

CHAPTER 141
THE BAHAMAS VACATION PLAN AND TIME-SHARING

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

1. Short title.
2. Interpretation.

PART II
LICENCES FOR TIME-SHARING

3. Licences for time-sharing project.
4. Exemption from customs duties for construction of project.
5. Restriction on the grant of a licence.
6. Duration of licences.
7. Transfer of licence.
8. Application for grant or transfer of licence.
9. Financial ability of applicant for licence.
10. Form of and matters to be specified in licence.
11. Inspection of facilities
12. Conditions for grant or transfer of licence.
13. Variation of terms of licence.
14. Endorsement of transfer or variation in licence.
15. Power of Board to suspend or revoke licence.
16. Suspension of managing agent's licence.
17. Power to appoint interim managing agent.
18. Surrender of revoked or suspended licence.

PART III
PURCHASER'S RIGHTS

19. Capacity of purchaser to acquire, dispose of, etc., his interest.
20. Registration of purchaser's rights.
21. Effect of registration of purchaser's rights.
22. Purchaser's contract.
23. Protection of purchaser from other estates and interests.
24. Prohibition against over-selling.
25. Purchaser waivers invalid.

PART IV
MANAGEMENT

26. Creation of managing entity.
27. Fiduciary relationship.
28. Duties of managing entity.
29. Denial of use for delinquency.

PART V
INSURANCE, FUNDS, TAX AND RECORDS

30. Developing owner to provide insurance.
31. Escrow fund.
32. Sinking fund.
33. Trust fund.
34. Assurances.
35. Books and records.
36. Inspection of books and records.
37. Occupancy tax.

PART VI
INSPECTION

38. Inspection of project.
39. Power of entry and inspection without warrant.
40. Power of magistrate to issue warrant to enter premises.

PART VII
PROHIBITIONS AND PENALTIES

41. Prohibited transactions.
42. Responsibility of developing owner.
43. Penalty for statements.
44. Penalty for false declaration.
45. Penalty for wrongful application of materials.
46. Penalty for irregular operation of project.
47. Penalty for obstructing officers.
48. Fiat of Attorney-General and time limit for proceedings.
49. Fiat not to include civil proceedings.

PART VIII
MISCELLANEOUS

- 50. Information to be supplied to Board.
- 51. Public Offering Statement
- 52. Power to grant exemption.
- 53. Exemption for foreign project or offerings.
- 54. Regulations.
- 55. Application of the Law of Property and Conveyancing (Condominium) Act.
- 56. Savings.

FIRST SCHEDULE - Matters which shall be Included in Every Purchaser's Contract.

SECOND SCHEDULE - Matters in respect of which Every Developing Owner, Marketing Agent or Managing Agent of a Time-Sharing Project Must Satisfy the Board.

THIRD SCHEDULE - Matters which Every Developing Owner or his Marketing Agent must Include in his Public Offering Statement.

CHAPTER 141

THE BAHAMAS VACATION PLAN AND TIME-SHARING

An Act to provide for the creation, regulation and management of time-sharing and vacation projects; for the protection of purchasers of time-sharing and vacation plans; and for connected purposes. 43 of 1999

*[Assent 3rd November, 1999]
[Commencement 12th January, 2000]*

**PART I
PRELIMINARY**

1. This Act may be cited as The Bahamas Vacation Plan and Time-Sharing Act, Short title.
1999.

2. In this Act- Interpretation.

"Board" means the Investments Board referred to in the International Persons Landholding Act, 1993, and includes any Minister authorised by the Board to carry out on its behalf any function conferred on the Board by this Act;

"Chief Medical Officer" has the meaning assigned to that expression in the Health Services Act;

"completion" means that point in time when the conditions precedent to the time-sharing purchaser's right to use and enjoy the accommodations and facilities of a time-sharing project have been satisfied and which may be simultaneous with or subsequent to the execution of the time-sharing contract;

"developing" means with reference to a time-sharing project the doing of any act pertaining to the construction or operation of a building for the purpose of such project and "development" shall be construed accordingly;

"developing contractor" means a person undertaking on behalf of a developing owner the duties, responsibilities and obligations of the construction and equipping, or the supervision of the construction or equipping, of a time-sharing project but does not include its developing owner;

"developing owner" means in the case of any given real property a person who holds an estate in fee simple or a leasehold estate for a term of forty years or such number of years, being not less than five years more than those constituting the time-sharing interests, whichever is the greater term, in the real property and who is in the business of creating and selling his own time-sharing interests in a time-sharing project but does not include a developing contractor or a marketing agent;

"Director of Fire Services" has the meaning assigned to that expression in the Fire Services Act;

"Director of Physical Planning" means the officer of that name referred to in section 5 of the Town Planning Act;

"escrow fund" means that fund required by and described in section 31;

"exchange programme" 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 time-sharing plan (such as, but not limited

to, a floating use of multi-site time-sharing plan);

"licence" means a licence granted under this Act to develop, market or manage a time-sharing project, as the case may be;

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

"managing agent" means a person undertaking the duties, responsibilities and obligations of the management of a time-sharing project;

"Minister" means the Minister responsible for the Investments Board;

"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 The Bahamas, with the execution by the purchaser of documents in connection therewith taking place in The Bahamas;

"purchaser" means a person who has given valuable consideration or is liable therefor in exchange for the acquisition of a time-sharing interest;

"regulations" means regulations made under section 54;

"seller" means any developer or any other person, or any agent or employee thereof, who advertises, markets or offers time-sharing interests in the ordinary course of business;

"sinking fund" means that fund required by and described in section 32;

"time-share 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 purchaser of a time-share plan is afforded the right to use and occupy the accommodations or facilities, or both, of a time-sharing project;

"time-share plan" means any arrangement, plan, scheme or device (other than an exchange programme) whereby a purchaser 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 but not necessarily for consecutive years;

"time-sharing 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 time-sharing plan;

"time-sharing 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 time-share plan;

"trust fund" means that fund required by and described in section 33;

"unit" means that part of the accommodations and facilities of a time-sharing project intended for the habitation of a purchaser during his time-share period;

"year" means any period of twelve consecutive months.

PART II LICENCES FOR TIME-SHARING

3. (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 time-sharing project except under and in accordance with the terms of a developing owner's licence granted for that purpose by the Board:

Provided that where a developing owner's licence has been granted in accordance with this subsection, the person so licensed may appoint a developing contractor to perform on his behalf functions in relation to the time-sharing project under and in accordance with the terms of that licence.

(2) A person shall not engage in the advertising, marketing, offering for sale or in the management of a time-sharing project except under and in accordance with the terms of a marketing agent's licence or managing agent's licence, as the case

Licences for time-sharing project.

may be, granted for that purpose by the Board.

(3) The Board may grant a licence under this section subject to such terms and conditions as may be specified therein or as may be prescribed.

4. (1) The Minister may, if satisfied that the erection of the time-sharing project will be in the best interest of The Bahamas, enter into an agreement with the developing owner for the exemption of the developing owner from the payment of all customs duties in respect of any materials necessary for the construction of a time-sharing project which may be imported into The Bahamas and which are purchased or taken out of bond therein by the developing owner.

Exemption from
customs duties for
construction of
project.

(2) The developing owner shall furnish the Minister with a bond in a form to be approved by the Comptroller of Customs with such sureties (if any) as may be required by the Minister of Finance in double the amount of any customs duties which would ordinarily attach on importation thereof for the payment of such customs duties on a date to be fixed by the Minister of Finance, such bond being conditioned to become null and void if, on or before the date specified in such bond, such materials are applied only for the purpose specified in such Agreement:

Provided that the Minister of Finance may accept in lieu of a bond an alternative assurance, in such amount and form as the Minister of Finance may require, including a letter of credit or a company guaranty issued by the developing owner (or its parent company) provided he is satisfied that the issuer of the guaranty has a net worth in excess of twenty-five thousand dollars and is otherwise financially capable of paying upon the said guaranty.

