

## MEMORANDUM

**Subject: Sint Maarten Timeshare Consumer Protection**  
**From : Petrus Leroy de Weever**  
**To : Sint Maarten Parliament**  
**DATE : June, 26, 2011**

### 1. Introduction

The timeshare industry is of vital importance to Sint Maarten's economy, therefore any negative events and developments may imply serious consequences.

In December 2010 the Sint Maarten Pelican Timesharing Resort was sold by the Lender in an auction pursuant to foreclosure. This foreclosure followed by the temporary closure of the resort caused a severe crisis, the effects of which are likely to continue to impact our community for some time to come.

Foreclosure on Sint Maarten timesharing resorts has occurred various times in the past and the footprint of the unfolding events is strikingly similar:

- Foreclosure invariably forms fertile ground to legal battles whereby timeshare owners are trying to regain the rights that they dearly paid for.
- The role of the Government is that of an observer in the sideline, unable to exercise any authority and influence to change the course of the events.
- The timeshare owners and our community are the losers who will suffer.
- Reputation damage to our island can be quite considerable.

The recent Pelican Timeshare Resort crisis provoked a considerable number of negative reactions in the local media and on the internet, whereby also the Sint Maarten Government and its Parliament were not spared of criticism, justified or not.

It appears from these reactions that there is a general lack of understanding of the nature of timeshare rights and the protection of the entitled parties to such rights. Timeshare is a very complex matter and it is understandable that the general public is not well informed about the different aspects thereof.

This document highlights basic aspects of the already existing timeshare legislation and it provides some recommendations to improve timeshare consumer protection.

I have carried out this exercise in an effort to assist in providing our Government with some tools to help prevent a crisis in our timeshare industry from recurring.

My Memorandum is to be considered the first step in the legislative process to enhance timeshare consumer protection to the benefit of the timeshare owners and in the interest of the people of Sint Maarten.

## **2. Legal Form Timeshare Contracts**

There are no compulsory rules regarding the legal form in which timeshare rights are to be structured. The developer of a timesharing project is free to choose the form he pleases.

The risk exposure of a timeshare Buyer is directly related to the legal form of his timeshare right.

Among those risks are:

- the risk that a developer would not (completely) finalize the timesharing project;
- the risk that the project is not properly managed and maintained;
- the risk of uncontrolled increases of maintenance fees and other charges;
- the risk of bankruptcy of the owner of the immovable property;
- the risk of sale and foreclosure of the immovable property.

### **2.1. Lease Agreements**

It appears that many timeshare contracts on Sint Maarten are in principle structured in a form that bears resemblance with lease agreements, with or without Club Membership Programs.

This legal form is chosen with the intention to provide timeshare owners the protection of Article 7A:1593 of the Civil Code, which entails that lease agreements are not affected by sale of the immovable property.

It should be noted however that often timeshare contracts may be mixed contracts covering not only the exclusive right to occupy and use each year a specific furnished

immovable property ("the unit") for one or more specified weeks during the duration of the timeshare contract period (sometimes up to 999 years), subject to the resort rules & regulations, but also additional rights and obligations such as the non-exclusive use of recreational facilities, laundry, cleaning and other services and amenities of the timesharing resort, affiliation to international exchange systems and sometimes investment agreements (such as rental pool agreements) and buy-back clauses.

The Court of Justice of the Netherlands Antilles ruled in its judgment of September 27<sup>th</sup>, 2002 that protection of article 7A:1593 of the Civil Code only regards rights and obligations that are directly related to the immovable property and appurtenant facilities thereto. Therefore, additional rights and obligations such as exchange systems and investments agreements and buy-back options are not covered by such protection.

One must realize that the more pronounced the additional rights and obligations are, the larger the chance that the timesharing contract will not qualify as a lease agreement.

In case the immovable property, on which timeshare rights in the form of lease agreements are based, is sold in an auction, it is a requirement that the Mortgagee (the Lender) must have granted consent to conclude the timeshare lease agreements.

Failing such consent, the (timeshare) lease agreements can be terminated and consequently the timeshare owners are left empty handed.

