he delivers to the purchaser (and files with the Agency) a copy of the public offering statement filed with the Securities and Exchange Commission. (A time share is not a security under the provisions of R.I. Gen. Laws § 7-11-1 *et. seq.* entitled "the Rhode Island Uniform Securities Act (1990)."

4.3.6 Practices Prohibited

- A. It shall be an unfair or deceptive act or practice for any developer, sales agent or acquisition agent of time share plans or units to:
1. Solicit prospective purchasers on any public street, beach or other public property or facility in violation of State or county laws or regulations.
 2. Use any promotional device, including but not limited to sweepstakes, lodging certificates, gift awards, premiums, or discounts without fully and conspicuously disclosing that such promotional devices are being used for the purpose of soliciting the sale of vacation time sharing plans;
 3. Use any promotional device as set forth above to obtain the names and addresses of prospective purchasers without fully and conspicuously disclosing that names and addresses so acquired will be used for the purpose of soliciting the sale of the vacation time sharing plans;
 4. Misrepresent or deceptively represent any material fact concerning the time share plans or time share units, including, but not limited to:
 - a. The amount or period of time the accommodation units and facilities will be available to any purchaser;
 - b. The location or locations of the offered units and accommodations and facilities;
 - c. The size, nature, extent, qualities or characteristics of the offered units, accommodations, and facilities;
 - d. The nature or extent of any services incident to the units, accommodations and facilities;
 - e. The right of a purchaser, if any, to exchange his right to units in one location for his right to units in another location;
 - f. The conditions under which a customer may exchange his right to an accommodation in one location for his right to an accommodation in another location; or

- g. The contents of the contract or the purchaser's rights, privileges or benefits thereunder;
- 5. Fail to honor or comply with all provisions of the contract with the purchaser;
- 6. Include, in any contract, any provision purporting to waive any right or benefit provided for purchasers pursuant to these Regulations;
 - a. To seek or solicit such a waiver during the effective period of these Regulations;
- 7. Sell any vacation time sharing plan the duration of which exceeds the period during which the availability of the offered accommodations and facilities can be guaranteed; or
- 8. Do any other act which constitutes fraud, misrepresentation, or failure to make a disclosure of a material fact.
 - a. Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall placed on the inside front cover or in the first page containing text material of the sale brochure, or otherwise conspicuously displayed: ORAL REPRESENTATION CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY RHODE ISLAND STATUTES AND/OR REGULATIONS, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If time share estates have or may be created with respect to any unit in the condominium, such sales brochure shall contain the following statement in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME SHARE ESTATES.

4.3.7 Disclosure

- A. It shall be an unfair or deceptive act or practice for the seller of a vacation time sharing plan to fail to utilize and furnish the buyer with a fully completed copy of a contract pertaining to such sale at the time of its execution, said contract shall include:
 - 1. The actual date the contract is executed by all parties;
 - 2. The name and address of the seller;
 - 3. In immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of a size of 10 points larger

than the largest type in the text the following statement: "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN THREE (3) DAYS FROM THE DATE YOU SIGN THIS CONTRACT OR RECEIVE THE PUBLIC OFFERING STATEMENT, WHICHEVER IS LATER IN TIME. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST HAND DELIVER NOTICE OF CANCELLATION OF THE SELLER OR MAIL NOTICE TO THE SELLER BY CERTIFIED OR REGISTERED MAIL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE DELIVERED OR SENT AND SHALL BE DELIVERED OR SENT TO THE NAME OF THE SELLER AT ADDRESS OF SELLER. ALL PAYMENTS MADE HEREUNDER WILL BE RETURNED IN FULL WITHIN FIFTEEN DAYS AFTER RECEIPT OF YOUR NOTICE OF CANCELLATION. This right to cancel shall not survive the actual transfer of title by deed where there has been at least three (3) days (excluding Sundays and Holidays) between the signing of the contract and transfer by deed.