(3) Every agreement under this section shall contain mutual covenants on the part of the Minister and the developing owner providing for the following matters, namely-

- (a) that nothing contained in the said agreement shall be deemed to make the developing owner liable to pay to the Government any payments in respect of any matter or thing done, executed or happening prior to the date on which such agreement shall cease in respect of which matter or thing payment is waived thereby, or to refund or to repay any customs duties which have been refunded to the developing owner under the concessions granted by such agreement except in the circumstances specified in section 43;
- (b) for the arbitration of all questions and differences between the Minister and the developing owner; and
- (c) for the interpretation of such agreement according to the laws of The Bahamas.

(4) For the purposes of this section "materials" means plumbing, electrical, mechanical and construction materials of all kinds necessary for the initial construction, furnishing and equipping of a new building so that the building is complete and ready for occupancy but does not include stoves, refrigerators, kitchen appliances or such other items as may be prescribed by the Minister.

(5) The exemption mentioned in subsection (1) shall apply-

- (a) to materials of comparable quality with a price greater than the price of such materials in The Bahamas before the payment of customs duties;
- (b) for a period of three years from the date of the commencement of this Act or such later date as the Minister may designate by order published in the *Gazette*; and
- (c) to a time-sharing project which makes provision for the accommodation of no less than fifty units in New Providence or Paradise Island and no less than twenty-five units in a Family Island.

(6) With respect to any time-sharing project that is part of a particular resort complex that includes a hotel, the Minister may also determine that the exemption set forth in subsection (1) shall also apply to those portions of the said complex that comprise a hotel and its appurtenant facilities, in which case such exemption shall apply to the said hotel in lieu of the exemption from customs duties set forth in the Hotels Encouragement Act.

(7) The developing owner of an existing time-sharing project desiring to rehabilitate or extend the same may submit to the Minister in writing for approval full particulars of such proposed rehabilitation or extension together with an estimate of the cost thereof, and shall supply to the Minister such other information as the Minister may require and on approval the provisions of subsections (1) to (6) shall apply *mutatis mutandis* to such rehabilitation or extension:

Provided that the exemption of the developing owner from the payment of customs duties in respect of materials necessary for the rehabilitation or extension of an existing time-sharing project shall be for a period of eighteen months from the commencement of this subsection.

(8) Where materials are purchased in The Bahamas for the construction, equipping, furnishing and completing of a time-sharing project or the rehabilitation or extension of a time-sharing project referred to in subsection (7), the customs duties paid on those goods shall be refunded by the Controller of Customs.

5. (1) Subject to section 57, the Board shall not grant a licence in respect of the operation of a time-sharing project unless the applicant satisfies the Board that the purchasers of the time-sharing interests in the project will have a right to occupy and use those accommodations and facilities for certain periods not in excess of six months in any year over a period of years not exceeding forty years, or as the Board may determine, and that any agreement relating to that purchase contains such conditions as may be prescribed by this Act or the regulations.

Restriction on the grant of a licence.

(2) The Board shall not grant a licence for the operation of a time-sharing project whereby any legal or equitable interest other than a time-sharing interest may be conferred upon the purchasers of those rights unless the Board otherwise sees fit, having regard to the fact that the right to use and occupy the accommodations and facilities of a time-sharing project is the principal benefit being conferred by the developing owner.

(3) The Board, unless it otherwise sees fit, shall not grant a licence for the operation of a time-sharing project until the time-sharing contract to be executed by the purchasers 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.

6. A developing owner's licence, a marketing agent's licence and a managing agent's licence shall come into force on the date specified therein and shall remain in force throughout the life of the time-sharing project, unless sooner suspended or revoked, except that nothing in this Act shall be deemed to prohibit a developing owner from voluntarily divesting himself of his licence at such time as the time-sharing project is completely sold out and the developing owner no longer retains any estate, right, title or interest therein.

Duration of licences.

7. (1) Where a developing owner divests himself of his licence or dies, the Board may, upon an application in that behalf made by any person claiming the right to succeed to such licence, transfer the licence to that person, subject to such terms and conditions as the Board may see fit to impose.

Transfer of licence.

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

8. (1) An application to the Board 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.

Application for grant or transfer of licence.

(2) Where the Board decides to grant, or approve the transfer of a licence, there shall be paid to the Treasurer before the licence is issued or transferred, the prescribed fee.

(3) All fees paid to the Treasurer under subsection (2) shall be paid by the Treasurer into the Consolidated Fund.

9. An applicant for a licence to develop a time-sharing project shall, before a licence is granted, satisfy The Board of his financial ability to complete the development required for the time-sharing 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.

Financial ability of applicant for licence.

10. A licence granted under section 3 shall be in such form as the Board may determine and shall specify-

Form of and matters to be specified in licence.

- (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, or

- (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 referred to in paragraph (a);
- (c) the time-sharing project in respect of which the licence is granted;
- (d) the maximum number of persons who may at any one time be provided with sleeping accommodations in the time-sharing project or in any unit on the premises;
- (e) the rooms to be reserved as public rooms for the general use of guests or purchasers;
- (f) the date-
 - (i) upon which the licence is to come into force,
 - (ii) if any, upon which the licence is to expire,
 - (iii) upon which the licence was granted; and
- (g) any terms or conditions attached to the licence.

11. Before approving a grant, transfer or variation of any of the specified terms of a licence, the Board may defer consideration of the application until the respective competent authorities constituted under the Health Services Act, the Town Planning Act and the Fire Services Act, or such one or more of them as, having regard to the nature of the application, the Board may deem appropriate, have caused the accommodations and facilities of the time-sharing 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.

Inspection of facilities of project.

12. The Board shall neither grant a licence nor approve the transfer of a licence unless it is satisfied-

Conditions for grant or transfer of licence.

- (a) that the applicant and the person responsible for the time-sharing 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 time-sharing project;
- (b) that the facilities of the time-sharing project have where practicable, been inspected pursuant to section 11 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 under section 52;
- (c) that the time-sharing project makes provision for the accommodation-
 - (i) in New Providence, of not less than fifty units, and
 - (ii) in a Family Island, of not less than twenty-five units;
- (d) that the applicant has complied with all requisite requirements prescribed by this Act; and
- (e) that the applicant is not in breach of any other law relating to the carrying on of business by him in The Bahamas and which business is in the best interest of The Bahamas.

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

Variation of terms of licence.

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 time-sharing project site of the intention to make such variation and shall take into account any representations made by or on behalf of the licensee.

14. Any transfer of a licence under section 7 or any variation of any of the specified terms of a licence under section 13 shall be endorsed on the licence by the Board together with the date when such transfer was approved or such variation made by the Board and the date from which the transfer or variation is to take effect.

Endorsement of transfer or variation in licence.

15. (1) Without prejudice to any other provisions of this Act, where the Board is satisfied that in relation to any time-sharing project, any provision of law or, as the case may be, any condition of the licence, is alleged to be contravened-

Power of Board to suspend or revoke licence.

- (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 licence 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 licence 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 licence; 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 time-sharing project, the Board may forthwith suspend or revoke the licence granted in respect thereof until such time as it is satisfied that such contravention has ceased.

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

(3) The Board may also revoke a licence if it is satisfied that the premises to which the licence relates have ceased to be operated as a time-sharing project.

16. (1) Where, as a result of an inspection made under section 38, the Board determines that it is in the public interest that the licence of a managing agent should be suspended, the Board may suspend the licence 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 time-sharing project.