It should be clear that timeshare contracts bearing resemblance with lease agreements do not always qualify as lease agreements.

### **2.1.1. A Case in Point**

Illustrative is a case where two owners had bought 3 timeshare rights in a resort on Sint Maarten. The total purchase price for those 3 contracts was quite substantial and amounted to USD 1,275,000.00

These timeshare contracts had been structured in a form bearing resemblance with lease agreements and contained the following non-disturbance clauses:

*7. That debtor is allowed to rent-out the burdened property or parts of it on a "time-sharing" basis. That the actually existing and the in the future on behalf of*

*Debtor contracted timesharing rental agreements shall be respected by the Lender in case of a public-sale and/or foreclosure.*

*8. That without the written consent of the Lender the collateral may not be alienated or further encumbered with mortgage, easements or other liabilities for the benefit of third parties ..."*

In July 1995 the timesharing resort was sold in a public auction pursuant to foreclosure and in December 2008 the Court of Justice ruled that the aforementioned timeshare contracts did not qualify as lease agreements. The timeshare owners appealed and presented their case to the Dutch Supreme Court in The Hague, The Netherlands.

Recently, on February 11, 2011 the Supreme Court rendered its judgment in this case and ruled as follows:

*"Not decisive is whether the agreements comprise elements that as such meet the legal description of lease agreements. Decisive is: if under the given circumstances, taking into account the intentions of the parties at the time of concluding the agreements, the contents and the purpose of the agreements are of such a nature that regarded overall the agreements can be considered as being lease agreements."*

The Supreme Court upheld the December 2008 decision of the Court of Justice that these timeshare agreements did not qualify as lease agreements and consequently the buyers did not enjoy the protection that they had based their claims on.

### **2.1.2. Pelican Timesharing Resort**

In the case of the December 2010 sale (by the Lender) of the Pelican Timesharing Resort in a public auction pursuant to foreclosure, the question whether the timeshare rights concerned would survive the consequences of the auction sale was never brought to court, because the Buyer of the timesharing resort, being an affiliated party of the Lender, respected the existing timeshare rights.

The Pelican timeshare owners were members of the Tenants' Association Pelican Resort Club ("**TAPRC**"), which association was the sole shareholder of a local limited liability company ("the Company"). The Company in its turn

was the owner of the Pelican long lease rights, including the rights to all the buildings and appurtenances of the resort.

As a consequence of the auction the Company, and thus TAPRC and the timeshare owners, lost the long lease rights and the rights to the buildings and appurtenances of the Pelican Resort.

Shortly before the long lease rights were transferred to the auction Buyer, TAPRC had assigned the rights to collect future rental income and payments from the timeshare owners to a newly established Foundation ("SBBPRC").

On June 17, 2011 the Court of First Instance of Sint Maarten, 2011 ruled said assignment illegal and determined that the payments must be made to the auction Buyer.

It seems that history repeats itself, so one may expect that the legal battles are far from over.

## **2.2. Timeshare Apartment Rights**

The most secure manner to avert the risks of sale (whether in auction or not) of the immovable property on which timeshare rights are based is provided by establishing timeshare rights in the form of "a right in rem" (in Dutch: "zakelijke recht").

Since December 1, 2005 the law indeed provides such option as Book 5 of the Civil Code was amended to include the concept of Timeshare Apartment Rights (in Dutch: "Deeltijd Appartementsrechten").

The law defines a Timeshare Apartment Right as: a share in the properties involved in the division, which includes the right, whether or not at regularly recurring times, and whether or not during fixed periods of time, of exclusive use of certain parts of the buildings, that, as appears from their lay-out, have been or will be intended to be used as a separate sections; the share may also include the right of exclusive use of certain parts of the land belonging to the building.

It should be noted that the non-exclusive right of use of recreational facilities and certain amenities inherent to the use of the common areas of the timesharing resort can be made part of the Timeshare Apartment Rights.

However, exchange programs, investment agreements and buy-back options cannot be made part of Timeshare Apartment Rights.

