
CHAPTER 427

THE TIMESHARING (LICENSING AND CONTROL) ACT

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TIMESHARING (LICENSING AND
CONTROL)

An Act to make provision for the licensing and control of the development marketing and management of certain types of property under the concept of timesharing and for matters connected therewith and incidental thereto.

(29th March, 1984.)

12/1983.
7/1984.

1. This Act may be cited as the Timesharing Shorttitle.
(Licensing and Control) Act.

2. In this Act—

Interpretation.

"Chief Fire Officer" means the Chief Fire Officer of the City of St. John's Fire Brigade;

"Department" means the Department of Tourism;

"developing owner" means in the case of any given real property a person licensed as a developing owner under this Act who holds an estate in fee simple or a leasehold estate for a term of twenty-five years or more in the real property and who is in the business of creating and selling his own timesharing intervals in a timesharing scheme but does not include a development contractor or a marketing agent;

"development contractor" means a person appointed by a developing owner to undertake on his behalf the duties, responsibilities and obligations of the construction and equipping, or the supervision of the construction or equipping, of a timesharing scheme on real property for which the developing owner is duly licensed under this Act;

"Director-General" means the Director-General of Tourism or the Permanent Secretary in the Ministry responsible for administering the subject matter of this Act;

"licence" means a licence granted under this Act to develop, market or manage a timesharing scheme, as the case may be;

"licensee" means a person to whom a licence has been granted under section 3;

"managing agent" means a person licensed as a managing agent under this Act and appointed by the developing owner who undertakes the duties, responsibilities and obligations of the management of a timesharing scheme;

"marketing agent" means a person licensed as a marketing agent under this Act and appointed by the developing owner who undertakes the duties, responsibilities and obligations of the marketing and sale of a timesharing scheme;

"Minister" means the Minister responsible for Tourism;

"occupancy licence" means a licence granted by the Minister under section 37;

"purchaser" means a person who has given valuable consideration in exchange for the right to occupy and use the facilities of a timesharing scheme;

"specified terms" means the conditions specified in a licence;

"timesharing interval" means a period of occupation and use of the facilities of a timesharing scheme;

"timesharing scheme" means any premises or complex of premises (whether contiguous to each other or not) and the grounds appurtenant thereto operated as a single business venture for the accommodation of purchasers and let for occupancy in exchange for a consideration given in advance by a purchaser who receives in return a right to occupy and use the facilities of the scheme for a specified period of not more than six months during any given year;

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"Town and Country Planner" has the meaning assigned to that expression by section 2 of the Land Development and Control Act;

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"Tribunal" means the Timesharing Appeal Tribunal established under section 32;

"unit" means that part of the facilities of a timesharing scheme designated for the exclusive use and occupation of a purchaser.

3. (1) A person shall not construct a new building or effect any improvement, repairs, alteration or change of use of an existing building for the purposes of such building being used in the operation of a timesharing scheme except under and in accordance with the terms of a developing owner's licence granted for that purpose by the Minister.

Licences for timesharing scheme.

(2) Where a developing owner's licence has been granted in accordance with subsection (1), the person so licensed may appoint a development contractor to perform on his behalf functions in relation to the timesharing scheme under and in accordance with the terms of that licence.

(3) A person shall not engage in the marketing or in the management of a timesharing scheme except under and in accordance with the terms of a licence granted for the purpose by the Minister.

(4) An application to the Minister for the grant or transfer of a licence may be made by or on behalf of the proposed licensee or the proposed transferee, as the case may be.

(5) The Minister may grant a licence under this section subject to such terms and conditions as may be specified therein.

4. (1) The Minister shall not grant a licence for the operation of a timesharing scheme unless the applicant satisfies the Minister that the purchasers of the facilities of the timesharing scheme will have a right to occupy and use

Restriction on the grant of licences.

those facilities for certain specified periods not in excess of six months of every year over a period of years not exceeding twenty-five.

(2) The Minister shall not grant a licence for the operation of a timesharing scheme whereby any legal or equitable estate or tenancy may be conferred upon the purchasers of rights to occupy and use the facilities of the scheme.

(3) The Minister shall not grant a licence for the operation of a timesharing scheme until the contract to be executed by the purchasers of the rights to occupy and use the facilities of the scheme has been submitted to and approved by the Minister; and no material variation thereof shall be made without the written approval of the Minister.

Transfer of licence on divestment of licensee's interest or on his death.

5. (1) Where a licensee divests himself of his interest in any real property under a timesharing scheme or dies, the Minister may, upon the application in that behalf made by any person claiming the right to succeed to such licensee, transfer the licence to that person subject to such terms and conditions as the Minister may think fit to impose.

(2) Before transferring any licence under subsection (1), the Minister shall, where practicable, give to the licensee or to his estate representatives a reasonable opportunity to make any representations that they may wish to make in relation to any such application and shall take into account any representations so made by them or on their behalf.