Suspension of managing agent's licence.

(2) If a developing owner fails to comply with the requirements of the notice under subsection (1), any interested party may make application to the Supreme Court for an order appointing an interim or other managing agent who shall continue in that office until the Board grants a licence to another managing agent; and all expenses incurred in connection with the appointment of an interim or successor managing agent shall be payable out of moneys standing to the credit of the trust fund as well as out of the moneys provided by the time-sharing purchasers for the operation and management of the time-sharing project.

(3) A developing owner who fails to comply with the requirements of a notice under subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars, and in addition, to a fine of one thousand dollars, for each day during which such offence continues, or to imprisonment for one year or to both such fine and imprisonment.

17. Notwithstanding anything to the contrary in this Act where-

- (a) a managing agent's licence has been suspended under this Act, except as under section 16;
- (b) a mortgagee has foreclosed on, or otherwise acquired pursuant to a power of sale, any real property subject to a time-sharing project; or
- (c) the term of a leasehold estate in real property subject to a time-sharing project has determined,

Power to appoint interim managing agent.

and there is no managing agent to manage the time-sharing project, any interested party may make application to the Supreme Court for an order appointing an interim managing agent for a period not exceeding three years for the orderly continuation of the time-sharing project and all expenses incurred in connection with the appointment of an interim managing agent shall be payable out of the trust fund as well as out of any moneys provided by the purchasers for the operation and maintenance of the time-sharing project.

18. (1) Where a licence has been revoked or suspended under this Act the Board 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 Board within seven days of the date of the notice.

Surrender of revoked or suspended licence.

(2) A licensee who fails to comply with a notice under subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or to both such fine and imprisonment.

PART III PURCHASER'S RIGHTS

19. A purchaser may, subject to such conditions and in such manner as may be prescribed, take, acquire, hold, lease, assign or dispose of his time-sharing interest in the same manner in all respects as personal property and the title of a purchaser of a time-sharing interest may be derived through, from or in succession to, another

Capacity of purchaser to acquire, dispose of, etc., his interest.

purchaser in the same manner in all respects as personal property enforceable by action.

20. (1) Within sixty days of execution of a time-sharing contract, the developing owner or his managing agent shall apply to the Registrar to register the rights of the time-sharing purchaser. Registration of purchaser's rights.

(2) On an application under subsection (1), the Registrar shall, upon receipt of a duly executed contract, specify the names of time-sharing purchasers of time-sharing interests, enter upon payment of the prescribed fee such particulars as may be prescribed in a register to be maintained by the Registrar to be called 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.

(4) The Registrar shall, on the application of a time-sharing purchaser, developing owner or managing agent, make such alterations to the particulars in the Register as appear necessary to the Registrar by virtue of the application.

(5) A developing owner shall provide a purchaser with a written certificate or other evidence of such purchaser's time-sharing interest within sixty days after execution, and the form of such certificate or other document shall be to the satisfaction of the Board.

(6) A developing owner or managing agent who contravenes the provisions of subsection (1) or (2) is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

(7) The Registrar in this Act means a Registrar of Vacation Plans and Time-Sharing who is to be an officer of the Ministry responsible for vacation plans and time-sharing designated as such.

21. (1) Upon the registration of any person under section 20 as the purchaser of a time-sharing interest, a charge shall be created on the time-sharing project and all estates and interests therein in favour of the time-sharing purchaser to the extent and for the duration of such purchaser's interest therein. Effect of registration of purchaser's rights.

(2) A charge upon the time-sharing project arising under subsection (1) shall prevail against any subsequent purchaser of the same whether or not he purchased in good faith, for value, and without actual notice of such charge.

22. (1) Each seller shall utilize and furnish each time-sharing purchaser with a fully completed and executed copy of a contract pertaining to the sale, which contract shall include the matters set out in the First Schedule. Purchaser's contract.

(2) A developing owner or managing agent who contravenes the provisions of subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

23. (1) Subject to subsection (2), notwithstanding any other law to the contrary- Protection of purchaser from other estates and interests.

- (a) in no event shall the foreclosure, exercise of power of sale or pursuit of other right or remedy under a mortgage or other debt instrument covering all or any portion of a time-sharing project (whether covering real or personal property or both) extinguish or impair a purchaser's time-sharing interest in the same time-sharing project, irrespective of whether any such mortgage or other debt instrument is given or filed for record prior to completion of any such time-sharing interest;
- (b) in no event shall the determination of any leasehold estate in real property subject to a time-sharing project extinguish or impair a purchaser's time-sharing project, irrespective of whether any such leasehold estate was created prior to completion of any such time-sharing interest; and
- (c) a trustee shall not, in any proceeding under the Bankruptcy Act in which a time-sharing project is included among a bankrupt's property, be permitted to disclaim any time-sharing interest.

(2) Nothing in this Act is intended to prohibit the foreclosure, exercise of power of sale or pursuit of other right or remedy pursuant to any law relating to-

- (a) a chattel mortgage (or other debt instrument) covering a purchaser's time-sharing interest that was given at the time of completion of any such time-sharing interest in order to secure all or any portion of the unpaid purchase price thereof (including any future advances made thereafter under any such chattel mortgage or other instrument between the same parties or their respective successors): or

- (b) any charge or lien upon a time-sharing interest arising out of any law or by contract whereby any such charge or lien arises or is given in order to secure payment of a purchaser's pro rata share of operating, maintenance or similar expenses to which such purchaser is subject under a time-sharing plan.

24. The developing owner and managing agent shall ensure that the time-sharing project with respect to which they are licensed is constituted and in fact operated such that the time-sharing interests therein shall not be oversold.

Prohibition against over-selling.

25. Any purported waiver by a purchaser of any of the requirements of this Act or of any of the rights or remedies of a purchaser set forth in this Act or under any other law shall be invalid.

Purchaser waivers invalid.

PART IV MANAGEMENT

26. (1) Before the first sale of a time-sharing interest within a time-sharing 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.

Creation of managing entity.

(2) A developing owner shall be considered the managing agent of the time-share plan unless and until such developing owner clearly provides in the Public Offering Statement described in section 51 that a different party will serve as managing agent, which party has acknowledge 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 under this Act and under any contract with a purchaser unless and until-

- (a) the time-sharing project is completely sold out;
- (b) the developing owner no longer retains any estate, right, title or interest in or to the time-sharing project; and
- (c) the developing owner has voluntarily divested himself of his licence.

27. The managing agent shall act in the capacity of a fiduciary to the purchasers of the time-share plan.

Fiduciary relationship

28. The duties of the managing agent shall include, but are not limited to-

Duties of managing entity.

- (a) management and maintenance of all accommodations and facilities constituting the time-share project;
- (b) collection of all assessments for common expenses;
- (c) providing each year to all purchasers an itemised 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 time-share plan and the time-sharing project so that all such books and records are reasonably available for inspection by any purchaser or the authorised agent of such purchaser and-
 - (i) all books and financial records of the time-share plan and of the time-sharing project must be maintained in accordance with International Accounting Standards,
 - (ii) all purchasers 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 time-share units, when purchasers are not already entitled to use specific time-share periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the time-share 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 time-share 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 purchasers and owners of time-sharing interests.

29. (1) The managing agent of any time-share plan may deny the use of the accommodations and facilities of the time-share plan to any purchaser who is delinquent in the payment of any assessments made by the managing agent against such purchaser for common expenses. Denial of use for delinquency.

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

(3) For purposes of this section, a purchaser 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 purchaser or upon the expiration of sixty days after the date the assessment is declared to be due, whichever is later.

