

SUBCHAPTER 58B – TIME SHARES

SECTION .0100 – TIME SHARE PROJECT REGISTRATION

21 NCAC 58B .0101 APPLICATION FOR REGISTRATION

(a) Every application for time share project registration shall be filed at the Commission's office upon a form prescribed by the Commission. Every such application shall contain or have appended thereto:

- (1) information concerning the developer's title or right to use the real property on which the project is located, including a title opinion provided by an independent attorney performed within 30 days preceding the date of application;
- (2) information concerning owners of time shares at the project other than the developer;
- (3) a description of the improvements and amenities located at the project, including a description of the number and type of time share units;
- (4) a description of the time share estate to be sold or conveyed to purchasers;
- (5) information concerning the developer and his or her financial ability to develop the project (including the developer's most recent audited financial statement, any loan commitments for completion of the proposed time share project, a projected budget for the construction, marketing and operation of the time share project until control by purchasers is asserted, and details of any source of funding for the time share project other than consumer sales proceeds), and information concerning the marketing and managing entities and their relationship to the developer;
- (6) the developer's name and address, past real estate development experience and such other information necessary to determine the moral character of those selling and managing the project;
- (7) copies of all documents to be distributed to time share purchasers at the point of sale or immediately thereafter; and
- (8) such information as may be required by G.S. 93A-52.

The form shall also describe the standards for its proper completion and submission.

(b) In accordance with G.S. 93A-52, an application for time share registration shall be considered to be properly completed when it is wholly and accurately filled out and when all required documents are appended to it and appear to be in compliance with the provisions of the Time Share Act, and, where the project is a condominium, the Condominium Act or Unit Ownership Act.

(c) An entity which owns time shares at a time share project where there are one or more existing registered developers may also apply to the Commission for registration of its time shares, provided that the entity does not control a registered developer, is not controlled by a registered developer, and is not in common control of the project with a registered developer.

*History Note: Authority G.S. 47A; 47C; 93A-51; 93A-52(a);
Eff. March 1, 1984;
Amended Eff. July 1, 2000; August 2, 1993; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

21 NCAC 58B .0102 REGISTRATION FEE

(a) For the initial registration or subsequent registration of a time share project by a developer proposing to sell or develop 16 or more time shares, the fee shall be one thousand dollars (\$1,000). For an initial or subsequent registration of a time share project in which the developer proposes to sell 15 or fewer time shares, the fee shall be seven hundred dollars (\$700.00). For any time share registration by a homeowner association for the purpose of re-selling time shares in its own project which it has acquired in satisfaction of unpaid assessments by prior owners, the fee shall be four hundred fifty dollars (\$450.00).

(b) Payment of application fees for time share registration shall be made to the Commission by certified check, money order, debit card, or credit card. Applications for registration not accompanied by the appropriate fee shall not be considered by the Commission.

(c) In the event a properly completed application filed with the Commission is denied for any reason, or if an incomplete application is denied by the Commission or abandoned by the developer prior to a final decision by the Commission, the amount of two hundred fifty dollars (\$250.00) shall be retained by the Commission from the application fee and the balance refunded to the applicant developer.

*History Note: Authority G.S. 93A-51; 93A-52;
Eff. March 1, 1984;
Amended Eff. July 1, 2016; April 1, 2013; July 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

21 NCAC 58B .0103 RENEWAL OF TIME SHARE PROJECT REGISTRATION

(a) A developer seeking a renewal of a time share project registration shall submit a complete renewal application form during the month of June. A renewal application form is available on the Commission's website at www.ncrec.gov. In the renewal application form, the developer shall set forth:

- (1) the time share's project name, registration number, and mailing address;
- (2) the developer's name, telephone number, and email address;
- (3) the full legal name of brokers that are associated with the time share project and their real estate license numbers;
- (4) the name of all exchange programs associated with the time share project along with a current copy of the Exchange Disclosure Report pursuant to G.S. 93A-48;
- (5) the name, address, email address, telephone number, real estate broker license number if applicable, and the assignment date for each of the following:
 - (A) the managing entity;
 - (B) the marketing entity;
 - (C) the registrar, pursuant to G.S. 93A-58(a);
 - (D) the independent escrow agent, pursuant to G.S. 93A-42(a); and
 - (E) the project broker, pursuant to 93A-58(c);
- (6) a certification that the information contained in the registration filed with the Commission is accurate and current on the date of the renewal application; and
- (7) the developer's attorney or project broker's signature.

(b) The developer shall submit a nonrefundable fee of eight hundred dollars (\$800.00) payable to the North Carolina Real Estate Commission by certified check, money order, debit card, or credit card.

(c) A complete renewal application shall be accompanied by the prescribed fee and shall be received at the Commission's office prior to the expiration of the certificate of registration as described in G.S. 93A-52(d).