### **2.2.1. Advantages**

The major advantage of a Time Share Apartment Right is that the entitled party owns a registered property (in Dutch: "registergoed") that is shielded from the foreclosure risks pertaining to the Developer or to the Operator or Manager of the timesharing resort. Furthermore a Timeshare Apartment Right can be encumbered by the right of mortgage and the entitled party can freely transfer his timeshare right to a third party.

### **2.2.2. Practical Aspects**

Meanwhile, the Sint Maarten Land Registry ("Kadaster") has confirmed that its digital registration system ("Kadsys") has the capability to record Timeshare Apartment Rights in the Public Registers. This is crucial because a Timeshare Apartment Right cannot be legally created if it cannot be recorded in the Public Registers.

Typically timeshare rights are purchased in a rather informal way by people in a vacation mood.

Acquiring a Timeshare Apartment Right however implies executing a deed before a civil law notary, which is a totally different setting then signing a conventional timeshare contract in a resort. Under conventional timeshare right is to be understood for the purpose of this document: a timeshare right not being a registered property.

The notary fee for a deed of division of property into apartment rights is established by the Court of Justice and amounts to 0.25% of the value of the land and the buildings in their completed state (exclusive architect costs and the movable inventory of the units). The timeshare developer could include these costs, which are only a fraction of the total costs marketing and sales, into the sales price of the timeshare right.

Acquiring a Timeshare Apartment Right furthermore implies closing costs (transfer tax, registration costs and notary fees), which costs customarily are for the account of the Buyer unless otherwise agreed upon.

The closing costs for a Timeshare Apartment Right with a purchase price of **USD 15,000.00** amounts to approx. **9%** (4% of which is Transfer Tax) of the purchase price.

On the internet rights of use in the form of fractional ownership rights of properties advertised as Condo Units located on Sint Maarten are offered for amounts of USD 250,000 and more.

It stands to reason to assume that the Buyer of such right expects nothing less than that he acquires a secure property right for such a substantial amount.

There should be no doubt that in cases like these, the timeshare rights must be vested in the legal form of Timeshare Apartment Rights.

The closing costs of a Timeshare Apartment Right with a value of **USD 250,000.00** amounts to approx. **5.2%** (4% of which is Transfer Tax) of the purchase price.

A conventional timeshare contract can be terminated easily in case the timeshare owner is in default with his contractual obligations such as paying maintenances fees and other charges.

In case the owner of a Timeshare Apartment Right does not comply with his obligations, he will be subject to certain sanctions such as penalties and eventually the Timeshare Owners Association could even foreclose.

Foreclosure however implies that the formal legal proceedings must be followed which is costly and time consuming.

The aforementioned factors and the fact that timeshare developers have no experience with this rather new legal form might explain why until now no Timeshare Apartment Rights were created on Sint Maarten and on the other islands constituting the former Netherlands Antilles.

In light of the judgment by the aforementioned Supreme Court rendered on February 11<sup>th</sup>, 2011 it would be prudent to analyze the type timeshare contracts of the different timesharing resorts on Sint Maarten and determine if they can withstand the criterion formulated by the Supreme Court. This may lead to the restructuring of certain existing contracts and also may cause new timeshare contracts to be structured in the legal form of Timeshare Apartment Rights.

### **3. Basic Consumer Protection**

#### **3.1. Failed Intent**

The Government of the Island Territory of Sint Maarten had introduced timeshare consumer protection by means of an Island Ordinance to supplement the Federal License Ordinance with regulations pertaining to the operation of immovable property for timeshare use.

However, on March 8<sup>th</sup>, 2005 the Court of First Instance on Sint Maarten declared the aforementioned supplement to the Federal License Ordinance unconstitutional and therefore non-binding.

#### **3.2. Civil Code Protection**

On December 1, 2005 specific consumer protection for Timeshare Buyers was introduced by means of Division 10A in Book 7 of the Civil Code.

The legislation is based on legislation applicable in the European Union with some adjustments thereto.

Its purpose is to provide certain protection to a timeshare Buyer, who is a natural person not acting in the practice of an occupation or conduct of a business during the purchase.