Capacity of purchaser to acquire, dispose of etc. his right to use facilities of timesharing scheme.

6. A purchaser may take, acquire, hold, lease, assign and dispose of his right to occupy and use the facilities of a timesharing scheme, in the same manner in all respects as personal property and the title of a purchaser to the right to occupy and use the facilities of a timesharing scheme may be derived through, from or in succession to, another purchaser in the same manner in all respects as personal property enforceable by action.

Variation of terms of licence.

7. The Minister may, at any time upon an application by a licensee, or of his own motion, vary any of the terms of

a licence required to be specified therein (hereinafter in this Act referred to as the "specified terms"); but the Minister shall not of his own motion vary any of the specified terms without first giving to the licensee reasonable notice of his intention to make such variation and shall take into account any representations made by or on behalf of the licensee.

8. Any transfer of a licence under section 5 or any variation of any of the specified terms of a licence under section 7 shall be endorsed on the licence by the Director-General together with the date when such transfer was approved or such variation made by the Minister and the date from which the transfer or variation is to take effect.

Endorsement of transfer or variation on licence.

9. Before approving a transfer or varying any of the specified terms of a licence the Minister may defer consideration of the application until the Chief Fire Officer and the Chief Medical Officer, and the Town and Country Planner or such one or more of them as, having regard to the nature of the application as he may deem appropriate, have caused the facilities of the timesharing scheme in respect of which application is made to be inspected and have furnished to the Minister a report of such inspection in relation to such particulars as the Minister may specify.

Inspection of facilities of scheme.

10. The Minister shall not grant a licence nor approve the transfer of a licence unless he is satisfied—

Conditions for grant or transfer of licence.

(a) that the applicant and the person responsible for the timesharing scheme (if other than the applicant), the developing owner, the marketing agent and the managing agent are financially able and fit and proper persons to perform their respective functions under the scheme;

(b) that the facilities of the timesharing scheme have been inspected pursuant to section 9 and that the scheme complies with the provisions of the Regulations or, in the event that it fails to so comply, that an exemption may properly be granted under section 31;

(c) that the timesharing scheme makes provision for not less than ten units;

(d) that the applicant is authorised by law to carry on business in Antigua and Barbuda and that it is in the best interests of Antigua and Barbuda.

Fee for grant or transfer of licence.

11. Where the Minister decides to grant or approve the transfer of a licence, before the licence is issued, there shall be paid into the Consolidated Fund in respect of the licence, such fee as may be prescribed.

Types of licences and duration.

12. (1) Licences granted under section 3 shall be of three kinds, namely—

- (i) a developing owner's licence;
- (ii) a marketing agent's licence; and
- (iii) a managing agent's licence.

(2) A developing owner's licence and a marketing agent's licence shall come into force on the date specified therein and shall remain in force until the completion of the timesharing scheme, unless suspended or revoked.

(3) A managing agent's licence shall come into force on the date specified therein and shall remain in force until the expiration of one year from that date or such shorter period as may be specified therein and may be renewed from time to time.

Form of and matters to be specified in licence.

13. A licence granted under section 3 shall be in such form as the Minister may determine and shall specify—

- (a) the name of—
 - (i) the developing owner and the applicant for the licence if different from the developing owner;
 - (ii) the marketing agent and the applicant for the licence, if different from the marketing agent;
 - (iii) the managing agent and the applicant for the licence, if different from the managing agent,

as may be appropriate to the particular licence;

(b) the name of the person who is to be responsible for each of the three functions under paragraph (a);

(c) the premises in respect of which the licence is granted;

(d) the maximum number of persons who may at any one time be provided with sleeping accommodation in the timesharing scheme or in any room on the premises;

(e) the rooms to be reserved as public rooms for the general use of guests or purchasers;

(f) the date upon which the licence is to come into force;

(g) the date upon which the licence is to expire;

(h) the date upon which the licence was granted; and

(i) any terms or conditions attached to the licence.

14. (1) Without prejudice to any other provisions of this Act, where the Minister is satisfied that in relation to any timesharing scheme any provision of law or, as the case may be, any condition of the licence, is alleged to be contravened—

Power of Minister to suspend and vary licence.

(a) the Minister may serve upon the licensee a notice specifying the provision of law or, as the case may be, the condition of the licence that is alleged to be contravened and requiring the licensee to comply or ensure compliance therewith to the satisfaction of the Minister within such reasonable period as the Minister may specify in the notice and, if at the expiry of such period the licensee has failed to comply or ensure compliance therewith to the satisfaction of the Minister, the Minister may suspend or revoke the licence; or

(b) if the Minister is satisfied that such alleged contravention is likely to endanger the health or safety of any of the persons in or likely to use the facilities of the timesharing scheme, the Minister may forthwith suspend or vary the licence granted in respect thereof until such time as he is satisfied that such contravention has ceased.

(2) The Minister may revoke a licence if he is satisfied that the premises to which it relates has ceased to be operated as a timesharing scheme.