(d) Making a false certification on a time share project registration renewal application shall be grounds for disciplinary action by the Commission.

*History Note: Authority G.S. 93A-51; 93A-52(d);
Eff. March 1, 1984;
Temporary Amendment Eff. May 23, 1985;
Amended Eff. July 1, 2016; April 1, 2013; February 1, 1989; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. July 1, 2018.*

21 NCAC 58B .0104 AMENDMENTS TO TIME SHARE PROJECT REGISTRATION

(a) A developer shall notify the Commission immediately, but in no event later than 15 days, after any material change in the information contained in the time share project registration.

(b) A material change shall be any change which reflects a difference in:

- (1) the nature, quality or availability of the purchaser's ownership or right to use the time share;
- (2) the nature, quality or availability of any amenity at the project;
- (3) the developer's title, control or right to use the real property on which the project is located;
- (4) the information concerning the developer, the managing or marketing entities, or persons connected therewith, previously filed with the Commission;
- (5) the purchaser's right to exchange his or her unit; however, a change in the information required to be disclosed to a purchaser by G.S. 93A-48 shall not be a material change; or
- (6) the project or time share as originally registered which would be significant to a reasonable purchaser.

(c) Amendments to time share project registrations shall be submitted in the form of substitute pages for material previously filed with the Commission. New or changed information shall be conspicuously indicated by underlining

in red ink. Every amendment submitted shall be accompanied by a cover letter signed by the developer or the developer's attorney containing a summary of the amendment and a statement of reasons for which the amendment has been made. The cover letter shall state:

- (1) the name and address of the project and its registration number;
- (2) the name and address of the developer;
- (3) the document or documents to which the amendment applies;
- (4) whether or not the changes represented by the amendment required the assent of the time share owners and, if so, how the assent of the time share owners was obtained; and
- (5) the recording reference in the office of the register of deeds for the changes, if applicable.

Developers of multiple projects must submit separate amendments and cover letters for each project for which amendments are submitted.

(d) The Commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without fee.

*History Note: Authority G.S. 93A-51;
Eff. March 1, 1984;
Amended Eff. October 1, 2000; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

21 NCAC 58B .0105 NOTICE OF TERMINATION

(a) A developer of a registered time share project which, for any reason, terminates its interest, rights, ownership or control of the project or any significant part thereof shall immediately notify the Commission in writing on a form prescribed by the Commission for that purpose. Notice of termination to the Commission shall include the date of termination, the reasons therefor, the identity of the developer's successor, if any, and a report on the status of time share sales to purchasers on the date of termination.

(b) Upon receipt of a properly executed notice of termination of the developer's interest in a time share project, the Commission shall enter a notation of cancellation of registration in the file of the project, and shall notify the developer of cancellation. A developer's failure to give notice of termination as provided herein shall not prevent cancellation of the project's registration under G.S. 93A-52.

*History Note: Authority G.S. 93A-51; 93A-52(a);
Eff. April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

SECTION .0200 - PUBLIC OFFERING STATEMENT

21 NCAC 58B .0201 GENERAL PROVISIONS

(a) Information contained in a public offering statement shall be accurate on the day it is supplied to a purchaser. Before any public offering statement is supplied to a purchaser, the developer shall file a copy of the statement with the Commission.

(b) In addition to the information required to be contained in a public offering statement by G.S. 93A-44, every public offering statement shall disclose to the purchaser of a time share complete and accurate information concerning:

- (1) the real property type of the time share program, whether tenancy-in-common, condominium or other, and a description of the estate the purchaser will own, the term of that estate and the remainder interest, if any, once the term has expired;
- (2) the document creating the time share program, a statement that it is the document which governs the program and a reference to the location where the purchaser may obtain or examine a copy of the document;
- (3) whether or not the property is being converted to a time share from some other use and, if so, a statement to that effect and disclosure of the prior use of the property;
- (4) the maximum number of time shares in the project, each recreational and other commonly used facility offered, and who or what will own each facility, if the project is to be completed in one development or construction phase;

- (5) if the project is planned in phased construction or development, the complete plan of phased offerings, including the maximum number of time shares which may be in the project, each recreational and other commonly used facility, who or what will own each facility, and the developer's representations regarding his or her commitment to build out the project;
 - (6) the association of owners or other entity which will ultimately be responsible for managing the time share program, the first date or event when the entity will convene or commence to conduct business, each owner's voting right, if any, and whether and for how long the developer, as time share owner, will control the entity;
 - (7) the location where owners may inspect the articles and bylaws of the owners association, or other organizational documents of the entity and the books and records it produces;
 - (8) whether the entity has lien rights against time share owners for failure to pay assessments;
 - (9) whether or not the developer has entered into a management contract on behalf of the managing entity, the extent to which the managing entity's powers are delegated to the manager and the location where a copy of the management contract may be examined;
 - (10) whether or not the developer will pay assessments for time shares which it owns and a statement that the amount of assessments due the managing entity from owners will change over time, as circumstances may change;
 - (11) whether or not the developer sponsors or will sponsor a rental or resale program and, if so, a summary of the program or programs; and
 - (12) the developer's role at the project, if the developer is a separate entity from any other registered developer of the time share project.
- (c) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary action by the Commission.