Under Seller is to be understood a Seller acting in the practice of an occupation or conduct of a business during the transaction.

The protection is aimed against aggressive sales practices and it comprises compulsory stipulations to provide timeshare Buyers with proper information beforehand.

The timeshare contract must be in the form of a written document and the Buyer has a Reflection Period of five days which allows cooling off, thinking things over and seeking expert advice.

The Reflection Period starts from the moment the Buyer receives a copy of the executed timeshare contract and during this period the Buyer may withdraw from the timeshare contract without stating reasons.

Such contract cancellation must take place by the Buyer giving writing notice to the Seller and it entitles the Seller to a cancellation fee of at the maximum 3% of the timeshare contract price.

If the Buyer has paid the purchase price in advance, then the Seller must, for the duration of the Reflection Period, provide



security for the prompt repayment of the advance payment less 3%, in case that Buyer would cancel the timeshare contract.

An example of such security would be an arrangement whereby an independent Escrow Agent would hold the purchase price in escrow during the Reflection Period.

If the Seller or a third party has provided a loan to the Buyer to finance the transaction, then such loan agreement will be dissolved by operation of law, without the Buyer forfeiting any penalty upon cancellation of the timeshare contract.

The timeshare contract must incorporate or refer to the pre-contract information set forth in the "Information Decree Rights of Use in Timesharing of Real Property, Federal Decree containing General Administrative Orders".

It should be noted that the Information Decree may be amended from time to time.

The Reflection Period will be extended with at the maximum one month if the Seller did not provide all the pre-contract information to the Buyer.

### **3.3. Information Decree (PB 2006#34)**

The aforementioned Information Decree stipulates that a timeshare Buyer must be provided with the following pre-contract information:

- the particulars of the contracting parties, including the legal form in which the Seller conducts his business. The name and place of residence of the actual real property owner;
- an accurate description of the nature of the timeshare right. The requirements to exercise that right, the statement that these requirements have been met, or which of these requirements still have to be met;
- an accurate description of the real property, its location and its cadastral identification;
- the extent to which the real property has been completed and a reliable estimate of the time required for the completion;
- the building permit number, the name and the address of the competent administrative body or bodies;
- the extent of completion of the common services such as connection to gas, electricity, water and telephone;

- guarantees for the sound completion of the real property, and, in case the completion does not take place, for the refund of all that buyer paid, the conditions on which these guarantees are given;
- the common services such as lighting, water, maintenance, and garbage collection, and the conditions on which these services are made available;
- the common facilities such as swimming pool and sauna, and the applicable conditions;
- the rules in force for the maintenance and upkeep of the real property and for accounting and administration;
- the starting date of the timeshare right, the period or periods of time during which the right may be exercised and the duration of this right;
- the purchase price, a reliable estimate of the amount to be paid for the use of the common services and facilities, the basis for the calculation of the amount of the expenses for the buyer to the use of the real property, for the calculation of amount the payments prescribed by law, such as taxes and charges, and for the calculation of additional administrative costs, such as concerning administration, maintenance and upkeep;
- a provision that the purchase does not entail expenses, charges or obligations other than those stated in the contract;
- a statement regarding participation in a system of exchange or resale of the timeshare right, as well as, if this system is administered by the seller, or by a third party, any expenses pertaining thereto;
- data concerning the right to cancel the timeshare contract during the Reflection Period, the name and place of residence to the person to whom the cancellation notice has to be addressed, and information concerning the dissolution loan agreements;
- date and place of signing the contract by each of the parties.

#### **4. Conclusions**

- Existing timeshare consumer protection legislation comes a long way, but it does not go far enough. Its application and enforcement require more Governmental involvement and control.