PART V INSURANCE, FUNDS, TAX AND RECORDS

30. (1) The developing owner shall provide and maintain for the benefit of all purchasers and their guests public liability insurance in respect of the accommodations and facilities to be used under the time-share plan, and such insurance shall be in an amount of not less than one million dollars, or such greater amount as the Board may see fit to impose from time to time. Developing owner to provide insurance.

(2) The developing owner shall keep all the property of the time-sharing 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 time-sharing project as contemplated in section 26.

(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 on summary conviction to a fine of ten thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

31. (1) A developing owner shall, forthwith on the commencement of a time-sharing project to which his licence relates and prior to entering into any contracts for the sale of time-sharing interests, establish and maintain with any of the financial institutions (in this section called the "escrow agent"), doing business in The Bahamas as are approved by the Minister of Finance by notice published in the *Gazette* for the purposes of this section, an escrow fund into which the proceeds of all on-site sales of time-sharing interests shall be paid immediately upon receipt thereof and there kept until disbursed as hereinafter provided: Escrow fund.

Provided that if sale of a time-sharing interest is an off-site sale and the jurisdiction where such sale occurs does not have contemporaneous to such sale comparable statutory time-sharing escrow requirements to those provided herein, then in such event the proceeds of such off-site sale shall be paid immediately upon receipt into the aforesaid escrow fund and kept there until disbursed as hereinafter provided.

(2) The following disbursements from the escrow fund shall be made by the escrow agent upon receipt of a developing owner's sworn affidavit averring the applicable circumstances as hereinafter described-

- (a) to the purchaser, on the cancellation of his contract within the cancellation period allowed therein, the total amount of all payments made by the purchaser less any contract benefits;
- (b) to the developing owner, on the cancellation of a purchaser's contract within the cancellation period allowed therein, the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of cancellation;
- (c) to the marketing agent, pursuant to a contract in writing between the developing owner and the marketing agent and upon the expiration of the cancellation 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 time-sharing interest of that purchaser for the purpose of paying the costs of marketing the time-sharing project;
- (d) to the developing owner, where he is also the marketing agent, upon the expiration of the cancellation 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 time-sharing interest of that purchaser for the purpose of paying the costs of marketing the time-sharing project; or

- (e) to the developing owner, upon the expiration of the cancellation period of a purchaser's contract, five per centum of the gross amount realized from the sale of the time-sharing interest of that purchaser; and the developing owner shall immediately pay the same into the sinking fund established under section 32.

(3) The escrow agent shall, after making the disbursements authorised under subsection (2) and if the amount standing to the credit of the sinking fund is not less than five per centum of the total construction cost incurred to that time on the time-sharing project, transfer to the trust fund established under section 33 the balance of the amount in the escrow fund; otherwise after making such disbursements the transfer of such balance shall be made to the sinking fund until the minimum requirement thereof is satisfied.

(4) Where a payment is to be made under subsection (3) into the trust fund, that payment may, at the request of the developing owner be made to him instead if the escrow agent receives a sworn affidavit from the developing owner averring that-

- (a) construction of the time-sharing project is complete and a certificate of occupancy with respect thereto has been issued pursuant the Buildings Regulation Act; and
- (b) completion of the purchaser's acquisition of his time-sharing interest has in fact occurred and the purchaser's name and time-sharing interest have been duly submitted to the Registrar in accordance with the terms of section 20.

(5) A developing owner who contravenes the provisions of subsection (1) or (2) (d) or who makes a false affidavit under subsection (2) or (4), or an escrow agent who contravenes the provisions of subsection (2) or (3) is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(6) The foregoing notwithstanding, upon application the Board may consider and accept in lieu of the establishment of an escrow account as provided in this section an alternative assurance in such amount and form as the Board may accept, including a surety bond, letter of credit or a company guaranty issued by the developing owner (or its parent company), provided the Board is satisfied that the developing owner (or its parent company) has a net worth in excess of twenty-five million dollars and is otherwise financially sound.

32. (1) A developing owner shall establish and maintain with a financial institution as is referred to in section 31(1) a sinking fund into which fund shall be paid any amount disbursed from the escrow fund under section 31(2)(e), together with such amount as represents five per centum of the gross amount realized from the off-site sale of any time-sharing interest by the developing owner after the operation of the respective cancellation period: Sinking fund.

Provided that, where the sum standing to the credit of the sinking fund is not less than a sum equal to five per centum of the total construction cost of the time-sharing project, the developing owner may cease to make disbursements into the fund.

(2) The sum standing to the credit of the sinking fund shall be applied in payment of any repairs, alterations or replacements necessary to the premises of the completed time-sharing project by reason of defects in materials or workmanship.

(3) Any sum paid to the sinking fund may, unless applied in payment to the purposes for which the sinking fund is established, be repaid to the developing owner anytime after three years from when construction of the time-sharing project is completed, and the sinking fund shall be held by the developing owner during such period on trust for the benefit of all purchasers for such purposes.

(4) The Advisory membership structure of any time-share owners' association described in the Second Schedule shall be entitled to use the funds held in the sinking fund, if any, for the purposes for which they are intended upon the failure of the developing owner so to do, and in that regard the developing owner shall at the request of the advisory body lay over with the financial institution at which the sinking fund is kept the signatures of two persons approved by that body as being authorised to make any necessary withdrawals.

- (5) A developing owner who contravenes the provisions of this section is guilty

of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

(6) The foregoing notwithstanding, upon application the Board may consider and accept in lieu of the establishment of a sinking fund account as provided in this section an alternative assurance in such amount and form as the Board may accept, including a surety bond, letter of credit or a company guaranty issued by the developing owner (or its parent company), provided the Board is satisfied that the developing owner (or its parent company) has a net worth in excess of twenty-five million dollars and is otherwise financially sound.

33. (1) A developing owner shall establish and maintain with a financial institution as is referred to in subsection (1) of section 31(1) (in this section called "the trustee") a trust fund into which fund shall be paid any amount transferred from the escrow fund under subsection (3) of section 31. Trust fund.

(2) Disbursements from the trust fund shall be made by the trustee-

- (a) to the developing owner, of the balance of the proceeds of sale of the time-sharing interest in relation to the facilities of the time-sharing project in respect of which a certificate of occupancy has been granted as aforesaid; and
- (b) to a time-sharing purchaser, in respect of any sum payable under a judgment obtained by him in a court of The Bahamas for breach of contract in connection with his purchase of a time-sharing interest,

provided there are moneys standing to the credit of the fund.

(3) A developing owner shall not be entitled to use the funds held in the sinking fund or the trust fund as collateral security in support of any loan or other financial obligation incurred by him.

(4) Notwithstanding anything in this section contained, where a developing owner fails to complete the time-sharing project in accordance with the terms and conditions of his licence or is adjudged a bankrupt by a court of competent jurisdiction and his licence is revoked, any interested party may make application to the Supreme Court for an order enabling that person to complete the time-sharing project by using the funds in the trust fund, if any, or for the disbursement of such funds to the purchasers on a *pro rata* basis.

(5) Where such an order has been made by the Supreme Court, moneys standing to the credit of the trust fund shall, notwithstanding anything to the contrary in any other law, be first applied for the purposes specified in that order.

(6) Any interest accruing on sums held in the trust fund shall be for the account of the developing owner.

(7) A developing owner who contravenes the provisions of subsection (1) or (3) or a trustee who contravenes the provisions of subsection (2) is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

34. Notwithstanding section 33, upon application the Board may consider and accept in lieu of the establishment of a trust fund account as provided in section 33 an alternative assurance in such amount and form as the Board may accept, including a surety bond, letter of credit or a company guaranty issued by the developing owner (or its parent company), provided the Board is satisfied that the developing owner (or its parent company) has a net worth in excess of twenty-five million dollars and is otherwise financially sound. Assurances.

