

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary

Time-Share Sub-Work Group **4th Floor West Conference Room, General Assembly Building** **August 15, 2011, 10:00 A.M.**

Members present: Delegate John Cosgrove, Frank Eck, Phil Richardson, Pam Coerse, Michael Levinson, Trisha Henshaw, Bill Ernst, Rob Hagerty, Lori Overholt, Joe Mayes, and Heather Gillespie

Staff present: Elizabeth Palen and Beth Jamerson

I. Welcome and Call to Order

- Delegate John Cosgrove, *Chair*
- The meeting was called to order at 10:00 a.m.
- **Delegate Cosgrove** welcomed everyone to the meeting, and noted that the group will discuss individually each Virginia Code section affected by the Time-Share Act. He clarified that the intent of this Act is not to interfere with contractual rights that have been willingly entered into, but to clarify the existing law and to offer more consumer protection going forward, not retroactively.

II. Discussion of Changes to the Time-share Act

- **Frank Eck**, of Eck, Collins and Richardson, explained that this legislative proposal is recommended by the Virginia Resort Development Association's (VRDA) legislative committee. There are three issues that have arisen when reviewing the bill draft. First, a proposal was made to allow developers to exceed 52 sales per unit. Also, although Virginia case law now renders the Consumer Protection Act inapplicable to this Code section, removing it from § 55-374.1 would provide clarity. Finally, fiscal considerations prompted striking § 55-400 from this bill proposal.
- **Phil Richardson**, of Eck, Collins and Richardson, detailed the proposed new language in § 55-361.1. This new subsection D exempts from registration a time-share project located outside of Virginia, for purchase by a Virginia resident, if that resident is an existing owner with the time-share company.
 - **Heather Gillespie**, the Ombudsperson at the Department of Professional Occupation Regulation (DPOR), asked how this provision would affect

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Virginia's jurisdiction over an out-of-state time-share no registered with the state.

- **Joe Mayes**, with Williams Mullen, explained that this amendment establishes the baseline proposition that companies must comply with registration provisions of the state where the time-share is located. If there is a dispute, then the Common Interest Communities Board has jurisdiction over the dispute.
- **There were no issues with regard to this section.**
- **Phil Richardson** explained that there are various amendments to definitions found in § 55-362. Many of these additional definitions are related to additions to the resale section.
 - **Frank Eck** suggested including “contract” and “all buyer’s acknowledgment” in the definition of “consumer documents,” since under this Act those would not be considered consumer documents. It is important to include “all” when reference acknowledgments as there can be as many as three acknowledgements in one transaction.
 - **The group agreed to include “contract” and “all buyer’s acknowledgment” in the definition of “consumer documents.”**
- **Phil Richardson** explained that the addition of subsection D to § 55-363 is meant to address a situation where a time-share owner attempts to transfer his interest back to the developer or association without the consent of the developer or association. The new language in this section requires an authorized representative of the developer or association to sign the deed conveying the property back to them.
 - **Frank Eck** mentioned that this is a significant change from the common law. Traditionally, only the grantor is required to sign the deed and the title transfers upon delivery. This section requires both the grantor and grantee to sign the deed, and title will not change until recordation. This eliminates the potential for abuse, and prevents people from conveying their time-shares back to the developer or association without the consent or knowledge of the developer or association.
 - **There were no issues with regard to this section.**
- **Phil Richardson** noted that the only modification to §55-366 was the addition of “time-share project.”
 - **There were no issues with regard to this section.**
- **Frank Eck** explained the amendments to §§ 55-367 and 55-368. The reason for these amendments is to consolidate the requirements for creating a time-share program or project into two sections of the Act.
 - **Michael Levinson** inquired about the replacement of “program” with “method” at line 381.
 - **Frank Eck** explained that “method” meant the contract signed by the managing agent and the developer or association, with attached exhibits.
 - **There was a consensus among the group to replace “method” with “contractual terms by which” at line 381 of the bill draft.**
 - **Michael Levinson** directed the group’s attention to line 435 of the bill draft. This is existing language in the Virginia Code today, but he expressed his concern that contracts for goods and services is voidable

by the association after the developer control period ends. A better way to handle this is to allow the board of directors to terminate the contract after the developer control period ends, and not to do so retroactively.

- **The group discussed the merits of Mr. Levinson’s argument, and a consensus was reached to change “association” to “board of directors” to maintain consistency within the Act, and to change “voidable” to “terminable” at line 435 of the bill draft. The group also decided to add a 60-day notice requirement.**
- **Phil Richardson** explained that changes made to **§55-369** were to clarify the existing process of transferring title to common elements (furniture, fixtures, and equipment) to the association at the end of the developer control period.
 - **Michael Levinson** suggested adding language to clarify the ownership of the furniture, fixtures, and equipment in each time-share unit.
 - **Discussion ensued, and the group decided to change “therein” in line 510 to “within the project,” since that word, by its definition, encompasses both the individual units and the common elements.**
- **Phil Richardson** explained that **§§ 55-370, 55-370.01, and 55-370.1** all clarify procedural issues related to the association, including calling meetings, maintaining books and records, use of email, and providing annual reports to time-share estate program owners.
 - **Delegate Cosgrove** expressed concern over boards of directors of associations using only email to contact time-share owners without affirmative consent by the owners. He asked the group to address this concern, and draft language allowing time-share owners to specify the method of communication by which they will be contacted.
- **Phil Richardson** described the addition of **§ 55-370.1.1**, which applies to time-share use projects. This section requires that the association provide annual reports and audited financial statements to time-share use owners on an annual basis. Associations in time-share estate programs have always been required to send its owners financial information annually, this section imposes the same requirement on associations in time-share use projects.
 - **There were no issues with regard to this section.**
- **Phil Richardson** explained that **§ 55-371** clarifies what information must be contained in the time-share instrument for a time-share use project.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described changes to **§ 55-374**, which provides for a reorganization of the public offering statement to allow the information provided to read more logically.
 - **Trisha Henshaw**, the executive director of the Common Interest Community Board (CICB), called attention to line 1081, which allows time-share estate programs to issue the annual report as an exhibit to the public offering statement. She suggested a reference to time-share use projects and the Code section governing annual report requirements may be appropriate.