**Surrender of
revoked or
suspended
licence.**

15. (1) Where a licence has been revoked or suspended under this Act the Director-General shall serve a notice upon the licensee notifying him of the revocation or suspension, as the case may be, and calling upon him to surrender the licence to the Director-General within seven days of the date of the notice.

(2) A licensee who fails to comply with a notice under subsection (1) is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for a term of three months.

**Power of
Magistrate to
issue warrant to
enter premises.**

16. Where it has been made to appear to a Magistrate that premises not licensed as a timesharing scheme or not exempted from being licensed as a timesharing scheme are being operated as such he may issue a warrant to a police officer of or above the rank of sergeant authorizing him, with or without assistance, to enter upon and inspect the premises.

**Powers of entry
and inspection.**

17. (1) Without prejudice to any other provision of law but subject to subsection (2), an officer of the Department duly authorised in that behalf, or an officer of the Department of Health, the Development Control Authority, St. John's Fire Brigade or a police officer of and above the rank of sergeant may, without a warrant, enter upon and inspect any premises licensed as a timesharing scheme or exempted from being so licensed.

(2) Before an inspection is carried out under the authority of subsection (1), the licensee of the premises which it is intended to inspect, or some agent or servant of the licensee shall be given such notice of the intention to carry out the inspection as may, in the circumstances of the case and having regard to the objects of the inspection, be reasonable; and the licensee or, as the case may be, his agent or servant shall be given an opportunity to be present or have some person selected by him to be present at the inspection.

(3) If any person authorised under the provisions of subsection (1) has reason to believe that a contravention of

any provision of law is being committed in premises licensed under a timesharing scheme and that the contravention is of such a nature that there is a likelihood of danger therefrom to the safety or health of persons therein if such contravention is not promptly remedied, then that person may give such directions to the person for the time being in charge of the premises as will, in his opinion, prevent or minimize such danger, and may require such persons or classes of persons as he may specify to vacate the premises or such part of the premises as he may specify until such danger is in his opinion prevented or minimized and may, if such directions or requirements are not carried out, call to his assistance such persons as he may think fit for the purpose of enforcing compliance therewith or carrying out such works of an emergency nature as he may think necessary.

(4) Any person giving directions or making requirements under the authority of subsection (3) shall forthwith report the action he has taken to the Director-General.

(5) In this section "licensee" means the developing owner or the managing agent.

18. (1) Within forty days of the execution of a contract by a purchaser entitling the purchaser to occupy and use the facilities of a timesharing scheme, a managing agent shall apply to the Registrar to register the right of the purchaser.

Registration of purchaser's right to occupy and use facilities of time-sharing scheme.

(2) On application under sub-section (1), the Registrar shall, upon being satisfied that—

(a) the purchaser is entitled to be registered in respect of the right;

(b) the timesharing occupancy tax payable under the Timesharing Tax Act has been paid,

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enter, upon payment of such fee as may be prescribed, such particulars as may be prescribed in a register to be maintained by him to be called the Register of Timesharing Intervals (in this section referred to as "the Register").

(3) The Register shall be opened to inspection by any member of the public at all reasonable times upon payment of such fee as may be prescribed.

(4) The Registrar shall, on the application of a purchaser or of a managing agent, make any necessary alterations to the Register in the particulars or otherwise relating to registered purchasers.

(5) A managing agent who contravenes the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for a term of one year.

Effect of
registration of
purchaser's right.

19. (1) On the registration of any person under section 18 as the purchaser of the right to occupy and use the facilities of a timesharing scheme, a charge shall be created on the premises of the timesharing scheme and all estates and interests therein in favour of the purchaser to the extent and for the duration of the purchaser's interest in the scheme.

(2) A charge upon the premises of a timesharing scheme arising under subsection (1) shall prevail against any purchaser of the premises in good faith for value without actual notice of such charge.

Refund of
registration fee.

20. The Minister of Finance may direct the repayment to the managing agent of any fee previously paid to the Registrar in respect of the registration under section 18 of the right of a purchaser where it is proved to the satisfaction of the Minister that—

(a) the contract for the sale of the timesharing interval to which the fee relates was, by mutual agreement of the parties thereto, cancelled before the purchaser first exercises his right;

(b) the managing agent has refunded to the purchaser an amount equal to the fee paid by him to the Registrar in respect of the registration of the right of the purchaser.

Regulations.