35. 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 purchasers of time-sharing interests in the time-sharing project. Books and records.

36. (1) Notwithstanding section 38, 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 authorised person") may enter at any reasonable time the premises of a time-sharing 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 35 is being or has been committed. Inspection of books and records.

(2) 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 authorised person who demands admission to the premises of the time-sharing project in

pursuance of his functions under subsection (1);

- (b) on being required by an authorised person to produce any book, record or other document in his possession or under his control which relates to the premises of the time-sharing project and which the authorised person reasonably requires to inspect for the purpose specified in subsection (1), fails without reasonable excuse to produce it to the authorised person or fails to permit the authorised person to take copies of it or of any entry in it; or
- (c) on being required by an authorised person to furnish any other information relating to the premises which is reasonably required by the authorised person for the purpose of ascertaining compliance with section 35, fails without reasonable excuse to furnish that information to the authorised person,

that managing agent or developing owner or other person is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

37. (1) There shall be paid by each occupant (who is not a purchaser or guest of a purchaser) of any time share property in any part of The Bahamas a tax (to be called "occupancy tax") for each period during which such occupant is provided with sleeping accommodation at such time-share property. Occupancy tax.

(2) Subject to subsection (3) the occupancy tax shall in respect of each such occupant be six per centum of his total room rate for the period during which such guest is provided with sleeping accommodation at such time-share property.

(3) Notwithstanding subsection (2), the Minister may, by order increase or reduce the rate of the occupancy tax from a date to be specified in the order.

(4) The provisions of sections 31 and 32 of the Interpretation Act shall not apply in relation to any order made by the Minister under subsection (3) but instead every such order shall be subject to affirmative resolution of both Houses of Parliament.

(5) In subsection (4) the expression "subject to the affirmative resolution of both Houses of Parliament", in relation to an order, means that the order is not to come into operation unless and until approved by a resolution of each of these Houses; and on and after the date specified in the order as so approved the alteration of the rate of tax specified in the order shall respectively have effect.

PART VI INSPECTION

38. The Board shall make or cause to be made periodic inspections with such scope and frequency as the Board shall determine of every time-sharing project in order to ascertain whether compliance with this Act is being made and for the purpose of investigating any complaints made by an aggrieved purchaser regarding the application of this Act to any particular project. Inspection of project.

39. (1) Without prejudice to any other law but subject to subsection (2), any public officer duly authorised by the Board for such purposes or an officer of the Department of Health, the Department of Planning or a police or fire service officer of or above the rank of sergeant may, without a warrant, enter upon and inspect any premises licensed as a time-sharing project. Power of entry and inspection without warrant.

(2) Before an inspection is carried out under the authority of section 38 or of subsection (1) hereof, the licensee of the premises to be inspected, or some agent or servant of the licensee, shall be given notice of the intention to carry out the inspection as may, in the circumstances of the case and having regard to the objects of the inspection, be reasonable; and the licensee or, as the case may be, his agent or servant shall be given an opportunity to be present or have some person selected by him to be present at the inspection.

(3) If any person authorised under the provisions of section 38 or of subsection (1) hereof has reason to believe that a contravention of any provision of law is being committed on a time-sharing project 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 Board.

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

40. Where it has been made to appear to a magistrate that premises not licensed as a time-sharing project are being operated as such, he may issue a warrant to a police officer of or above the rank of sergeant authorising him, with or without assistance, to enter upon and inspect the premises and to conduct such enquiries therein for the purpose of determining whether there is a contravention of this Act.

Power of magistrate to issue warrant to enter premises.

PART VII PROHIBITIONS AND PENALTIES

41. (1) The happening of any of the following events occurring after the coming into operation of this Act shall, notwithstanding anything to the contrary in this Act, be deemed to be a prohibited transaction and a contravention of this Act-

Prohibited transactions.

- (a) for a developing owner or marketing agent to sell a time-sharing interest where such interest was previously sold and not otherwise re-acquired by the developing owner into his inventory;
- (b) the advertising, marketing or sale of a time-sharing interest that would expire after forty-five years from the date on which the occupancy permit pertaining to that unit was issued;
- (c) the advertising, marketing or sale of any time-sharing interests otherwise in contravention of the terms of this Act; and
- (d) the advertising, marketing or sale of any time-sharing interests in or from any place other than a place approved by the Board or the place where the time-sharing project is located.

(2) Any person who commits a prohibited transaction is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

42. Where an offence alleged to have been committed against this Act relates to the alteration of a contract document pertaining to the sale of a time-sharing interest or the management or marketing of a time-sharing project, and the offence is shown to have been done by someone other than the developing owner, then the developing owner is guilty of the like offence and liable to be punished accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence.

Responsibility of developing owner.

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

Penalty for statements.

(2) Any person who, in the course of developing, managing, advertising, marketing or selling a time-sharing project-

- (a) makes a statement which he knows to be false; or
- (b) recklessly makes a statement which is false as to any of the following matters, that is to say-
 - (i) the nature, extent or scope of any services, accommodations or facilities provided with respect to the time-sharing project or the time-share plan,
 - (ii) the time at which, manner in which or persons by whom any services or accommodations or facilities are so provided,
 - (iii) the location of the project, amenities offered or any accommodation or facilities provided,
 - (iv) a prediction of any increase in the price or value of a time-sharing interest, or
 - (v) any matter set forth in the Public Offering Statement,

is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

(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 without reasonable knowledge and investigation as to whether it is true or false shall be deemed to have been made recklessly, whether or not the person to whom the statement is made might suspect that the statement is false.

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

44. Every person knowingly making a false declaration for the purpose of obtaining a benefit pursuant to the provisions of this Act is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

Penalty for false declaration.

45. (1) Any person applying any materials in respect of which customs duties have been exempted pursuant to the provisions of any agreement made under the authority of this Act for any purpose other than the purpose specified in such agreement is guilty of an offence and shall be liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for one year or to both, such fine and imprisonment.

Penalty for wrongful application of materials.

(2) If the person convicted of an offence under subsection (1) is the developing owner or the director of a company that is the developing owner such agreement may be cancelled by the Minister in which case all customs duties from the payment of which the developing owner has been exempted pursuant to the provisions of an agreement made under the authority of this Act may be recovered from the developing owner as liquidated damages.

46. (1) Any person who develops, markets or manages a time-sharing project when there is not in force a licence granted to him by the Board to develop, market or manage such project is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars and, in addition, to a fine of one thousand dollars for each day during which the offence continues or to imprisonment for one year or to both such fine and imprisonment.

Penalty for irregular operation of project.

(2) Any licensee who develops, markets or manages a time-sharing project otherwise than in accordance with the terms and conditions of the licence that has been granted to him is guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and, in addition, to a fine of five hundred dollars for each day during which such offence continues or to imprisonment for a term of six months or to both such fine and imprisonment.

(3) Any person to whom a licence has been granted who subsequently makes any material variation in a contract referred to in subsection (3) of section 5 without the written approval of the Board, is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars for each contract so varied and executed by a time-sharing purchaser.

(4) Where an offence against this Act is committed by a body corporate, every person who at the time of the commission of the offence was a director, manager or officer or any person purporting to act in any such capacity, is guilty of the like offence and liable to be punished accordingly unless he proves that the act or omission constituting the offence took place without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence.

47. Any person who obstructs any authorised officer of the Board, any officer of the Department of Health, the Department of Planning or a police or fire service officer in the exercise of any power conferred on him or the performance of any duty imposed upon him by this Act is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

Penalty for obstructing officers.

48. (1) Proceedings in respect of an offence against this Act shall not be instituted by any person without the written consent of the Attorney-General other than an offence against subsection (4) of section 32.