- Without the right tools in the form of additional consumer protection and a properly functioning system of checks and balances in place our Government will not be in a position to act decisively act and take appropriate measures to prevent a crisis in our timeshare industry or mitigate the effects thereof.
- Sint Maarten has a tourism driven economy and it cannot afford to suffer the consequences of recurring crises in its timeshare industry.
- The judgment of the Supreme Court rendered on February 11, 2011 underlines that timeshare contracts structured in a form bearing resemblance with lease agreements do not necessarily provide the desired protection against a sale of the immovable property on which the timeshare rights are based.
- A Timeshare Apartment Right is the most secure legal form that our legal system provides and the use of such option should be encouraged and in certain cases be made compulsory by the Government.
- Since October 10, 2010 Country Sint Maarten has full legislative authority to enact legislation to regulate its timeshare industry.
- Preparing legislation is a highly specialized trade, requiring at all times the input of a well experienced legislative lawyer.

## **5. Recommendations**

- Amend the law to stipulate that timeshare rights exceeding a certain monetary value (or a certain number of weeks) must be in the legal form of Timeshare Apartment Rights.
- Establish a Timeshare Regulatory Board with the authority to monitor, supervise and enforce compliance with timeshare legislation on Sint Maarten.
- Introduce timeshare license legislation to effectively enforce compliance with the existing legislation and expand timeshare consumer protection.
- Timeshare Contracts regarding properties located on Sint Maarten must be made subject to Sint Maarten law.
- Analyze the contracts of the existing timesharing resorts on Sint Maarten and assess the risk exposure of the timeshare owners.
- Introduce sanctions for non-compliance with timeshare legislation and acts in contravention with the conditions of timeshare licenses to be issued.

- Parliament should invite Professor Jan de Boer (member of the Common Court of Justice of Curacao, Aruba, Sint Maarten and the BES Islands):
  - to discuss the status of existing timeshare consumer protection on Sint Maarten;
  - to interchange ideas of enforcing existing legislation; and
  - to deliberate on the possibilities of introducing additional protection as set forth in the Addendum to this Memorandum.
- Install a Committee of experts, which in any case must comprise an experienced legislation lawyer, with the following tasks:
  - to make recommendations regarding effectively enforcing the existing timeshare consumer protection rules;
  - to prepare additional legislation to protect timeshare Buyers and timeshare owners and in connection therewith work out and cause the ideas set forth in Addendum to this Memorandum to be implemented.

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### ADDENDUM

Suggestions Improvement Timeshare Consumer Protection

**SUGGESTIONS**

**Improvement Timeshare Consumer Protection**

**DEFINITIONS**

**Board:** means a Timeshare Industry Regulatory Body established by the Government of Sint Maarten with the authority to monitor, supervise and enforce compliance with timeshare legislation on Sint Maarten.

**Developing Owner:** means a person who holds an estate in fee simple or in long lease and who is in the business of creating and selling his own Timesharing Interests in a Timesharing Project but does not include a Developing Contractor or a Marketing Agent.

**Exchange Program:** means any method, arrangement or procedure for the voluntary exchange of the right to use accommodations and facilities (whether at a time-sharing project or otherwise) between a purchaser and another person but does not include the assignment of a right to use and occupy accommodations and facilities to purchasers within a particular Timesharing Plan (such as, but not limited to, a floating use of multi-site Timesharing Plan).

**License:** means a license granted the Board to develop, market or manage a Timesharing Project, as the case may be.

**Licensee:** means a person to whom a license has been granted.

**Managing Agent:** means a person undertaking the duties, responsibilities and obligations of the management of a Timesharing Project.

**Off-Site Sale:** means any sale and purchase of a time-sharing interest not otherwise deemed an On-Site Sale;

**On-Site Sale:** means the consummation of a sale and purchase of a time-sharing interest occurring within the jurisdictional limits of Sint Maarten, with the execution

by the Buyer of documents in connection therewith taking place in Sint Maarten.

**Buyer:** means a person who has given valuable consideration or is liable therefor in exchange for the acquisition of a Timesharing Interest.

**Timeshare Period:** means the period or periods of time whether pre-established at the time of completion or determined subsequent thereto pursuant to a reservation system, when a Buyer of a Timeshare Plan is afforded the right to use and occupy the accommodations or facilities, or both, of a Timesharing Project.

**Seller:** means any developer or any other person, or any agent or employee thereof, who advertises, markets or offers Timesharing Interests in the ordinary course of business.

