



**BERMUDA
1981 : 60**

TIMESHARING (LICENSING AND CONTROL) ACT 1981

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SCHEDULE

[16 July 1981]

[preamble and words of enactment omitted]

Short title

1 This Act may be cited as the Timesharing (Licensing and Control) Act 1981.

Interpretation

2 In this Act, unless the context otherwise requires —

"Chief Fire Officer" means the Chief Fire Officer of the Bermuda Fire and Rescue Service;

"Chief Medical Officer" has the meaning given in section 2(1) of the Public Health Act 1949 *[title 11 item 1]*;

"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

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holds an estate in fee simple or a leasehold estate for a term of forty 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" means the Director of Tourism;

"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;

"Regulations" means Regulations made under section 20;

"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

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use the facilities of the scheme for a specified period of not more than six months during any given year;

"Tribunal" means the Timesharing Appeal Tribunal established under section 29;

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

[Section 2 "developing owner" amended by 2005:34 s.2 effective 1 May 2006; "chief fire officer" amended by 2007:23 s.17 effective 2 July 2007; "Minister" amended by BR67/2007 effective 13 July 2007]

Licences for timesharing schemes

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 purpose 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:

Provided that where a developing owner's licence has been granted in accordance with this subsection, 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.

(2) 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 that purpose by the Minister.

(3) 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.

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

Restriction on the grant of licences

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 those facilities for certain specified periods not in excess of six months of every year over a period of not less than forty years.

(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

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submitted to and approved by the Minister; and no material variation thereof shall be made without the written approval of the Minister.

(4) The Minister shall not grant a licence for the operation of a timesharing scheme unless the Minister has approved the maximum number of units in the scheme and it shall be a term of the licence that the number of units in the scheme shall not exceed that maximum number.

[Section 4 subsection (1) amended, and (4) inserted, by 2005:34 s.3 effective 1 May 2006]

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 a right in 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 a right in 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 (hereafter in this Act referred to as the "specified terms"):

Provided that 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.

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Endorsement of transfer or variation on licence

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 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.

Inspection of facilities of scheme

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, the Chief Medical Officer, and the Director of Planning or such one or more of them as having regard to the nature of the application the Minister 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.

Conditions for grant or transfer of licence

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

- (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 Regulations or, in the event that it fails to so comply, that an exemption may properly be granted under section 28;
- (c) that the timesharing scheme makes provision for not less than 25 units;
- (d) that the applicant is authorized by law to carry on business in Bermuda; and
- (e) that the grant or approval of the transfer of a licence is in the best interests of Bermuda.

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 under the Government Fees Act 1965 [*title 15 item 18*].

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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

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

Power of Minister to suspend and vary 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 —

- (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 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) 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 suspension, be of no effect.

(3) The Minister may also revoke a licence if he is satisfied that the premises to which it relates have 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 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 within seven days of the date of the notice.

(2) A licensee who fails to comply with a notice under subsection (1) commits an offence against this Act:

Punishment on summary conviction: to a fine of \$1000.00 or imprisonment for three months or both such fine and imprisonment.

[Section 15 subsection (2) amended 2005:34 s.4 effective 1 May 2006]

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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 authorized in that behalf, or an officer of the Department of Health, the Department of Planning, the Bermuda Fire and Rescue Service 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 authorized under 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.

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

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[Section 17 subsection (1) amended by 2007:23 s.17 effective 2 July 2007]

Registration of a purchaser's right to occupy and use facilities of timesharing scheme

18 (1) Within 40 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 General to register the right of the purchaser.

(2) On an application under subsection (1), the Registrar General 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 Miscellaneous Taxes Act 1976 [*title 14 item 46*] has been paid,

enter, upon payment of such fee as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*], 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 open to inspection by any member of the public at all reasonable times upon payment of such fee as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*].

(4) The Registrar General 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) commits an offence:

Punishment on summary conviction: a fine of \$10,000.00 or imprisonment for one year or both such fine and imprisonment.