Fiat of Attorney-General and time limit for proceedings.

(2) Proceedings in respect of a summary offence under this Act or the regulations may be commenced at any time within two years from the time the offence is committed.

49. The provisions of section 48 shall not be construed to prohibit or impair the

Fiat not to include civil

right of any purchaser or other aggrieved person to enforce in any civil proceedings any right or remedy conferred upon such person under this Act or under any contract.

PART VIII MISCELLANEOUS

50. (1) Every developing owner, marketing agent or managing agent of a time-sharing project shall, whenever required to do so by the Board, satisfy the Board that the project in relation to which such owner or agent has been granted a licence has made provision for the matters set out in the Second Schedule.

(2) Any failure of a developing owner, marketing agent or managing agent of a time-sharing project to satisfy the Board with respect to any of the matters set out in the Second Schedule shall be deemed to be a breach of the conditions of the licence and the Board may, if it considers the breach to be of a grave nature, and subject to subsection (3) suspend or revoke the licence.

(3) Before suspending or revoking the licence under subsection (2) the board shall serve upon the licensee by delivering to the project site a notice specifying the alleged contravention and requiring the licensee to comply or ensure compliance therewith to the satisfaction of the Board within such period as the Board may specify in the notice being not less than seven days from the date of delivery, and, if at the expiry of such period the licensee fails to comply or ensure compliance to the satisfaction of the Board, the Board may suspend or revoke the licence.

(4) Where the Board suspends or revokes the licence in accordance with subsection (3), it shall serve on the licensee a notice of the suspension or revocation and no licence shall during the period of suspension, be of any effect.

51. (1) The developing owner, unless exempted by the Board, shall file with the Board a Public Offering Statement, which shall be in conformity with the requirements outlined in the Third Schedule:

Provided that if the developing owner distributes to an off-site time-sharing purchaser a Public Offering Statement (howsoever denominated) which contains in the opinion of the Board substantially all of the information required by that Schedule, then such Public Offering Statement distributed in conjunction with the said off-site sale shall be deemed in conformity with this section and that Schedule.

(2) The Public Offering Statement shall be delivered by the developing owner to the on-site time-sharing purchaser before execution of his contract of purchase.

(3) Any developing owner who contravenes the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

52. (1) The Board may, at any time, if it sees fit, exempt the holder of a licence from complying, in whole or in part, with any one or more of the provisions of this Act.

(2) An exemption may be granted for such period as the Board sees fit and may be extended from time to time.

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

(4) An exemption may be revoked in whole or in part at any time by the Board and such revocation shall be endorsed on the licence:

Provided that before effecting any such revocation, the Board shall give to the licensee by delivery to the time-sharing project site written notice of its intention to revoke the exemption unless the licensee shows good cause to the satisfaction of the Board within seven days from the date of delivery as to why the revocation should not be made and the Board shall thereafter take into account any representations made by or on behalf of the licensee.

53. Without prejudice to the provisions of section 52, with respect to any time-sharing project that is located-

- (a) outside The Bahamas but which is advertised, marketed or sold within the jurisdictional limits of The Bahamas; or
- (b) within The Bahamas but which is advertised, marketed and sold exclusively outside of the Bahamas,

the Board may, upon application, grant the developing owner, managing agent or marketing agent of any such time-sharing project a complete or partial exemption

from the requirements of this Act if the Board-

- (i) determines that the foreign jurisdiction in which such time-sharing project is located or is advertised, marketed and sold (as the case may be) makes adequate protection for purchasers of time-sharing interests therein and that such protection will (by statute, contract or otherwise) in fact be extended to any such purchasers who purchase their time-sharing interest as a result of the aforesaid advertising, marketing or sale activity; and
- (ii) is satisfied that the person making such application is financially sound.

54. (1) The Board may make regulations for the purpose of carrying the provisions of this Act in effect, and in particular, but without prejudice to the generality of the foregoing, for- Regulations.

- (a) governing the development, management, advertising, marketing, and sale of time-sharing projects in such manner as to be likely to enhance the growth of tourism through fair and honest business practices and the creation of safe hygienic and sanitary facilities which are equal to the generally accepted standards of legitimate hotels in The Bahamas;
- (b) regulating the number of persons who may be accommodated in the units and facilities of a time-sharing project;
- (c) prescribing standards of equipment for the sanitation of time-sharing projects, standards for the preparation and serving of food and drink in such projects and standards for ventilation;
- (d) the medical examination of employees of licensees so as to restrict and control the employment in time-sharing projects 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 or licensees;
- (e) prescribing standards for the maintenance of the exteriors and interiors of the building comprising time-sharing projects and the roads, pathways and grounds thereof;
- (f) prescribing precautions to be taken against the outbreak or spread of fire in time-sharing projects 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 Board;
- (i) the keeping of registers and log-books by licensees in relation to the operation of time-sharing projects;
- (j) the making of reports to the Board, the Department of Health, the Department of Planning and the authority responsible for fire services 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;
- (m) regulating the volume of inventory from each time-sharing project coming into the market for sale at any given time;
- (n) identifying and investigating the operators of time-sharing projects;
- (o) regulating generally the functions and the operations of marketing agents authorised to advertise, promote and sell time-sharing projects;
- (p) prescribing the financial requirements to be fulfilled under section 12(a) by an applicant for a licence before such licence may be granted;
- (q) requiring the developing owner, where the Board considers it necessary, to furnish the Board with a payment and performance bond or other bond executed by one or more sufficient sureties in such amount, for such periods and on such terms as the Board may prescribe to cover maintenance obligations as well as 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 time-sharing project;
- (r) prescribing levels of services including maid services and cleaning

services to be maintained in the operation of time-sharing projects;

- (s) the imposition and payment of such fees as are prescribed in relation to the occupancy of time-sharing projects;
- (t) providing for anything required under this Act to be prescribed.

(2) The Minister may make the regulations setting out the items eligible to receive concessions under the Act.

(3) The developing owner of any time-sharing project granted concessions under this Act may be required to provide evidence that they attempted to obtain the materials locally or attempted to obtain locally produced materials at comparable quality, price and quantity.

55. Notwithstanding the provisions of subsection (1) of section 4 of the Law of Property and Conveyancing (Condominium) Act, a time-sharing project shall satisfy the requirements of that section if the developing owner holds a leasehold estate with an unexpired term of not less than twenty years and not more than forty-five years in property which relates to a Declaration executed under seal by a developing owner pursuant to section 4 of that Act and all accommodations and facilities which are subject to the Declaration are restricted to time-sharing use and such Declaration is approved by the Board.

Application of the Law of Property and Conveyancing (Condominium) Act.

56. (1) Nothing in this Act shall derogate from the provisions of any other law but, in the event of any conflict between this Act and such law, the provisions of this Act, in so far as they wholly relate to the development, management, advertising, marketing or sale of a time-sharing project, or to the ownership or use of a time-sharing interest, shall prevail.

Savings.

(2) Notwithstanding anything to the contrary in subsection (1), the reference to twenty-one years in subsection (1) of section 9 of the International Persons Landholding Act, 1993 shall, in its application to a time-sharing project to which a developing owner's licence applies, be construed and have effect as a reference to forty years.