21. (1) The Minister may make Regulations for the purpose of carrying the provisions of this Act into effect, and in particular, but without prejudice to the foregoing for—

(a) governing the development, marketing and management of timesharing schemes in such a manner as to be likely to enhance the growth of tourism through

the creation of safe, hygienic and sanitary facilities which are equal to the generally accepted standards of hotels under the supervision of the Department;

(b) regulating the number of persons who may be accommodated in the facilities of a timesharing scheme and in any room thereof;

(c) prescribing standards of equipment for the sanitation of timesharing schemes in such a manner the preparation and serving of food and drink in such schemes and standards for ventilation;

(d) the medical examination of employees of licensees so as to restrict and control the employment in timesharing schemes of persons suffering from disease or infection or who have been in contact with persons suffering from disease or infection and for prescribing standards of personal cleanliness to be observed by employees of licensees;

(e) prescribing standards for the maintenance of the exteriors and interiors of timesharing schemes and the roads, pathways and grounds thereof;

(f) prescribing the precautions to be taken against the outbreak or spread of fire in timesharing schemes and for the protection therefrom;

(g) prescribing the furnishing and fixtures to be provided in bedrooms and other rooms provided for the use of purchasers and the standards to be maintained in connection therewith;

(h) prescribing the manner in which any application may be made to the Minister;

(i) keeping of registers and log-books by licensees in relation to the operation of timesharing schemes;

(j) the making of reports to the Minister, the Department of Health, the Development Control Authority and the Chief Fire Officer upon any matters connected with the observance of the Regulations;

(k) requiring that the licence, the Regulations, or any part or extract from either, shall be displayed in any prescribed place;

(1) providing for the proof of any matter in proceedings under the provisions of this Act or the Regulations;

(m) regulating the volume of inventory from each timesharing scheme coming on to the market for sale at any given time;

(n) identifying and investigating the sources of timesharing schemes;

(o) regulating generally the functions and the operations of marketing agents authorized to advertise, promote and sell timesharing schemes;

(p) prescribing the financial requirements to be fulfilled by an applicant for a licence under section 3 (1) before such licence may be granted;

(q) requiring the developing owner, where the Minister, after consultation with the Minister of Public Works, considers it necessary to furnish the Minister with a bond executed by one or more sufficient sureties in such amount, for such period and in such terms as the Minister may prescribe to cover latent and other defects and repairs likely to be necessary as a result of materials used in the construction of the roof or components of the premises of the timesharing scheme;

(r) prescribing levels of services including maid services and cleaning services to be maintained in the operation of timesharing schemes;

(s) prescribing any fee that is required to be prescribed.

(2) Regulations under this section shall be subject to negative resolution of the House.

Information to be supplied to Minister.

22. (1) Every developing owner, marketing agent or managing agent of a timesharing scheme shall, whenever required to do so by the Minister, satisfy the Minister that the scheme in relation to which he has been granted a licence has made provision for the matters set out in the Schedule.

Schedule.

(2) Any failure of a developing owner, marketing agent or managing agent of a timesharing scheme to satisfy the

Minister with respect to any of the matters set out in the Schedule shall be deemed to be a breach of the condition of the licence and the Minister may, subject to subsection (3), suspend or revoke the licence.

(3) Before suspending or revoking the licence the Minister may serve upon the licensee a notice specifying the alleged contravention and requiring the licensee to comply or ensure compliance therewith to the satisfaction of the Minister within such reasonable period as the Minister may specify in the notice and, if at the expiry of such period the licensee fails to comply or ensure compliance to the satisfaction of the Minister, the Minister may suspend or revoke the licence.

(4) Where the Minister suspends a licence he shall serve on the licensee a notice of the suspension and the licence shall, during the period of any suspension be of no effect.

23. An applicant for a licence to develop a timesharing scheme shall, before a licence may be granted, satisfy the Minister of his financial ability to complete the development required for the scheme whether such development consists of the construction of a new building with all the requirements necessary for the proper operation of the scheme or the conversion of an existing building into one satisfying those requirements.

Financial ability
of applicant
for licence under
s. 3(1).

24. (1) A managing agent shall provide or cause to be provided for the purchaser public liability insurance in respect of the accommodation and facilities to be used under the timesharing scheme and such insurance shall be an amount approved by the Minister.

Managing agent to
provide insurance.

(2) A managing agent shall keep all the property of the timesharing scheme of an insurable nature insured in an amount approved by the Minister against loss or damage by such risks as the Minister may from time to time specify.

(3) A managing agent who contravenes any of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for a term of two years.

Escrow Fund.

25. (1) A developing owner shall, forthwith on the commencement of a timesharing scheme to which his licence relates, establish and maintain with a financial institution doing business in Antigua and Barbuda and approved by the Minister of Finance (in this section called "the escrow agent") an escrow fund into which the proceeds of all sales of timesharing intervals shall be paid immediately upon receipt thereof and there kept until disbursed in accordance with the provisions of this section.