[Section 18 subsection (5) amended by 2005:34 s.5 effective 1 May 2006]

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.

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Refund of registration fee

19A The Minister of Finance may direct the repayment to the managing agent of any fee previously paid to the Registrar General 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 General in respect of the registration of the right of the purchaser.

Lien for overdue charges, etc.

19B (1) The managing agent is entitled to have a lien registered against the right of a purchaser to occupy and use the facilities of a timesharing scheme for any overdue charge or assessment owed by the purchaser or any amounts owing for costs arising from damage to the facilities of the timesharing scheme by the purchaser or the purchaser's guests.

(2) An application to register a lien shall be made to the Registrar General who shall register the lien in the Register of Timesharing Intervals upon being satisfied that the managing agent is entitled to have it registered.

- (3) A registered lien shall prevail against –
 - (a) the right of any subsequent purchaser of the right to occupy and use the facilities of the timesharing scheme who purchases the right after the lien is registered; and
 - (b) any charge against the purchaser's right to occupy and use the facilities that is not registered or that is registered after the lien is registered.

[Section 19B inserted by 2005:34 s.6 effective 1 May 2006]

Termination of pre-licensing contracts

19C (1) This section applies to a contract relating to a timesharing interval of a timesharing scheme if the contract is entered into before a developing owner's licence is issued in respect of the timesharing scheme.

(2) Any party to a contract described in subsection (1) may terminate the contract, by written notice to the other party or parties, at any time before the developing owner's licence is issued.

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(3) The power under this section to terminate a contract is in addition to, and does not derogate from, the right of a purchaser to cancel a contract for the purchase of a timesharing interval within the rescission period allowed in the contract.

[Section 19C inserted by 2005:34 s.6 effective 1 May 2006]

Regulations

20 (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 generality of 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, standards for 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 of persons therefrom;
- (g) prescribing the furnishings 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;

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- (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 Department of Planning 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;
- (l) 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 Works and Engineering, 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 other 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.

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

Information to be supplied to Minister

21 (1) Every developing owner, marketing agent or managing agent of a timesharing scheme shall, whenever required to do so by the

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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.

(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.

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

22 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.

Managing agent to provide insurance

23 (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 in an amount approved by the Minister.

(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 commits an offence:

Punishment on summary conviction: a fine of \$20,000.00 or imprisonment for two years or both such fine and imprisonment.

[Section 23 subsection (3) amended by 2005:34 s.7 effective 1 May 2006]

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Escrow fund

24 (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 Bermuda 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 this section.

(2) Disbursements 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 developing owner, upon the expiration of the rescission period of a purchaser's contract, up to an amount not exceeding thirty-five per centum of the gross amount realized from the sale of the timesharing interval of that purchaser for the purpose of paying construction costs of 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 thirty-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;
- (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 25.

(3) The escrow agent shall, after making the disbursements authorized under subsection (2), transfer to the trust fund established under section 25A 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 subsection (1) or (2)(d) or who uses disbursements under subsection (2)(b) for a purpose other

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than that specified in subsection (2)(b) or an escrow agent who contravenes subsection (2) commits an offence:

Punishment on summary conviction: a fine of \$10,000.00 or imprisonment for one year or both such fine and imprisonment.

[Section 24 subsections (2)(b) and (5) substituted by 2005:34 s.8 effective 1 May 2006]

Sinking fund

25 (1) A developing owner shall establish and maintain a sinking fund with a financial institution doing business in Bermuda and approved by the Minister of Finance into which fund shall be paid any amount disbursed from the escrow fund under section 24(2)(d).

(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 any 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 subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$10,000.00 or imprisonment for one year or both such fine and imprisonment.

[Section 25 subsections (2) and (4) amended by 2005:34 s.9 effective 1 May 2006]

Trust fund

25A (1) A developing owner shall establish and maintain with a financial institution doing business in Bermuda approved by the Minister of Finance (in this section called "the trustee") a trust fund into which fund shall be paid any amount transferred from the escrow fund under section 24(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 Bermuda for breach of a contract in connexion with the purchase of a timesharing interval, the amount of such judgment, together with costs, if any.