FIRST SCHEDULE (Section 22(1))

MATTERS WHICH SHALL BE INCLUDED IN EVERY PURCHASER'S CONTRACT

Each seller shall utilize and furnish each purchaser with a fully completed and executed copy of a contract pertaining to the sale which shall include the following information-

- (a) the actual date the contract is executed by each party;
- (b) the names and addresses of the developing owner, any holder of a mortgage or other security instrument, and any owner or lessor of any underlying estate in freehold or leasehold;
- (c) the total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject, such as financing, reservation, maintenance, management and recreation charges;
- (d) the estimated date of completion of construction of each accommodation or facility which is not completed at the time the contract is executed;
- (e) a description of the nature and duration of the time-sharing interests being sold and of the time-share plan, including the specific number of years constituting the term of the time-share plan;
- (f) immediately prior to the space reserved in the contract for the signature of the purchaser, in conspicuous type, substantially the following statement:

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN SEVEN DAYS FROM THE DATE YOU SIGN THIS CONTRACT, AND UNTIL SEVEN DAYS AFTER YOU RECEIVE THE PUBLIC OFFERING STATEMENT, WHICHEVER IS LATER. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE DEVELOPING OWNER IDENTIFIED IN THIS CONTRACT IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (NAME OF DEVELOPING OWNER) AT (ADDRESS OF DEVELOPING OWNER). ANY ATTEMPT TO OBTAIN A WAIVER OF YOUR CANCELLATION RIGHT IS UNLAWFUL. WHILE YOU MAY EXECUTE ALL COMPLETION DOCUMENTS IN ADVANCE, THE COMPLETION, AS EVIDENCED BY DELIVERY OF YOUR OWNERSHIP

CERTIFICATE OR OTHER DOCUMENT, BEFORE EXPIRATION OF YOUR SEVEN DAY CANCELLATION PERIOD, IS PROHIBITED.";

- (g) a statement that, in the event the purchaser cancels the contract during the seven day cancellation period, the developing owner will refund to the purchaser the total amount of all payments made by the purchaser under the contract, reduced by the proportion of any contract benefits (such as an overnight stay at the time-sharing project), the purchaser has actually received under the contract period prior to the effective date of the cancellation; the statement shall further provide that the refund will be made within twenty days after receipt of notice of cancellation or within five days after receipt of funds from the purchaser's cleared cheque, whichever is later; a seller and a purchaser shall agree in writing on a specific value for each contract benefit received by the purchaser for purposes of this paragraph; the term "contract benefit" shall not include public offering statements or other documentation or materials that must be furnished to a purchaser pursuant to any law;
- (h) unless the developing owner is at the time of the sale of the time-sharing interest the owner in fee simple absolute of all accommodations and facilities of which the time-sharing project is comprised, free and clear of all liens and encumbrances, a statement that the developing owner is not the sole owner of the underlying fee of the said accommodations or facilities without liens or encumbrances, which statement shall include-
 - (i) the names and addresses of all persons or entities having an ownership interest or other legal or beneficial interest in the accommodations or facilities, and
 - (ii) the actual interest of the developing owner in the said accommodations or facilities.

SECOND SCHEDULE (Section 50(1))

**MATTERS IN RESPECT OF WHICH EVERY DEVELOPING OWNER,
MARKETING AGENT
OR MANAGING AGENT OF A TIME-SHARING PROJECT MUST SATISFY THE
BOARD**

Every developing owner, marketing agent or managing agent shall, whenever required to do so by the Board and not otherwise exempted by it, satisfy the Board that the time-sharing project 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 the time-sharing project) for the protection of the interests of all time-sharing purchasers;
- (b) made provision for the purchasers of time-sharing interests to directly or indirectly cancel and terminate (on commercially reasonable terms) the contract of any managing agent after the sellout of seventy-five per centum of all time-sharing interests in the project, through the creation of an advisory membership structure or owner's association as selected by the developing owner for each time-sharing project; such structure or association, as the case may be, shall have the right to the names and addresses of all time-sharing purchasers in the project; the managing agent shall co-operate with such structure or association in all ways feasible; and the Board shall periodically review comments received from any such structure or association and take any suggestions into consideration as part of the periodic inspection under section 38;
- (c) provided the Board, prior to their use, with copies of all contracts and other legally binding documents being used by the parties in connection with the time-sharing project, including all rules, regulations, conditions or limitations on and charges for use of the accommodations or facilities as may be in force from time to time;
- (d) provided for the keeping of proper and detailed records concerning all aspects of the development, management, advertising, marketing and sale of the time-sharing project; such records shall include a copy of the contract for each sale under the time-sharing project and records detailing the disposition of all funds realized from such sales;
- (e) provided the Board, prior to their use or implementation, as the case may be, and every purchaser, prior to the execution of the contract by such purchaser, with a copy of the contract transferring the time-sharing interests and the Public Offering Statement, if required, full information concerning the terms and conditions of any financing offered; a detailed statement of all annual or periodic charges and assessments that defines

the basis for such charges and assessments and the means by which all periodic charges and assessments (if any) will be made and the amounts thereof; and, all rules, regulations, conditions or limitations on the use of the accommodation or facilities of the project;

- (f) afforded every purchaser a cancellation period of not less than seven days from the date of the execution of the contract or until seven days after receipt of the Public Offering Statement, whichever is the later, during which time such purchaser shall be entitled to cancel the contract;
- (g) made satisfactory financial arrangements for the refund to the purchaser of the total amount of all payments made by the purchaser, reduced by the proportion of any contract benefits by any purchaser who cancels his contract as provided in this Act within twenty days of the receipt of the notification of the cancellation;
- (h) made provision that if the titles, rights, obligations and responsibilities of a developing owner, marketing agent or managing agent are transferred to a third party, such third party agrees in writing to honour fully the rights of the time-sharing purchasers under the time-sharing project;
- (i) made provision for the inclusion of a clause in all contracts and other legally binding documents being used by the parties in connection with the time-sharing project to the effect that such contracts and other documents shall in so far as they relate to the purchase or transfer of a time-sharing interest be interpreted and construed according to the law of The Bahamas; otherwise as provided in the time-sharing contract, and if not so provided, then the law of the place of the *situs* of the time-sharing contract's execution shall govern;
- (j) made provision whereby a compensating use period, similar alternative accommodation or monetary compensation may be granted to a purchaser where the facilities of the time-sharing project that he is entitled to use and occupy are 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;
- (k) provided a policy and procedure for disciplining a purchaser for failure to comply with any provision of the rules and regulations of the time-sharing project or this Act, 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 the facilities of the time-sharing project and ultimately the forfeiture of a purchaser's time-sharing interest in the time-sharing project 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 time-sharing project by other purchasers; and further made provision for giving a purchaser proper notice and a reasonable opportunity to be heard before any penalty is imposed or the rights and privileges of such purchaser are suspended or forfeited;
- (l) made provision whereby a special assessment, that is to say, any assessment in respect of any costs in connection with the time-sharing project payable by a time-sharing purchaser other than annual or periodic charges and assessment, shall be submitted to the Board together with a detailed statement thereof for its approval before any demand is made on the said purchaser for payment;
- (m) provided a plan of payment by time-sharing purchasers either individually or through a body contemplated in paragraph (b) to the managing agent or interim managing agent for the costs of operating and maintaining the time-sharing project and such plan shall provide, *inter alia*-
 - (i) for the payment of not less than ten per centum and not more than twenty-five per centum of the moneys received (as approved by the Board) annually into a fund to be used solely for the purpose of replacing any furniture, fittings, appliances and floor coverings in the time-sharing project, and
 - (ii) for the submission by the managing agent or interim managing agent to the Board of an annual audited statement of accounts;
- (n) made provision not to encumber the time-sharing project with a mortgage or other similar instrument, subsequent to the sale of any time-sharing interests in the project, without the written consent of not less than fifty-one per centum of the then existing time-sharing purchasers, other than the

developing owner, marketing agent or managing agent, as the case may be.