4. A synopsis of any sales presentation made by the seller to the purchaser over the telephone or other electronic device;
5. The existence of any lien on the accommodation or facility which could affect the rights of the purchaser or his assignee;
6. However, when any of the specific language required to be placed in a contract pursuant to this rule is in conflict with or duplicative of the language required by those registered under R.I. Gen. Laws § 34-36.1-1 *et. seq.* or its successor, the language of R.I. Gen. Laws § 34-36.1-1 *et. seq.* or its successor shall be exclusive.

B. It shall be an unfair or deceptive act or practice for any seller of vacation time sharing plans to fail to fully and conspicuously disclose in the contract:

1. The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject, including but not limited to per diem, season, reservation, maintenance, management, recreation or utility charges;
2. Any individual or business entity which has or may have the right to alter, amend or add to charges which the purchaser may be subject, and the terms and conditions under which such charges may be imposed;
3. The nature and duration of each agreement between the business offering the vacation time sharing plans for sale and the individual or business entity providing the accommodations or other facilities;
4. In immediate proximity to the space reserved in the contract for the signature of the buyer and boldfaced type of the same size as required by § 4.3.7(A)(3) of this Part "NO PURCHASER SHOULD RELY UPON

REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THE CONTRACT.” However, inclusion of this statement shall not impair the buyer’s right to bring any legal action based upon any cause of action arising from verbal statements;

5. The date of availability of each amenity of the offered accommodations and facilities when same are not completed at the time of sale of such plan.
6. The specific number of years that constitutes the term of the contract.

4.3.8 Purchaser's Right to Cancel

- A. A person required to deliver a public offering statement pursuant to § 4.3.2 of this Part shall, before transfer of a time share and no later than the date of any contract of sale, provide a prospective purchaser with:
 1. a copy of the public offering statement and all amendments and supplements thereto, and
 2. the disclosure required in the case of resale by § 4.3.9 of this Part. Unless the purchaser has received those materials more than three (3) days (excluding Sundays and Holidays) before execution of any contract of sale, the contract is violable by him until he has received those materials and for three (3) days (excluding Sundays and Holidays) thereafter or until transfer, whichever first occurs.
- B. If a purchaser elects to cancel a contract pursuant to § 4.3.8(A) of this Part, he may do so by hand-delivering notice thereof to the seller or by mailing notice thereof to the developer or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within fifteen (15) days after receipt of the notice of cancellation.
- C. If a person required to deliver a public offering statement pursuant to these rules fails to provide a purchaser to whom a time share is transferred with the materials as required by § 4.3.8(A) of this Part, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the seller an amount equal to ten percent (10%) of the sales price of the time share.

4.3.9 Resale of Time Shares

- A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under § 4.3.1(A)(2) of this Part, a seller of a time share shall furnish to the purchaser before execution of any contract for the sale, or otherwise before the transfer of title, a copy of the time share instrument (other than any plans or plans) and a certificate containing:

1. a statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time share or any portion thereof;
 2. a statement setting forth the amount of the periodic time share expense liability and any unpaid time share expense of special assessment of other sums currently due and payable from the seller;
 3. a statement of any other fees payable by time share owners; and
 4. a statement of any judgments or other matters that are or may become liens against the time share or the time share unit and the status of any pending suits that may result in those liens.
- B. A managing entity, within three (3) days (excluding Sundays and Holidays) after a request by a time share owner, shall furnish a certificate containing the information necessary to enable the time share owner to comply with this section. A time share owner providing a certificate pursuant to § 4.3.9(A) of this Part is not liable to the purchaser for any erroneous information provided by the managing entity and included in the certificate, other than for judgment liens against the time share or the time share unit.
- C. A purchaser is not liable for any unpaid time share expense liability or fee greater than the amount set forth in a certificate prepared by a managing entity. A time share owner is not liable to a purchaser for the failure or a delay of managing entity to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for three (3) days (excluding Sundays and Holidays) thereafter or until transfer, whichever first occurs.