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(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 up to fifty per centum of 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 development of the timesharing scheme to which those funds relate.

(5) Notwithstanding anything contained in this section—

(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 Works and Engineering, complete the timesharing scheme by using the funds in the trust fund and any interest accruing to the trust fund or 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 Works and Engineering, 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 Works and Engineering, 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 on proceeds from the sale of a timesharing interval shall be dealt with in the manner agreed to by written contract between the developing owner and the purchaser of the timesharing interval.

(6A) The terms and conditions of any contract entered into between the developing owner and the purchaser in relation to any interest accruing to the trust fund on proceeds from the sale of a timesharing interval under subsection (6) shall be subject to the written approval of the Minister and the Minister of Finance.

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(7) A developing owner who contravenes subsection (1) or a trustee who contravenes subsection (2) commits an offence:

Punishment on summary conviction: to a fine of \$10,000.00 or imprisonment for one year or both such fine and imprisonment.

[Section 25A subsections (4), (5) and (7) amended, and (6) and (6A) substituted for (6), by 2005:34 s.10 effective 1 May 2006]

Further provisions for disbursements from sinking fund and trust fund

25B (1) Notwithstanding anything to the contrary in section 25 or 25A, the Minister and 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—

- (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 to 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.

Purchaser to accommodation ratio

25C (1) The developing owner and marketing agent shall ensure that the total number of the time intervals sold is limited so that if all the purchasers exercised their rights to occupy units, each unit would still be unoccupied for at least one week each year.

(2) The minimum one-week period referred to under subsection (1) shall not be considered an interval for the purposes of allocating assessments under section 25D.

[Section 25C inserted by 2005:34 s.11 effective 1 May 2006]

Assessments, principles relating to allocation

25D Charges and assessments for the operation and maintenance of the timesharing scheme shall be allocated to purchasers and the developing owner in accordance with the following principles –

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- (a) the charges and assessments shall be allocated among all timesharing intervals including timesharing intervals not yet sold;
- (b) the allocation among timesharing intervals must be proportionate to the intervals and may vary only on the basis of factors that relate to the intervals including, without limiting the generality of the foregoing, the duration of the interval and the size, type, location or other characteristics of the unit to which the interval relates;
- (c) neither the developing owner nor a purchaser shall be exempted from, or accorded special treatment in respect of, any charge or assessment.

[Section 25D inserted by 2005:34 s.11 effective 1 May 2006]

Inspection of scheme

26 The Director 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 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

27 (1) Where as a result of an inspection made under section 26 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 commits an offence:

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Punishment on summary conviction: to a fine of \$2,000.00 for each day during which such offence continues or imprisonment for one year or both such fine and imprisonment.

[Section 27 subsection (3) amended by 2005:34 s.12 effective 1 May 2006]

Power of Minister to grant exemption

28 (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 Director of Planning, 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:

Provided that 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.

Timesharing Appeal Tribunal

29 (1) There shall be a Tribunal to be called the Timesharing Appeal Tribunal which shall comprise a chairman who shall be a barrister and attorney 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 and shall hold office during the Governor's pleasure.

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

(4) Fees shall be paid to the members of the Tribunal in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

(5) In the exercise of his powers under this section, the Governor shall act on the advice of the Premier.

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Appeal to Tribunal

30 (1) Any person aggrieved by any 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.

(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

31 (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 such rules, the Tribunal may regulate its own proceedings.

Appeals to the Supreme Court

32 (1) Any person aggrieved by an order made by the Tribunal on an appeal under section 30 may appeal to the Supreme Court on a point of law within twenty-one days or such longer period as the Supreme Court may allow after receipt of notification of such order.