(2) Disbursement from the escrow fund shall be made by the escrow agent, with the approval of the Minister and the Minister of Finance—

(a) to the purchaser, on the rescission of his contract within the rescission period allowed therein, the full amount paid by the purchaser for the timesharing interval;

(b) to the marketing agent, pursuant to a contract in writing between the developing owner and the marketing agent and upon the expiration of the rescission period of a purchaser's contract, up to an amount not exceeding forty-five *per centum* of the gross amount realized from the sale of the timesharing interval of that purchaser for the purpose of paying the costs of marketing the timesharing scheme; or

(c) to the developing owner, where he is also the marketing agent, upon the expiration of the rescission period of a purchaser's contract, up to an amount not exceeding forty-five *per centum* of the gross amount realized from the sale of the timesharing interval of the purchaser for the purpose of paying the costs of marketing the timesharing scheme;

(d) to the developing owner, upon the expiration of the rescission period of a purchaser's contract, five *per centum* of the gross amount realized from the sale of the timesharing interval of that purchaser; and the developing owner shall pay the same into the sinking fund established under section 26.

(3) The escrow agent shall, after making the disbursements authorized under subsection (2), transfer to the trust

fund established under section 27 the balance of the amount in the escrow fund.

(4) The terms and conditions of any agreement entered into between the escrow agent and the developing owner in relation to the escrow fund shall be subject to the written approval of the Minister and the Minister of Finance.

(5) A developing owner who contravenes the provisions of subsection (1) or (2) (d) or an escrow agent who contravenes the provisions of subsection (2) is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for a term of one year.

26. (1) A developing owner shall establish and maintain a sinking fund with a financial institution doing business in Antigua and Barbuda and approved by the Minister of Finance into which fund shall be paid any amount disbursed from the escrow fund under section 25(2) (d). **Sinking Fund.**

(2) The sum paid to the sinking fund shall be applied in payment for repairs, alterations or omissions and any corrections necessary to the premises of the timesharing scheme due to latent defects.

(3) Any sum paid to the sinking fund shall, unless applied in payment of the purposes for which the sinking fund is established, be repaid with the approval of the Minister and the Minister of Finance to the developing owner five years after the completion of the final unit of the timesharing scheme.

(4) A developing owner who contravenes the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding five thousand dollars to imprisonment for a term not exceeding one year or to both.

27. (1) A developing owner shall establish and maintain with a financial institution doing business in Antigua and Barbuda approved by the Minister of Finance **Trust Fund.**

(in this section called "the trustee") a trust fund into which fund shall be paid any amount transferred from the escrow fund under section 25(3).

(2) Disbursements from the trust fund shall be made by the trustee, with the approval of the Minister and the Minister of Finance—

(a) to the developing owner, upon the grant of an occupancy licence, the balance of the proceeds of sale of the timesharing interval in relation to which the occupancy licence has been granted;

(b) to a purchaser, after a judgment obtained in a court of law in Antigua and Barbuda for breach of contract in connexion with the purchase of a timesharing interval, the amount of such judgment, together with costs, if any.

(3) The terms and conditions of any agreement entered into between the trustee and the developing owner in relation to the trust fund shall be subject to the written approval of the Minister and the Minister of Finance.

(4) A developing owner shall be entitled to use the funds in the trust account as collateral security in support of any loan or other financial obligation incurred by him for any purpose directly connected with the timesharing scheme to which those funds relate.

(5) Notwithstanding anything in this section contained—

(a) where a developing owner fails to complete the timesharing scheme in accordance with the terms and conditions of his licence or is adjudged a bankrupt by a court of competent jurisdiction and the Minister revokes his licence, the Minister may, with the concurrence of the Minister of Finance, and after consultation with the Minister responsible for Public Works, complete the timesharing scheme by using the funds in the trust fund and any interest accruing to the trust fund and disburse such funds to the purchasers on a *pro rata* basis;

(b) the Minister may, with the concurrence of the Minister of Finance and after consultation with the

Minister responsible for Public Works, require that any funds in the trust fund shall remain therein for such period as may be specified in writing;

(c) the Minister may, with the concurrence of the Minister of Finance and after consultation with the Minister responsible for Public Works, in order to protect the interests of the purchasers or to ensure the proper construction and maintenance of the premises of the timesharing scheme require a developing owner to provide such security as the Minister may think fit.

(6) Any interest accruing to the trust fund shall be for the account of the developing owner.

(7) A developing owner who contravenes the provisions of subsection (1) or a trustee who contravenes the provisions of subsection (2) is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for a term of one year.

28. (1) Notwithstanding anything to the contrary in section 26 or 27, the Minister of Finance may direct that disbursements from the sinking fund and the trust fund may be made to the developing owner where it is proved to their satisfaction that—

Further provisions for disbursements from sinking fund and trust fund.

(a) the contract for the sale of the timesharing interval in respect of which the money was paid into the sinking fund and the trust fund was, by mutual consent of the parties thereto, cancelled before the purchaser first exercises his right to occupy and use the timesharing interval;

(b) the developing owner has repaid the purchaser the amount paid by him in respect of the sale of the relevant timesharing interval.

(2) Disbursements from the sinking fund and the trust fund under subsection (1) shall not exceed the amount repaid by the developing owner to the purchaser.