- **The group agreed to include “or time-share use program” following “time-share estate program,” and “or 55-370.1.1” following “§§ 55-370.1,” both on line 1081 of the bill draft.**
- **Phil Richardson** explained that § 55-374.1 resolves inconsistencies between this chapter and the Virginia Nonstock Corporation Act in favor of this chapter.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described the changes made to § 55-374.2, which specify requirements for exchange company disclosure documents.
 - **There was a question as to why subsection B of this section was stricken. Delegate Cosgrove asked Frank Eck to discuss the matter with his colleagues and report back to the sub-work group.**
- **Phil Richardson** explained that minor changes to § 55-375 clarify the escrow deposit requirements in connection with time-share and alternative purchases.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described revisions to § 55-376, which specify that the purchaser’s notice of cancellation must be in writing.
 - **There were no issues with regard to this section.**
- **Phil Richardson** detailed the changes to § 55-376.1, which clarify procedures related to possibility of reverter and the reverter deed for a time-share estate.
 - **Delegate Cosgrove directed the group’s attention to line 1410 of the bill draft, which addresses attorney fees in connection with the possibility of reverter. After failing to obtain a satisfactory answer as to why this provision was stricken, he decided that it was to remain in this Code section.**
- **Phil Richardson** explained the addition of § 55-377, which requires the buyer’s acknowledgement and stipulates that it must be a separate written document.
 - **Delegate Cosgrove** noted that requiring the buyer’s acknowledgement to be a stand alone document heightens disclosure standards and provides more protection for both the consumer and the developer.
- **Phil Richardson** described the new language in § 55-380, which requires a copy of the buyer’s acknowledgement to be included in the certificate of resale in the event of any resale of a time-share by an owner other than the developer.
 - **Trisha Henshaw** noted that the Code section governing annual reports of time-share use projects, § 55-370.1.1, should be included in line 1467 of the bill draft.
 - **There was a consensus among the group to include § 55-370.1.1 in line 1467 of the bill draft.**
- **Phil Richardson** mentioned that the bill draft adds §§ 55-380.1, 55-380.2, 55-380.3, and 55-380.4, which regulate resale of a time-share by a reseller, and detail exemptions from reseller requirements, recordkeeping requirements, and prohibited practices.
 - **Delegate Cosgrove asked staff to include a provision in the bill draft that requires resellers to register with the CICB.**
- **Phil Richardson** noted that amendments to § 55-382 require a determination of compliance for certain violations by the CICB instead of the Real Estate Board.

- **Heather Gillespie** expressed concern about subsection B, which requires an aggrieved owner to first seek a determination of compliance from the CICB for violations under §§ **55-375 and 55-386** before going to court.
- **Trisha Henshaw** agreed that although this is existing language, it is troubling because the CICB cannot make a determination of noncompliance with these sections. A determination of noncompliance would mean the CICB is holding a disciplinary hearing without providing notice or observing other requirements for a formal hearing.
- **Delegate Cosgrove asked Phil Richardson to discuss the matter with his colleagues and report back to the sub-work group.**
- **Phil Richardson** explained § **55-383** revisions, which specifies the ground on which a court may grant rescission of a contract.
 - **There were no issues with regard to this section.**
- **Phil Richardson** described changes to § **55-385**, which clarify the record-keeping requirements of financial reports, and strikes superfluous language.
 - **There were no issues with regard to this section.**
- **Phil Richardson** detailed the revisions to § **55-386**, which specify requirements for a performance bond in the event the developer's units are incomplete.
 - **There were no issues with regard to this section.**
- **Phil Richardson** mentioned the amendments to § **55-390**, which provides that a time-share project or alternative purchase may not be disposed of unless the project or purchase has been properly registered with the CICB.
 - **There were no issues with regard to this section.**
- **Phil Richardson** explained that § **55-394.1** revisions specify the procedure by which a time-share project or program registration may be terminated with the CICB.
 - **Trisha Henshaw** mentioned that the CICB supported a legislative proposal that affects the termination provisions of this section. The proposal is essentially identical with the addition of a process by which a registration can be terminated administratively for failure to file an annual report for three years or more, or for failure to renew the State Corporation Commission (SCC) registration for five years or more. This has also been done with condominium registration. She suggested including mirroring language in this bill draft.
 - **There were no other issues with regard to this section.**
- **Phil Richardson** described revisions to § **55-396**, which specify the powers and duties of the CICB, particularly with regard to issuing a cease and desist order determined by legal notice with an opportunity for hearing that the developer has violated one of the specified unlawful practices set forth in this Act.
 - **Discussion ensued, and Delegate Cosgrove directed the group to continue discussing this section, as well as § 55-396.1 and all the issues identified above, outside of this meeting and to report back to the Common Interest Communities Work Group at the next scheduled meeting.**

- **The question as to whether to include the Virginia Consumer Protection Act in § 55-374.1 as an exempted statute was discussed throughout the meeting, and the issue remained unresolved.**

III. Public Comment

- There was no public comment.

IV. Adjourn

- The meeting was adjourned at 12:17 p.m.