4.3.10 Escrow Deposits

- A. Any deposit made in connection with the purchase or reservation in this State of a time share from a person required to deliver a public offering statement pursuant to § 4.3.2(C) of this Part must be placed in escrow, either in this State or in the state where the time share project is located, in an Account designated solely for that purpose, by a licensed title insurance company, an attorney, a licensed real estate broker, an independent bonded escrow company, or any institution whose accounts are insured until:
1. delivered to the developer at the time of any final transfer or conveyance of a time share interest,
 2. delivered to the developer because of the purchaser's default under a contract to purchase the time share,
 3. refunded to the purchaser, or

4. until delivered to the developer in accordance with § 4.4.2(C)(6) of this Part.

4.3.11 Liens

- A. In the case of a sale of a time share where deliver of a public offering statement is required pursuant to § 4.3.2(C) of this Part, a seller shall, before transferring a time share, record of furnish to the purchaser releases of all liens affecting that time share which the purchaser does not expressly agree to subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate in R.I. Gen. Laws Title 34.
- B. If a lien other than a deed of trust or mortgage becomes effective against more than one time share estate, any time share owner is entitled to a release of his time share estate from the lien upon payment of his proportionate liability for the lien in accordance with time share expense liability unless he or his predecessor in interests agreed otherwise with the lienor. After payment, the managing entity may not assess or have a lien against that time share estate for any portion of the time share expenses incurred in connection with that lien.
- C. If a lien to be foreclosed or enforced against all time shares in a time share property, service of notice pursuant to these regulations upon the managing entity, if any, constitutes service thereof upon all the time share owners for the purposes of foreclosure or enforcement. The lienholder shall also forward promptly, by certified or registered mail, a copy thereof to each time share owner at his last known address. Such notice does not suffice for the entry of a deficiency or other personal judgment against any time share owner.

4.3.12 Conversion Building

- A. A developer of a time share property which includes all or any part of a conversion building, and any person in the business of selling real estate for his own account who intends to offer time shares in such a property, shall give each of the residential tenants and any residential subtenant to possession of the proposed time share units notice of the conversion no later than one hundred twenty (120) days before the developer will require the tenants and any subtenant in possession to vacate. Rents shall not be increased during said notice period. The notice must set forth generally the rights of tenants and subtenants under this section and be hand-delivered to the unit or mailed to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required by the developer to vacate upon less than one hundred twenty (12) days' notice, except by reason of non-payment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

- B. For sixty (60) days after delivery or mailing of the notice described in § 4.3.12(A) of this Part, the person required to give the notice shall offer to convey each time share unit or time share proposed unit occupied for residential use to the tenant who leases that unit. Tenants shall have the right to cancel their lease and receive no penalties for said cancellation as long as all obligations of the lease have been met. If a tenant fails to purchase the unit during the sixty (60) day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty (180) days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to non-residential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit for conversion.
- C. If a seller, in violation of § 4.3.12(B) of this Part, conveys a time share unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under § 4.3.12(B) of this Part to purchase that unit if the deed states that the seller has complied with § 4.3.12(B) of this Part, but does not affect the right of a tenant to recover damages from the seller for a violation of § 4.3.12(B) of this Part.
- D. If a notice of conversion specifies a date by which a unit must be vacated and otherwise complies with the provisions of R.I. Gen. Laws § 34-18-1 *et. seq.*, the notice also constitutes a notice to vacate specified by that statute.
- E. Notwithstanding the notice provisions of subsection (A) herein any tenant who has continuously resided in the unit for then (10) years or more or any tenant who has attained the age of sixty-two (62) shall be given one (1) year notice. Rents shall not be increased during said notice period. A tenant as described in this subsection shall have one hundred eighty (180) days within which to purchase the unit as provided for in § 4.3.12(B) of this Part and the remaining provisions of that subsection shall apply. The owner or developer shall pay reasonable moving expenses and costs, to any tenant who has attained the age of sixty-two (62), within a fifty (50) mile radius.
- F. Nothing in this section permits termination of a lease by a developer in violation of its terms.