29. The Director-General shall make or cause to be made an annual inspection of every timesharing scheme in order to ascertain whether compliance with this Act or the

Inspection of scheme.

Regulations is being made and for the purpose of investigating any representation made by a licensee relating to the application of this Act or the Regulations to any particular scheme.

**Suspension of
managing agent's
licence.**

30. (1) Where as a result of an inspection made under section 29 the Minister determines that it is in the public interest that the licence of a managing agent should be suspended, the Minister may suspend the licence of the managing agent and by notice in writing require the developing owner before the date specified in the notice to appoint subject to his approval an interim managing agent for the orderly continuation of the timesharing scheme.

(2) If a developing owner fails to comply with the requirements of a notice under subsection (1) before the date specified therein, the Minister may appoint an interim managing agent who shall continue in that office until the Minister grants a licence to another managing agent; and all costs incurred in connexion with the appointment of an interim managing agent shall be payable out of the moneys provided by the purchasers for the operation and management of the timesharing scheme.

(3) A developing owner who fails to comply with the requirements of a notice under subsection (1) before the date specified therein is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars for each day during which such offence continues and to imprisonment for a term of one year.

**Power of Minister
to grant
exemption.**

31. (1) The Minister may, at any time, if he thinks fit, exempt the holder of a licence from complying, in whole or in part, with any one or more of the Regulations.

(2) Before granting an exemption under subsection (1), the Minister may consult with the Town and Country Planner, the Chief Medical Officer and the Chief Fire Officer or such one or more of them as, having regard to the nature of the proposed exemption, he thinks appropriate.

(3) An exemption may be granted for such period as the Minister thinks fit and may be extended from time to time.

(4) An exemption shall not have any effect unless particulars thereof have been endorsed on the licence.

(5) An exemption may be revoked in whole or in part at any time by the Minister and such revocation shall be endorsed on the licence; but before effecting any such revocation, the Minister shall give to the licensee reasonable notice of his intention to revoke the exemption and shall take into account any representations made by or on behalf of the licensee.

32. (1) There shall be a Tribunal to be called the **Timesharing Appeal Tribunal.** which shall comprise a chairman who shall be a barrister-at-law and two other members selected from time to time by the chairman from a panel of members.

(2) The chairman shall be appointed by the Governor-General and shall hold office during the Governor-General's pleasure.

(3) The panel of members shall consist of not less than five and not more than nine members appointed by the Governor-General and shall hold office during the Governor-General's pleasure.

(4) Such fees as may be prescribed shall be paid to the members of the Tribunal.

(5) In the exercise of his powers under this section, the Governor-General shall act on the advice of the Prime Minister.

33. (1) Any person aggrieved by an act, decision or order of the Minister in the exercise or purported exercise of any power or authority conferred on him by or under this Act or the Regulations may appeal to the Tribunal on a point of law or mixed fact and law. **Appeals**

(2) On any appeal under this section, the Tribunal may make such order, including an order for costs, as it thinks just.

Procedure on hearing of appeals.

34. (1) Appeals shall be heard by the Tribunal in a summary manner and the Tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses and their examination on oath.

(2) In the determination of any appeal the decision of the majority of the members shall prevail.

(3) The proceedings of the Tribunal when sitting to determine any appeal shall be open to the public.

(4) The Chief Justice shall make rules governing appeals to the Tribunal and the hearing thereof and all matters incidental thereto, including the fees to be paid and the forms to be used and, subject to any rules, the Tribunal may regulate its own proceedings.

Appeals to the High Court

35. (1) Any person aggrieved by an order made by the Tribunal on an appeal under section 32 may appeal to the High Court on a point of law within twenty-one days or such longer period as the High Court may allow after receipt of notification of such order.

(2) On any appeal under this section the High Court may make such order, including an order for costs, as it thinks just.

Cap. 422A.

(3) The provisions of section 17 of the Supreme Court Order shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on any appeal under the provisions of this section.

Penalty for irregular operation of scheme.

36. (1) Any person who develops, markets, or mail-ages a timesharing scheme when there is not in force a licence granted to him by the Minister to develop, market or manage such a scheme is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars for each day during which the offence continues and to imprisonment for a term of one year, and on conviction on indictment to a fine of ten thousand dollars for each day during which the offence continues and to imprisonment for a term of one year.

(2) Any person to whom a licence has been granted under this Act who operates a timesharing scheme in respect of which that licence has been granted otherwise than in accordance with the terms and conditions of such licence is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars for each day during which such offence continues and to imprisonment for a term of six months.

(3) Any person to whom a licence has been granted under this Act who makes any material variation in a contract referred to in section 4(3) without the written approval of the Minister is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars for each contract so varied and executed by a purchaser.