**Timeshare Plan:** means any arrangement, plan, scheme or device (other than an Exchange Program) whereby a Buyer receives, directly or indirectly, a right to use and occupy accommodations and any related facilities for a period of time less than six months on a recurring basis over a period of at least three years.

**Timesharing Interest:** means the right to use and occupy a unit, which may be coupled with the right to use other facilities or other rights and privileges, pursuant to a Timesharing Plan.

**Timesharing Project:** means any premises or complex of premises (whether contiguous or not) and the grounds appurtenant thereto that are subject to or included within a Timeshare Plan.

**Unit** means that part of the accommodations and facilities of a Timesharing Project intended for the habitation of a Buyer during his Timeshare Period.

### **Proposed Stipulations**

1. A person shall not-
  - (a) construct a new building;
  - (b) effect any improvement in or repairs or alterations to an existing building; or

(c) use or change the use of an existing building, for the purpose of such building being used in the operation of a Timesharing Project except under and in accordance with the terms of a Developing Owner's License granted for that purpose by the Board for the purpose of such building being used in the operation of a Timesharing Project except under and in accordance with the terms of a Developing Owner's License granted for that purpose by the Board. This stipulation does not relieve the Developing Owner from his obligations to obtain the necessary permits (such as for example a building permit).

2. A person shall not engage in the advertising, marketing, offering for sale or in the management of a Timesharing Project except under and in accordance with the terms of a Marketing Agent's License or Managing Agent's License, as the case may be, granted for that purpose by the Board.

3. The Board, unless it otherwise sees fit, shall not grant a license for the operation of a Timesharing Project until the Timesharing contract to be executed by the Buyers of the rights to occupy and use the facilities of the project has been submitted to and approved by the Board; and no material variation thereof shall be subsequently made without the written approval of the Board.

4. A Developing Owner's License, a Marketing Agent's License and a Managing Agent's License shall come into force on the date specified therein and shall remain in force throughout the life of the Timesharing Project, unless sooner suspended or revoked.

5. Where the Board decides to grant, or approve the transfer of a license, there shall be paid to the Sint Maarten Receiver before the license is issued or transferred, the prescribed fee.

6. An applicant for a license to develop a Timesharing Project shall, before a license is granted, satisfy the Board of his financial ability to complete the development required for the Timesharing Project with all the requirements necessary for the proper operation of the project and whether such development consists of the



construction of a new building or the conversion of an existing building.

**7. (a)** A license shall be in such form as the Board may determine and shall specify the name of-

**(i)** the Developing Owner and the applicant for the license, if different from the Developing Owner;

**(ii)** the Marketing Agent and the applicant for the license, if different from the Marketing Agent, or

**(iii)** the Managing Agent and the applicant for the license, if different from the Managing Agent, as may be appropriate to the particular license;

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

**(c)** the Timesharing Project in respect of which the license is granted;

**(d)** the maximum number of persons who may at any one time be provided with sleeping accommodations in the Timesharing Project or in any unit on the premises;

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

**(f)** the date-

**(i)** upon which the license is to come into force,

**(ii)** if any, upon which the license is to expire,

**(iii)** upon which the license was granted; and

**(g)** any terms or conditions attached to the license.

**8.** Before approving a grant, transfer or variation of any of the specified terms of a license, the Board may defer consideration of the application until the respective competent authorities, having regard to the nature of the application, the Board may deem appropriate, have caused the accommodations and facilities of the Timesharing Project in respect of which application is made to be inspected and have furnished to the Board a report of such inspection in relation to such particulars as the Board may specify.

**9.** The Board shall neither grant a license nor approve the transfer of a license unless it is satisfied:

**(a)** that the applicant and the person responsible for the Timesharing Project (if other than the applicant), the

Developing Owner, the Marketing Agent and the Managing Agent are financially able and are fit and proper persons to perform their respective functions under the Timesharing Project;

**(b)** that the facilities of the Timesharing Project have where practicable, been inspected pursuant to section 8 and that the project complies with the prescribed requirements or, in the event that it fails to so comply, that an exemption may properly be granted;

**10.** The Board may, of its own motion or at any time upon an application by a licensee, vary any terms of a license as are or required to be specified therein:

provided that the Board shall not of its own motion vary any of the specified terms without first giving to the licensee no less than seven days notice delivered to the Timesharing Project site of the intention to make such variation and shall take into account any representations made by or on behalf of the licensee.