*History Note: Authority G.S. 93A-44(8); 93A-51;
Eff. March 1, 1984;
Amended Eff. October 1, 2000; August 2, 1993; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

21 NCAC 58B .0202 PUBLIC OFFERING STATEMENT SUMMARY

Every public offering statement shall contain a one page cover prescribed by the Commission and completed by the developer entitled Public Offering Statement Summary. The Public Offering Statement Summary shall read as follows:

PUBLIC OFFERING STATEMENT

SUMMARY

NAME OF PROJECT:

NAME AND REAL ESTATE LICENSE NUMBER OF BROKER:

This Public Offering Statement contains information which deserves your careful study, as you decide whether or not to purchase a time share.

The Public Offering Statement includes general information about the real estate type, the term, and the size of this time share project. It also includes a general description of the recreational and other facilities existing now, or to be provided in the future. The Public Offering Statement will tell you how maintenance and management of the project will be provided and how the costs of these services will be charged to purchasers. From the Public Offering Statement, you will also learn how the project will be governed and whether purchasers will have a voice in that government. You will also learn that a time share instrument will be recorded to protect your real estate interest in your time share.

The Public Offering Statement contains important information, but is not a substitute for the detailed information contained in the contract of purchase and the legal documents which create and affect the time share program at this project.

Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesperson or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

NOTICE

UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIME SHARE PURCHASE WITHOUT PENALTY WITHIN FIVE DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIME SHARE PURCHASE, YOU MUST MAIL OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO (name and address of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.

*History Note: Authority G.S. 93A-44; 93A-51;
Eff. March 1, 1984;
Amended Eff. April 1, 2006; October 1, 2000; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

21 NCAC 58B .0203 RECEIPT FOR PUBLIC OFFERING STATEMENT

- (a) Prior to the execution of any contract to purchase a time share, a time share developer or a time share salesperson shall obtain from the purchaser a written receipt for the public offering statement, which shall display, directly over the buyer signature line in type in all capital letters, no smaller than the largest type on the page on which it appears, the following statement: DO NOT SIGN THIS RECEIPT UNLESS YOU HAVE RECEIVED A COMPLETE COPY OF THE PUBLIC OFFERING STATEMENT TO TAKE WITH YOU.
- (b) Receipts for public offering statements shall be maintained as part of the records of the sales transaction.

*History Note: Authority G.S. 93A-45(a); 93A-51;
Eff. February 1, 1988;
Amended Eff. October 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

SECTION .0300 - CANCELLATION

21 NCAC 58B .0301 PROOF OF CANCELLATION

- (a) The postmark date affixed to any written notice of a purchaser's intent to cancel his or her time share purchase shall be presumed by the Commission to be the date the notice was mailed to the developer. Evidence tending to rebut this presumption shall be admissible at a hearing before the Commission.
- (b) Upon receipt of a purchaser's written notice of his or her intent to cancel his or her time share purchase, the developer, or his or her agent or representative, shall retain the notice and any enclosure, envelope or other cover in the developer's files at the project, and shall produce the file upon the Commission's request.
- (c) When there is more than one registered developer at a time share project and a purchaser gives written notice of his or her intent to cancel his or her time share purchase that is received by a developer or sales staff other than the one from whom his or her time share was purchased, the developer or sales staff receiving such notice shall promptly deliver it to the proper developer who shall then honor the notice if it was timely sent by the purchaser.

*History Note: Authority G.S. 93A-51; 93A-54(d);
Eff. September 1, 1984;
Amended Eff. October 1, 2000; August 2, 1993; February 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

SECTION .0400 - TIME SHARE SALES OPERATION

21 NCAC 58B .0401 RETENTION OF TIME SHARE RECORDS

A time share developer and a time share salesperson shall retain or cause to be retained for a period of three years complete records of every time share sale, rental, or exchange transaction made by or on behalf of the developer. Records required to be retained shall include but not be limited to offers, applications and contracts to purchase, rent or exchange time shares; records of the deposit, maintenance and disbursement of funds required to be held in trust; receipts; notices of cancellation and their covers if mailed; records regarding compensation of salespersons; public offering statements; and any other records pertaining to time share transactions. Such records shall be made available to the Commission and its representatives upon request.