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

(3) The provisions of section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

Penalty for irregular operation of scheme

33 (1) Any person who develops, markets, or manages timesharing scheme when there is not in force a licence granted to him by the Minister to develop, market or manage such a scheme commits an offence:

Punishment on summary conviction a fine of \$2,000.00 for each day during which the offence continues or imprisonment for one year

Punishment on conviction on indictment: a fine of \$10,000.00 for each day during which the offence continues or imprisonment for one year or both such fine and imprisonment.

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(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 commits an offence:

Punishment on summary conviction: a fine \$1000.00 for each day during which such offence continues or imprisonment for six months or both such fine and imprisonment.

(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 commits an offence:

Punishment on summary conviction: a fine of \$4,000.00 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 shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

[Section 33 subsections (1)-(3) amended by 2005:34 s.13 effective 1 May 2006]

Penalty for obstructing officers in performance of their duties

34 Any person who obstructs any authorized officer of the Department, the Department of Health, the Department of Planning or a member of the Bermuda Fire and Rescue Service 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 commits an offence:

Punishment on summary conviction: a fine of \$1000.00 to imprisonment for three months or to both such fine and imprisonment.

[Section 34 amended by 2005:34 s.14 effective 1 May 2006; and by 2007:23 s.17 effective 2 July 2007]

Penalty for false statements

35 (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 commits an offence.

(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 —

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- (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 so provided,

commits an offence.

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

- (a) anything (whether or not a statement as to any of the matters specified in the said subsection (2)) likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; or
- (b) a statement made regardless of whether it is true or false shall be 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) Where a person commits an offence under this section:

Punishment on summary conviction: a fine of \$10,000.00 or imprisonment for one year or both such fine and imprisonment.

(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.

[Section 35 amended by 2005:34 s.15 effective 1 May 2006]

Fiat of Director of Public Prosecutions

36 Proceedings in respect of an offence against this Act or any Regulations shall not, without the written consent of the Director of Public Prosecutions, be instituted by any person other than the Director of Public Prosecutions.

[Section 36 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Occupancy licences

37 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

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Minister may grant an occupancy licence in respect of that unit to the developing owner.

Power of Minister to appoint interim managing agent

38 Notwithstanding anything to the contrary where —

- (a) a managing agent's licence has been suspended under this Act, except under section 27; 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 managing agent shall be payable out of the moneys provided by the purchasers for the operation and maintenance of the timesharing scheme.

Saving of certain other Acts and provisions of the Act to prevail over No. 24 of 1949

39 Nothing in this Act or the Regulations shall derogate from the provisions of the Public Health Act 1949 [*title 11 item 1*], the Development and Planning Act 1974 [*title 20 item 1*], the Hotels (Licensing and Control) Act 1969 [*title 17 item 2*] and the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*] or any regulations made thereunder, but, in the event of any conflict between this Act and the Public Health Act 1949 (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.

Transitional

40 [*omitted*]

Commencement

41 [*omitted*]

[This Act was brought into operation 1 August 1981 by BR 43/1981]

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SCHEDULE (Section 21)

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 shall, wherever required to do so by the Minister, satisfy the Minister that the scheme in relation to which he has been granted a licence has—

- (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 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 be governed in accordance with the principle that the number of votes a purchaser has, should be proportionate to his timesharing interval; 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 26;
- (d) provided the Director 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:

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- (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 from such sales;
- (f) provided the Director prior 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; provision for the winding up of the scheme in the event such winding up becomes necessary; 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 ten 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 separated from the other text of the contract the following words:

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PAYMENT OR OBLIGATION WITHIN TEN (10) 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 moneys received from any purchaser who cancels his contract under 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

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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 Bermuda;

- (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 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, subject to section 25D, 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 moneys received (as approved by the Minister) annually

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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.

[Schedule paras (c), (f), (g) and (n) amended by 2005:34 s.16 effective 1 May 2006]

[Amended by:

1982 : 44
1999 : 8
2005 : 34
2007 : 23
BR 67/2007]