(4) Where an offence against this Act or the Regulations is committed by a body corporate with the consent or connivance of, or is attributable to any wilful neglect on the part of any director, manager, secretary or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

37. Any person who obstructs any authorised officer of the Department, the Department of Health, the Development Control Authority or a member of the St. John's Fire Brigade or a police officer of or above the rank of sergeant in the exercise of any power conferred on him or the performance of any duty imposed upon him by this Act or the Regulations is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars and to imprisonment for a term of three months.

Penalty for obstructing officers in Performance of their duties.

38. (1) Any person who, in connexion with an application for a licence under this Act, makes a statement which to his knowledge is false in any material particular is guilty of an offence.

Penalty for false statements.

(2) Any person who, in the course of developing, marketing or managing a timesharing scheme—

(a) makes a statement which he knows to be false;

or

(b) recklessly makes a statement which is false; as to any of the following matters, that is to say—

- (i) the nature of any services, accommodation or facilities provided in the timesharing scheme;
- (ii) the time at which, manner in which or persons by whom any services, accommodation or facilities are so provided;
- (iii) the location or amenities of any accommodation or facilities provided,

is guilty of an offence.

(3) For the purposes of subsection (2)—

(a) anything (whether or not a statement as to any of the matters specified in subsection (2)) likely to be taken for such a statement as to any of those matters as would be false is deemed to be a false statement as to that matter; or

(b) a statement made regardless of whether it is true or false is deemed to be made recklessly, whether or not the person making it has reasons for believing that it might be false.

(4) In subsections (2) and (3) "false" means false to a material degree.

(5) Any person guilty of an offence under this section is liable on summary conviction to a fine of five thousand dollars and to imprisonment for a term of one year.

(6) The Minister may, after giving the licensee an opportunity to be heard, suspend or revoke a licence where the licensee is convicted of an offence under this section.

Occupancy
licences.

39. Upon being satisfied that the licence, the Act and the Regulations have been complied with and that not less than ninety per *centum* of a unit in a timesharing scheme has been completed, the Minister may grant an occupancy licence in respect of that unit to the developing owner.

40. Notwithstanding anything to the contrary where— **Power of Minister to appoint interim managing agent.**

(a) a managing agent's licence has been suspended under this Act, except under section 30; or

(b) a mortgagee has foreclosed on any real property in a timesharing scheme,

and there is no managing agent to manage the timesharing scheme the Minister may appoint an interim managing agent for a period not exceeding three years for the orderly continuation of the timesharing scheme and all expenses incurred in connexion with the appointment of an interim management agent shall be payable out of the monies provided by the purchasers for the operation and maintenance of the timesharing scheme.

41. Nothing in this Act or the Regulations shall derogate from the provisions of the Public Health Act, the Land Development and Control Act and the Immigration and Passport Act or any regulations made thereunder, but in the event of any conflict between this Act and the Public Health Act (but not the others), the provisions of this Act or the Regulations, as the case may be, shall, in so far as they relate to a timesharing scheme, prevail.

Saving of certain other Acts and provisions of this Act to prevail over Cap. 353.

Cap. 353.
Cap. 235.
Cap. 208.

42. (1) A person who, immediately before the date of commencement of this Act, was developing or marketing any property for the purposes of a timesharing scheme whether in the capacity of a developing owner, marketing agent or otherwise may continue so to do without a licence under this Act for the period of three months beginning with that date and if before the expiration of that period he applies for a licence under this Act in respect of that property, until the licence is granted or finally refused or the application is withdrawn. **Transitional.**

(2) For the purposes of this Act, a "developing owner" shall be deemed to include a person who, immediately before the commencement of this Act, was developing any property for the purposes of a timesharing scheme and is permitted by virtue of subsection (1) to continue so to do without a licence under this Act.

(3) Where a purchaser buys a timesharing interval in a timesharing scheme—

(a) before the commencement of this Act; or

(b) during the period when a person, whether in the capacity of a developing owner or marketing agent, is permitted by virtue of subsection (1) to market any property for the purposes of a timesharing scheme without a licence under this Act,

then in any such case the managing agent of the timesharing scheme shall, within 40 days of the grant of his licence, apply to the Registrar to register the right of that purchaser, and the Registrar shall upon being satisfied that the purchaser is entitled to be registered in respect of the right enter, upon payment of such fee as may be prescribed, such particulars as may be prescribed in the Register of Timesharing Intervals.

(4) Notwithstanding section 4, it shall be lawful for the Registrar to register the right of a purchaser to occupy and use premises for a period exceeding twenty-five years if that right existed before the commencement of this Act.

SCHEDULE

(Section 22)

Matters in respect of which every developing owner, marketing agent or managing agent of a timesharing scheme must satisfy the Minister.

Every developing owner, marketing agent or managing agent of a timesharing scheme shall, whenever required to do so by the Minister, satisfy the Minister that the scheme in relation to which he has been granted a licence has made provision for the matters set out in this schedule.