4.3.13 Express Warranties of Quality

- A. Express warranties made by any seller to a purchaser of a time share, if relied upon by the purchaser, to prevent deception or unfair practices, are created as follows:
 - 1. Any affirmation of fact or promise which relates to time times share, the time share unit, rights appurtenant to either, area improvements that would directly benefit the time share, or the right to use or have the benefit of facilities not located on the time share unit, creates an express warranty

that the time share, the time share unit, and related rights and uses will conform to the affirmation or promise;

2. Any model or description of the physical characteristics of the time share property, including plans and specification of or for improvements, creates an express warranty that the property will substantially conform to the model or description;
 3. Any description of the quantity or extent of the real estate constituting the time share property, including plats or surveys, creates an express warranty that the property will conform to the description, subject to customary tolerances, and;
 4. A provision that a purchaser may put a time share unit only to a specified use is an express warranty that the specified use is lawful.
- B. Neither formal words; such as “warranty” or “guarantee”, nor a specific intention to make a warranty, is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the time share, the time share unit, or the value of either does not create a warranty.

4.3.14 Implied Warranties of Quality

- A. A developer and any person in the business of selling real estate for his own account, to prevent unfair practices or deception, warrants that a time share unit will be in at least as good condition at the earlier of the time of the transfer or of the delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.
- B. A developer and any person in the business of selling real estate for his own account impliedly warrants that a time share unit and any other real property the time share owners have a right to use in conjunction therewith are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before transfer, will be:
1. free from defective materials, and
 2. constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.
- C. In addition, a developer warrants to a purchaser of a time share that an existing use of the time share unit, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of transfer or of the delivery of possession.
- D. Warranties imposed by this section may be excluded or modified as provided in § 4.3.15 of this Part.

- E. For purposes of this section, improvements made or contracted for by an affiliate of a developer are made or contracted for by the developer.
- F. Any transfer of a time share transfers to the purchaser all of any developer's implied warranties of quality.

4.3.15 Exclusion or Modification of Implied Warranties of Quality

- A. Except as limited by § 4.3.15(B) of this Part, which subsection applies with respect to a purchaser of a time share in a time share unit that may be used as a dwelling or for recreational purposes, implied warranties of quality:
 - 1. May be excluded or modified by agreement of the parties; and
 - 2. Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.
- B. With respect to a purchaser of a time share in a time share unit that may be used as a dwelling or for recreational purposes, no general disclaimer of implied warranties of quality is effective, but a developer may disclaim liability in an instrument signed by the purchaser for a specified defect of specified failure to comply with applicable law if the existence of the defect or failure entered into and became a part of the basis of the bargain.

4.3.16 Violations

It shall be an unfair act or practice for any person subject to these regulations to violate or fail to comply with any provision of these regulations or of the time share instrument.

4.3.17 Labeling of Promotional Material

It shall be an unfair act or practice to use any promotional material for display or to deliver to or use any promotional material concerning prospective purchaser which describes or portrays any improvement in the time share property unless the description or portrayal of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

4.3.18 Developer's Obligation to Complete

It shall be an unfair act or practice for a developer to fail to complete within a reasonable time period all promised improvements described in the time share instrument and promotional materials.

4.3.19 Substantial Completion of Units

It shall be an unfair act or practice to convey an interest in a unit for which delivery of a public offering statement is required until the unit is substantially completed as evidenced by a recorded certificate of substantial completion executed by an independent registered architect or engineer, or by issuance of a certificate of occupancy authorized by law.

4.4 Administration and Registration

4.4.1 Registration Required

Registration of the following information is required under these regulations. This requirement is necessary to ensure the ability to enforce and effectively carry out the consumer protection measures these regulations are intended to implement. A developer may not offer or transfer a time share unless the time share is registered with the Department of Business Regulations (hereinafter "the Agency"), but an offering by a developer of time shares in no more than one time-share unit at any one time is exempted from the requirement of the regulations.