*History Note: Authority G.S. 93A-51; 93A-54(d);
Eff. September 1, 1984;
Amended Eff. October 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

21 NCAC 58B .0402 TIME SHARE AGENCY AGREEMENTS AND DISCLOSURE

Time share sales transactions conducted by licensees on behalf of a time share developer are subject to 21 NCAC 58A .0104.

*History Note: Authority G.S. 93A-3(c); 93A-51;
Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

SECTION .0500 – HANDLING AND ACCOUNTING OF FUNDS

21 NCAC 58B .0501 TIME SHARE TRUST FUNDS

(a) Except as otherwise permitted by G.S. 93A-45(c), all monies received by a time share developer or a time share salesperson in connection with a time share sales transaction shall be deposited into a trust or escrow account not later than three banking days following receipt and shall remain in such account for ten days from the date of sale or until cancellation by the purchaser, whichever first occurs.

(b) All monies received by a person licensed as a broker in connection with a time share transaction shall be delivered immediately to his or her project broker.

(c) When a time share purchaser timely cancels his or her time share purchase, the developer shall refund to the purchaser all monies paid by the purchaser in connection with the purchase. The refund shall be made no later than 30 days following the date of execution of the contract. Amounts paid by the purchaser with a bankcard or a credit card shall be refunded by a cash payment or by issuing a credit voucher to the purchaser within the 30-day period.

(d) Every project broker shall obtain and keep a written representation from the developer as to whether or not lien-free or lien-subordinated time share instruments can be recorded within 45 days of the purchaser's execution of the time share purchase agreement. When a lien-free or lien-subordinated instrument cannot be recorded within said time period, on the business day following the expiration of the ten day time share payment escrow period, a project broker shall transfer from his or her trust account all purchase deposit funds or other payments received from a purchaser who has not cancelled his or her purchase agreement, to the independent escrow agent in a check made payable to the independent escrow agent. Alternatively, the check may be made payable to the developer with a restrictive endorsement placed on the back of the check providing "For deposit to the account of the independent escrow agent for the (name of time share project) only."

*History Note: Authority G.S. 93A-42(c); 93A-51;
Eff. September 1, 1984;
Amended Eff. April 1, 2006; October 1, 2000; February 1, 1989; July 1, 1988; February 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

SECTION .0600 - PROJECT BROKER

21 NCAC 58B .0601 DESIGNATION OF PROJECT BROKER

The developer of a registered timeshare project shall designate for each project subject to the developer's control a project broker by filing with the Commission an affidavit on the form prescribed. The developer may from time to time change the designated project broker by filing a new designation form with the Commission within 10 days following the change. A broker licensed under the provisions of Section .1800 of Subchapter 58A shall not be designated as a project broker. Provisional brokers shall not be designated as a project broker.

History Note: Authority G.S. 93A-41(7a); 93A-51; 93A-58(c); 93A-9; Eff. February 1, 1998; Amended Eff. April 1, 2006; July 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

21 NCAC 58B .0602 DUTIES OF THE PROJECT BROKER

(a) The broker designated by the developer of a time share project to be project broker shall assume responsibility for:

- (1) The display of the time share project certificate registration and the license certificates of the real estate brokers associated with or engaged on behalf of the developer at the project;
- (2) The determination of whether each licensee employed has complied with Rules .0503 and .0506 of Subchapter 58A;
- (3) The notification to the commission of any change in the identity or address of the project or in the identity or address of the developer or marketing or managing entities at the project;
- (4) The deposit and maintenance of time share purchase or rental monies in a trust or escrow account until proper disbursement is made; and
- (5) The proper maintenance of accurate records at the project including all records relating to the handling of trust monies at the project, records relating to time share sales and rental transactions and the project registration and renewal.

(b) The project broker shall review all contracts, public offering statements and other documents distributed to the purchasers of time shares at the project to ensure that the documents comport with the requirements of the Time Share Act and the rules adopted by the commission, and to ensure that true and accurate documents have been given to the purchasers.

(c) The project broker shall not permit time share sales to be conducted by any person not licensed as a broker and shall not delegate or assign his or her supervisory responsibilities to any other person, nor accept control of his or her supervisory responsibilities by any other person.

(d) The project broker shall notify the commission in writing of any change in his or her status as project broker within ten days following the change.

History Note: Authority G.S. 93A-51; 93A-58(c); Eff. February 1, 1988; Amended Eff. April 1, 2006; October 1, 2000; February 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

SECTION .0700 - TIME SHARE FORMS

21 NCAC 58B .0701 FORMS FOR TIME SHARE PROJECTS

History Note: Authority G.S. 93A-51; 150B-11(1); Eff. July 1, 1989; Expired Eff. June 1, 2018 pursuant to G.S. 150B-21.3A.