(a) made provision for the inclusion of a non-disturbance clause in all debt instruments where there is recourse against such property for the protection of all purchasers in the timesharing scheme for the duration of their interest in the scheme;

(b) provided for an orderly transition of the property where the timesharing scheme involves the conversion of an

existing hotel facility to a timesharing scheme. Unless specifically exempted by the Minister within the confines of a single scheme where there shall be no mixed use of timesharing schemes and regular hotel accommodations beyond the conversion period and the Minister may grant an exemption only where unique physical characteristics of the property or special financial circumstances are involved and where he thinks the growth of tourism will be advanced;

(*c*) made provision for the purchasers of timesharing intervals to have a voice in the management of timesharing schemes through the creation of an advisory membership structure or tenants' association for each timesharing scheme, such body shall have the right to the names and addresses of all purchasers in the scheme; the managing agent shall cooperate with such body in all ways feasible; the Department shall periodically review comments received from any such body and take any suggestions into consideration as part of its annual inspection under section 29;

(*d*) provided the Director-General prior to their use, with copies of all contracts and other legally binding documents being used by the parties in connexion with the timesharing scheme, including all rules, regulations, conditions or limitations on and charges for use of the accommodation or facilities as may be in force from time to time;

(*e*) provided for the keeping of proper and detailed records concerning all aspects of the development, marketing and management of the timesharing scheme; such records shall include a copy of the contract for each sale under the timesharing scheme and records detailing the disposition of all funds realized for such sales;

(*f*) provided the Director-General to their use or implementation, as the case may be, and every purchaser prior to the execution of a contract by a purchaser, with a copy of the contract conveying timesharing rights; full information concerning the terms and conditions of any financing offered; a detailed statement of all annual or periodic charges and assessments that defines the basis for such charges and assessments and the means by which all periodic charges and assessments (if any) will be made and the amounts thereof; and, all rules, regulations, conditions or limitations on the use of the accommodation or facilities of the scheme;

(*g*) afforded every purchaser a rescission period of not less than fifteen days from the date of execution of the contract by the purchaser, during which time the purchaser

shall be entitled to cancel the contract without any payment or obligation on the part of the purchaser; and the contract shall contain on the first page in bold faced type and separate from the other text of the contract the following words:

“YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PAYMENT OR OBLIGATION WITHIN FIFTEEN (15) DAYS FROM THE DATE HEREOF, IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR DECISION TO DO SO.”;

(h) made satisfactory financial arrangements for the refund of all monies received from any purchaser who cancels his contract under the provisions of paragraph (g) within twenty days of the receipt of the notification of the cancellation;

(i) made provision that if the ownership or other interest in the scheme of the developing owner, marketing agent or managing agent is transferred to a third party such third party agrees in writing to honour fully the rights of the purchasers under the timesharing scheme;

(j) made provision for the inclusion of a clause in all contracts and other legally binding documents being used by the parties in connexion with the timesharing scheme to the effect that such contracts and other documents shall be interpreted and construed according to the law of Antigua and Barbuda;

(k) made provision whereby compensating use periods, similar alternative accommodation or monetary compensation may be granted to a purchaser where the facilities of the timesharing scheme that he is entitled to use and occupy is not available for the period or any part thereof during which the purchaser is entitled to occupy and use the said facilities due to any fault whatever on the part of the managing agent;

(l) provided a policy and procedure for disciplining a purchaser for failure to comply with any provision of the rules and regulations of the timesharing scheme or this Act and the Regulations made thereunder including the late payment of any annual, periodic, or special assessment, and such procedure shall include the imposition of monetary penalties, the suspension of a purchaser's right to use a unit, and the forfeiture of a purchaser's right and interest in a unit for violations including the failure of a purchaser to vacate promptly a unit in accordance with the terms and conditions of purchase and any disturbance affecting the use and enjoyment of the facilities of the timesharing scheme by

other purchasers; and further made provision for giving a purchaser an opportunity to be heard before any penalty is imposed or the rights and privileges of a purchaser are suspended or forfeited;

(m) made provision whereby any special assessment, that is to say any assessment in respect of any costs in connexion with the timesharing scheme payable by a purchaser other than annual or periodic charges and assessments shall be submitted to the Director-General together with a detailed statement thereof for his approval before any demand is made on the purchaser for payment;

(n) provided a plan of payment by purchasers either individually or through a body contemplated in paragraph (c) to the managing agent or interim managing agent for the costs of operating and maintaining the timesharing scheme and such plan shall provide *inter alia*—

(a) for the payment of not less than 10 per centum and not more than 25 per centum of the monies received (as approved by the Minister) annually into a fund to be used solely for the purpose of replacing any furniture, fittings, appliances and floor coverings in the timesharing scheme;

(b) for the submission by the managing agent or interim managing agent to the Minister of an annual audited statement of accounts;

(o) made provision not to encumber the timesharing scheme, subsequent to the sale of units of the scheme, without the written consent of not less than 51 per centum of the existing purchasers, other than the developing owner, marketing agent, or managing agent, as the case may be.