THIRD SCHEDULE (Section 51)

MATTERS WHICH EVERY DEVELOPING OWNER OR HIS MARKETING AGENT MUST INCLUDE IN HIS PUBLIC OFFERING STATEMENT

Every developing owner or his marketing agent shall, unless exempted by the Board, include in his Public Offering Statement the following information, where applicable to his time-sharing project-

- (a) the name of the developing owner and the principal address of such developing owner, the project and its primary location, and the time-share interests being offered for sale, including:
 - (i) the name and address of every officer of the developing owner, and
 - (ii) the name and address of each person owning or controlling an interest of twenty per centum or more in the time-sharing project;
- (b) a complete description of the time-sharing project and the facilities and amenities made available to purchasers, including provisions, if any, that have been made for public utilities in the time-sharing project, including water, electricity, telephone and sewerage facilities and also including, without limitation, the developing owner's good faith estimate, schedule of commencement and completion of the time-sharing project, its facilities and amenities or, if completed, a statement indicating that they have been completed and the date of such completion;
- (c) the description contemplated in paragraph (b) shall include a description of any recreational and other commonly used facilities which will not be used exclusively by purchasers of the time-sharing project and which require the payment of any portion of the maintenance and expenses of such facilities, either directly or indirectly, by the purchasers; such description shall include, but not be limited to, the following-
 - (i) each building or facility committed to be built,
 - (ii) facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies,
 - (iii) as to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions of subparagraph (ii), a statement whether it will be owned by the purchasers having the use thereof or by an association or other entity which will be controlled by the purchasers, or others, and the location in the exhibits of the lease or other document providing for use of those facilities,
 - (iv) the year in which each facility will be available for use by the purchasers or, in the alternative, the maximum number of purchasers in the time-sharing project at the time each of the facilities is committed to be completed,
 - (v) if there are leases, descriptions thereof, including the length of their terms, the rents payable, and descriptions of any options to purchase;
- (d) if it is mandatory that the purchasers pay fees, rent, dues or other amounts under a recreational facilities lease or club membership for the use of any facilities as referred to in paragraph (c), the following statements in conspicuous type-
 - (i) membership in the recreational facilities club is mandatory for purchasers,
 - (ii) purchasers are required, as a condition of ownership, to be lessees under the recreational facilities lease, and
 - (iii) purchasers are required to pay their share of the costs and expenses of maintenance, management, upkeep, replacement, rent and fees under the recreational facilities lease or the other instruments providing the facilities, or

similar statements of the nature of the organisation or the manner in which the use rights are created, and that purchasers are required to pay;
- (e) a description (including the amount) of all amounts due from the purchaser at completion, together with a description of the purpose and method of calculating such amounts;

- (f) an explanation of the status of the title to the real property underlying the time-share-plan, including a statement of the existence of any lien, defect, judgment, mortgage or other encumbrance affecting the title to the property, and how such lien, defect, judgment, mortgage or other encumbrance will be removed, satisfied or subordinated prior to completion;
- (g) a general description of any financing offered the time-sharing purchaser by the developing owner;
- (h) a statement of any pending suits against the developing owner and of which such developing owner has actual knowledge;
- (i) a description of the insurance coverage provided for the benefit of time-sharing owners;
- (j) the name and address of the managing agent, a statement whether the developing owner may change the managing agent or its control and, if so, the manner by which the developing owner may change the managing agent, a statement of the arrangements for management, maintenance and operation of the accommodations and facilities and of other property that will serve the purchasers; and a description of the management arrangement and any and all contracts for these purposes having a term in excess of one year, including the names of the contracting parties, the term of the contract, the nature of the services included, and the compensation, stated for a month and for a year, and provisions for increases in the compensation; copies of all described contracts shall be attached as exhibits;
- (k) any current or expected fees or charges to be paid by time-sharing owners for the use and enjoyment of any facilities related to the project which are not already disclosed under paragraph (d);
- (l) the extent to which financial arrangements, if any, have been provided for completion of any part of the time-sharing project;
- (m) the extent to which a time-sharing owner in a project can exchange his time-sharing interest in that project with that of another purchaser, in another project, and the procedures and costs necessary to do so;
- (n) a brief narrative description of the significant features of the time-sharing instrument and any document referred to therein, any contract or lease to be signed by the purchaser at closing, and any contract or lease that will or may be subject to cancellation by the owners of time-sharing interests;
- (o) any services which the developing owner provides or expense he pays and which he expects may become at any subsequent time a time-sharing expense of the time-sharing purchasers;
- (p) a description of the restrictions, if any, to be imposed on time-sharing interests concerning the use of any of the accommodations or facilities, including statements whether there are restrictions upon children and pets, and references to the volumes and pages of the time-share plan documents where such restrictions are found; or, if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit; if there are no restrictions, there shall be a statement of such fact;
- (q) an estimated operating budget for the time-sharing project and a schedule of the purchaser's expense shall be attached as an exhibit and shall contain the following information-
 - (i) the estimated annual expenses of the time-sharing project collectable from purchasers by assessments; the estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due; expenses shall also be shown for the shortest time-share period (or smallest time-sharing interest, as the case may be) offered for sale by the developing owner; if the time share plan provides for the offer and sale of units to be used on a non time-share basis, the estimated monthly and annual expenses shall be set forth in a separate schedule, and
 - (ii) the estimated weekly, monthly, and annual expenses (if any) of the purchaser of each time-share period, other than assessments payable to the managing agent as contemplated in subparagraph (i); expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from this estimate;

- (r) if the developing owner intends to subsidize or guarantee the level of assessments, such subsidy or guarantee must be based upon a good faith estimate of the revenues and expenses of the time-share plan; the subsidy or guarantee must include a description of the following-
 - (i) the specific time period measured in one or more calendar or fiscal years during which the subsidy or guarantee will be in effect, and
 - (ii) the level, expressed in total dollars, at which the developing owner subsidizes or guarantees the budget, as well as the developing owner's good faith estimate of the fiscal impact upon the annual budget immediately after the expiration of the said subsidy or guarantee;
- (s) all other circumstances or features affecting the time-sharing project determined by the developing owner in good faith to be unusual and material to such project;
- (t) a statement or provision on the face of the Public Offering Statement, in bold face type and separated from the other text as follows-

"THIS PUBLIC OFFERING STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A TIME-SHARING INTEREST. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS HERETO, CONTRACT DOCUMENTS AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE SELLER IS PROHIBITED FROM MAKING ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THE CONTRACT AND THIS PUBLIC OFFERING STATEMENT.";

- (u) copies of the following documents and plans, to the extent they are applicable, shall be included as exhibits-
 - (i) if the time-sharing project is part of a condominium, the declaration of condominium, or the proposed declaration if the declaration has not been recorded,
 - (ii) any declaration of covenants and restrictions, or proposed declaration if the declaration has not been recorded,
 - (iii) if the owner's association is established as a body corporate, the articles of incorporation creating the association,
 - (iv) the bye-laws of the owner's association,
 - (v) the ground lease or other underlying lease of the real property on which the time-sharing project is situated,
 - (vi) the management agreement and all maintenance and other contracts regarding the management and operation of the time-share property which have terms in excess of one year,
 - (vii) the estimated operating budget for the time-sharing project and the required schedule of purchaser's expenses,
 - (viii) the floor plan of each type of unit and the plot plan showing the location of all accommodations and facilities of the time-share plan,
 - (ix) any lease of recreational facilities and other facilities which will be used only by purchasers of the time-share plan,
 - (x) any lease of facilities used by purchasers and others,
 - (xi) a statement of condition of the existing building or buildings, if the offering is of time-sharing interests in an operation being converted from an existing building,
 - (xii) the form of agreement for sale or lease of the time-sharing interests,
 - (xiii) the documents containing any restrictions on use of the property described in paragraph (p),
 - (xiv) any other documents or, instruments creating the time-share plan, and
 - (xv) any other contract or lease to be signed by the purchasers.