**11. (1)** Where the Board is satisfied that in relation to any Timesharing Project, any provision of law or, as the case may be, any condition of the license, is alleged to be contravened:

**(a)** the Board may serve upon the licensee a notice specifying the provision of law or, as the case may be, the condition of the license that is alleged to be contravened and requiring the licensee to comply or ensure compliance therewith to the satisfaction of the Board or satisfy the Board as to why the license should not be suspended or revoked within such reasonable period as the Board may specify in the notice, and, if at the expiry of such period the licensee has failed to so comply or ensure compliance therewith or to so satisfy the Board, the Board may suspend or revoke the license; or

**(b)** if the Board 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 Project, the Board may forthwith suspend or revoke the license granted in respect thereof until such time as it is satisfied that such contravention has ceased.

**(2)** Where the Board suspends a license the license shall, during the period of suspension, be of no effect.

**(3)** The Board may also revoke a license if it is satisfied that the premises to which the license relates have ceased to be operated as a Timesharing Project.

12. Where, as a result of an inspection, the Board determines that it is in the public interest that the license of a Managing Agent should be suspended, the Board may suspend the license of the Managing Agent and, by notice in writing, require the Developing Owner within such time as is specified in the notice to appoint, subject to its approval, an interim or other Managing Agent for the orderly continuation of the Timesharing Project.

**Note:** *Measures to secure the interim management during license suspension are to be studied.*

13. The Developing Owner and Managing Agent shall ensure that the Timesharing Project with respect to which they are licensed is constituted and in fact operated such that the Timesharing Interests therein shall not be oversold.

14. (1) Before the first sale of a Timesharing Interest within a Timesharing Project, the Developing Owner shall create or provide for a Managing Agent, which shall be either the Developing Owner, a separate manager or management firm, the board of administration of an owners' association, or some combination thereof.

(2) A Developing Owner shall be considered the Managing Agent of the Timeshare Plan unless and until such Developing Owner obtains the consent of the Board that a different party will serve as Managing Agent, which party has acknowledged in writing that it has accepted the duties and obligations of serving as Managing Agent. In the event such other party subsequently resigns or otherwise ceases to perform its duties as Managing Agent, any Developing Owner shall again be considered the Managing Agent until the Developing Owner arranges for a new Managing Agent pursuant to this subsection.

(3) Notwithstanding the appointment of a Managing Agent, the Developing Owner shall continue to be jointly and severally responsible for the obligations of the Managing Agent pursuant to the law and under any contract with a Buyer unless and until:

(a) the Timesharing Project is completely sold out;

(b) the Developing Owner no longer retains any estate, right, title or interest in or to the Timesharing Project; and

(c) the Developing Owner has voluntarily divested himself of his license.

15. The Managing Agent shall act in the capacity of a fiduciary to the Buyers of the Timeshare Plan.

**16.** The duties of the Managing Agent shall include, but are not limited to:

(a) management and maintenance of all accommodations and facilities constituting the Timeshare Project;

(b) collection of all assessments for common expenses;

(c) providing each year to all Buyers an itemized annual budget which shall include all estimated revenues and expenses. The budget shall be in such form as may required by the Board;

(d) maintenance of all books and records concerning the Timeshare Plan and the Timesharing Project so that all such books and records are reasonably available for inspection by any Buyer or the authorized agent of such Buyer and:

(i) all books and financial records of the Timeshare Plan and of the Timesharing Project must be maintained in accordance with International Accounting Standards;

(ii) all Buyers shall be notified of the location of the books and records and the name and address of the custodian in the copy of the annual budget provided to them pursuant to paragraph (c);

(e) scheduling occupancy of the timeshare units, when Buyers are not already entitled to use specific Timeshare Periods, so that all Buyers will be provided the use and possession of the accommodations and facilities of the Timeshare Plan with respect to which they have purchased;

(f) performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities as provided in the Timeshare Plan and as advertised; and

(g) the Managing Agent shall maintain among its records and provide to the Board upon request a complete list of the names and addresses of all Buyers and owners of Timesharing Interests.