4.4.2 Application for Registration: Approval of Uncompleted Units

- A. For the purposes of this section, "substantially completed" means that all structural components and mechanical systems of all buildings constituting or containing any time share units or portions thereof are finished in accordance with the plans, as evidenced by a recorded certification of completion executed by an independent registered engineer, surveyor, or architect.
- B. An application for registration must contain the required information and be accompanied by any reasonable fees required by the agency. A developer shall promptly file amendments to report any actual or expected material change in any document or information contained in his application.
- C. If a developer files with the agency the time share instrument or proposed time share instrument, or an amendment or proposed amendment to the time share instrument, describing time share units consisting in whole or in part of buildings or portions of buildings that have not been substantially completed, the developer shall also file with the agency:
 - 1. a verified statement showing all costs involved in completing the time share property;
 - 2. a verified estimate of the time of completion of construction of the time share property;
 - 3. satisfactory evidence that he has sufficient funds to cover all costs to complete the time share property;

4. a copy of the executed construction contract and any other contracts for the completion of the time share property;
5. a one hundred percent (100%) payment and performance bond covering the entire cost of construction of the time share property;
6. if purchasers' funds are to be utilized for the construction of the time share property, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides:
 - a. that disbursements of purchasers' funds may be made from time to time to pay for construction of the time share property, architectural, engineering, finance, and legal fees, and other costs for the completion of the time share property in proportion to the value of the work completed by the contractor as certified by an independent registered architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;
 - b. that disbursement of the balance of purchasers' funds remaining after completion of the time share property may be made only after the escrow agent or lender receives satisfactory evidence that the period for filing mechanics' and materialmen's lien has expired, the right to claim those liens has been waived, or adequate provision has been made for satisfaction of any claimed mechanics' or materialmen's lien; and
7. any other materials or information the agency may reasonably require.

4.4.3 Receipt of Application; Order of Registration

The agency shall acknowledge receipt of an application for registration within five (5) business days after receiving it. The registration shall be made available to the general public for inspection thereafter.

4.4.4 Annual Report and Amendments

- A. A developer within thirty (30) days after the anniversary date of the order of registration, annually shall file a report to bring up to date the material contained in the application for registration and the public offering statement. This provision does not relieve the developer of the obligation to file amendments pursuant to § 4.4.4(B) of this Part.
- B. A developer promptly shall file amendments to the public offering statement with the agency.
- C. If an annual report reveals that a developer owns or controls time shares representing less than twenty-five percent (25%) of the time shares in the time

share units and that a developer has no power to increase the number of time shares in the units, the agency shall issue an order relieving the developer of any further obligation to file annual reports.

4.4.5 Agency Regulation of Public Offering Statement

- A. Both the agency and the Department of Attorney General at any time may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.
- B. The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the time shares, the disclosure statement, or any of the documents contained in the application for registration.
- C. In the case of any time share property situated wholly outside of this State, no application for registration or proposed public offering statement filed with the agency which has been approved by an agency of the state in which the time share property is located and substantially complies with the requirements of this act may be rejected by the agency on the grounds of noncompliance with any different or additional requirements imposed by this Act or by the agency. However, the agency may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

4.5 Conclusion

4.5.1 Enforcement

These rules and regulations are enforceable to the same extent as would be any violation of the provisions of the Rhode Island Deceptive Trade Practices Law, R.I. Gen. Laws § 6-13.1-1 *et. seq.* Specifically, enforcement remedies include injunctive and/or monetary relief pursuant to R.I. Gen. Laws § 6-13.1-5; appointment of a receiver pursuant to R.I. Gen. Laws § 6-13.1-5, civil penalties pursuant to R.I. Gen. Laws § 6-13.1-8, and criminal penalties pursuant to R.I. Gen. Laws § 6-13.1-14.

4.5.2 Severability

If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable. These regulations are adopted under the authority of the Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1 *et. seq.* and the Administrative

Procedures Act, R.I. Gen. Laws § 42-35-1 *et. seq.* These regulations shall become effective twenty (20) days after filing with the Office of Secretary of State.

110-RICR-40-00-4

TITLE 110 - ATTORNEY GENERAL

CHAPTER 40 - CONSUMER PROTECTION UNIT

SUBCHAPTER 00 - N/A

**PART 4 - RULES AND REGULATIONS FOR REAL ESTATE TIME SHARE/INTERVAL
OWNERSHIP SALES AND PRACTICES**

Type of Filing: Refile Capabilities

Department of State

Regulation Effective Date

Original Signing Date

Department of State Initials

Department of State Date