**17. (1)** The Managing Agent of any Timeshare Plan may deny the use of the accommodations and facilities of the Timeshare Plan to any Buyer who is delinquent in the payment of any assessments made by the Managing Agent against such Buyer for common expenses. *(To be studied for adjusted wording in case it concerns an Timeshare Apartment Right)*

**(2)** Any denial of use shall also extend to those parties claiming under any such delinquent Buyer.

(3) For purposes of this section, a Buyer shall be considered delinquent in the payment of a given assessment only upon the expiration of sixty days after the date the assessment is billed to the Buyer or upon the expiration of sixty days after the date the assessment is declared to be due, whichever is later.

18. (1) The Developing Owner shall provide and maintain for the benefit of all Buyers and their guests public liability insurance in respect of the accommodations and facilities to be used under the Timeshare Plan, and such insurance shall be in an amount of not less than xxxxxxxx million dollars (**amount to be studied**), or such greater amount as the Board may see fit to impose from time to time.

(2) The Developing Owner shall keep all the property of the Timesharing Project of an insurable nature insured against loss or damage in an amount not less than the replacement cost of such property.

(3) A Developing Owner may delegate or assign to a Managing Agent responsibility for compliance with the requirements of subsections (1) and (2), but the Developing Owner shall remain jointly and severally responsible for such compliance until the Developing Owner is no longer involved with the Timesharing Project as set forth in section 14. 3 sub (c).

**Note: To be studied: locally available insurance and additional wording for the case of Timeshare Apartment Rights.**

(4) A Developing Owner or Managing Agent, as the case may be, who contravenes any of the provisions of this section is guilty of an offence and shall be liable to a fine of XXXXXXXX thousand dollars or to an additional sanction or to both such fine and additional sanction (**amount of fine and additional sanction to be studied**).

19. The Managing Agent, or where there is no Managing Agent, the Developing Owner, shall keep such books and records as will clearly show the number of Buyers of Timesharing Interests in the Timesharing Project.

20. Upon production to the Managing Agent or Developing Owner or any person acting on behalf of the agent or owner of a duly authenticated document by the Board showing his

authority, any person (in this section referred to as "an authorized person") may enter at any reasonable time the premises of a Timesharing Project, to inspect and to make copies of entries in any books, records or other documents on those premises for the purpose of ascertaining whether a contravention of section 19 is being or has been committed.

**21.** If the Managing Agent or Developing Owner, or other person acting on behalf of such agent or owner:

(a) fails without reasonable excuse to admit an authorized person who demands admission to the premises of the Timesharing Project in pursuance of his functions under section 20;

(b) on being required by an authorized person to produce any book, record or other document in his possession or under his control which relates to the premises of the Timesharing Project and which the authorized person reasonably requires to inspect for the purpose specified in section 20, fails without reasonable excuse to produce it to the authorized person or fails to permit the authorized person to take copies of it or of any entry in it; or

(c) on being required by an authorized person to furnish any other information relating to the premises which is reasonably required by the authorized person for the purpose of ascertaining compliance with sections 13 and 16, fails without reasonable excuse to furnish that information to the authorized person, that Managing Agent or Developing Owner or other person shall be subject to a fine of xxxxxxxx thousand dollars and the following additional sanction-----  
--- (**amount of fine and additional sanction to be studied**).

**22. To be studied:** provisions regarding the obligation of the Developing Owner to deposit the proceeds of On-Site Sales and Off-Site Sale with an Escrow Agent and stipulations regarding disbursements by the Escrow Agent.

**23. To be studied:** provisions regarding a Sinking Fund for the payment of any repairs, alterations or replacements necessary to the premises of the completed Timesharing Project by reason of defects in materials or workmanship.

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