

### SUMMARY

**Venue in criminal cases; concurrent jurisdiction; obsolete provisions.** Provides that the courts of a locality have concurrent jurisdiction with the courts of any other adjoining locality over criminal offenses committed in or upon the premises, buildings, rooms, or offices owned or occupied by such locality or any officer, agency, or department thereof that are located in the adjoining locality and repeals an existing statute that provides such concurrent jurisdiction for certain enumerated localities. The bill also deletes references to corporation courts, which no longer exist, and repeals several obsolete provisions involving courts not of record that ceased to be applicable in 1980. This bill is a recommendation of the Virginia Code Commission.

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 16.1-69.8, 16.1-69.31, 16.1-69.46, 17.1-515.1, 19.2-45, and 19.2-244  
 2 of the Code of Virginia and to repeal § 16.1-69.13, Chapter 5 (§§ 16.1-70 through 16.1-75) of  
 3 Title 16.1, and § 17.1-515.2 of the Code of Virginia, Chapter 117 of the Acts of Assembly of  
 4 1946, and Chapter 199 of the Acts of Assembly of 1960, relating to venue in criminal cases;  
 5 concurrent jurisdiction; obsolete provisions.

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 16.1-69.8, 16.1-69.31, 16.1-69.46, 17.1-515.1, 19.2-45, and 19.2-244 of the Code of**  
 8 **Virginia are amended and reenacted as follows:**

9 **§ 16.1-69.8. Existing courts continued and redesignated; exception.**

10 The present system of courts not of record is continued as follows on and after July 1, 1973:

11 (a) The county court in each county shall continue as the general district court of such county  
 12 with the same powers and with territorial jurisdiction over such county and over any city within the  
 13 county for which a municipal court with general civil or criminal jurisdiction or separate general district  
 14 court has not been established.

15 (b) The municipal court or courts in each city, excluding ~~courts of limited jurisdiction established~~  
 16 ~~pursuant to Chapter 5 (§ 16.1-70 et seq.) of this title and~~ juvenile and domestic relations courts, shall  
 17 continue as the general district court of the city with the same powers and territorial jurisdiction over  
 18 such city; provided that in the case of more than one such municipal court in operation in any city, all  
 19 such courts shall be merged on July 1, 1973, and their powers and territorial jurisdiction merged in the  
 20 general district court.

21 (c) The juvenile and domestic relations court of each county and city shall continue as the  
 22 juvenile and domestic relations district court of the county or city with the same powers and territorial  
 23 jurisdiction as heretofore provided.

24 (d) The municipal court of any town and/or other court of any town having general civil and  
 25 criminal jurisdiction however called shall be abolished and all jurisdiction and power conferred upon

18100079D

8/4/2017 11:29 AM

Cotter, David M.

26 any such court shall pass to and be exercised by the district courts having jurisdiction over the county  
27 wherein the town is located.

28 **§ 16.1-69.31. The duties of the Judicial Council.**

29 The duties of the Judicial Council with respect to the district court system shall include those set  
30 forth in §§ 16.1-69.6 through ~~16.1-69.13~~ 16.1-69.12, and such other duties as may be assigned to the  
31 Council by law.

32 **§ 16.1-69.46. How salaries payable.**

33 All salaries determined according to the provisions of §§ 16.1-69.44 and 16.1-69.45 and any  
34 salary payment required by § ~~16.1-69.13~~ or 16.1-69.37 shall be payable by the Commonwealth, except  
35 any supplements paid to district court employees. All annual salaries shall be paid in semimonthly  
36 installments within the limits fixed by the Committee.

37 **§ 17.1-515.1. Territorial jurisdiction of the Circuit Court for the City of Lynchburg.**

38 The territorial jurisdiction of the Circuit Court for the City of Lynchburg ~~shall be the same with~~  
39 ~~that of the Corporation Court for the city and~~ shall extend to the corporate limits of the city and to a  
40 space of one mile without and around the city limits, except that the same shall not extend further into  
41 the County of Amherst than the corporate limits. Any judgment, order, or decree of the Circuit Court for  
42 the City of Lynchburg heretofore made in any case in which the court would have had jurisdiction had  
43 this section then been in operation shall have the same effect as if it had been at that time in force.

44 **§ 19.2-45. Powers enumerated.**

45 A magistrate shall have the following powers only:

- 46 (1) To issue process of arrest in accord with the provisions of §§ 19.2-71 to 19.2-82 of the Code;
- 47 (2) To issue search warrants in accord with the provisions of §§ 19.2-52 to 19.2-60 of the Code;
- 48 (3) To admit to bail or commit to jail all persons charged with offenses subject to the limitations  
49 of and in accord with general laws on bail;
- 50 (4) The same power to issue warrants and subpoenas as is conferred upon district courts and as  
51 limited by the provisions of §§ 19.2-71 through 19.2-82. A copy of all felony warrants issued at the  
52 request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or

18100079D

8/4/2017 11:29 AM

Cotter, David M.

53 city in which the warrant is returnable. Upon the request of the attorney for the Commonwealth, a copy  
54 of any misdemeanor warrant issued at the request of a citizen shall be delivered to the attorney for the  
55 Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable  
56 before a district court ~~or any court of limited jurisdiction continued in operation pursuant to § 16.1-70.1;~~

57 (5) To issue civil warrants directed to the sheriff or constable of the county or city wherein the  
58 defendant resides, together with a copy thereof, requiring him to summon the person against whom the  
59 claim is, to appear before a district court on a certain day, not exceeding 30 days from the date thereof to  
60 answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction  
61 in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be  
62 directed to the sheriff of the county or city of his residence, and such warrant may be served and  
63 returned as provided in § 16.1-80;

64 (6) To administer oaths and take acknowledgments;

65 (7) To act as conservators of the peace;

66 (8), (9) [Repealed.]

67 (10) To perform such other acts or functions specifically authorized by law.

68 **§ 19.2-244. Venue in general.**

69 A. Except as otherwise provided by law, the prosecution of a criminal case shall be had in the  
70 county or city in which the offense was committed. Except as to motions for a change of venue, all other  
71 questions of venue must be raised before verdict in cases tried by a jury and before the finding of guilty  
72 in cases tried by the court without a jury.

73 B. If an offense has been committed within the Commonwealth and it cannot readily be  
74 determined within which county or city the offense was committed, venue for the prosecution of the  
75 offense may be had in the county or city (i) in which the defendant resides; (ii) if the defendant is not a  
76 resident of the Commonwealth, in which the defendant is apprehended; or (iii) if the defendant is not a  
77 resident of the Commonwealth and is not apprehended in the Commonwealth, in which any related  
78 offense was committed.

79 C. The courts of a locality shall have concurrent jurisdiction with the courts of any other locality  
80 adjoining such locality over criminal offenses committed in or upon the premises, buildings, rooms, or  
81 offices owned or occupied by such locality or any officer, agency, or department thereof that are located  
82 in the adjoining locality.

83 **2. That § 16.1-69.13, Chapter 5 (§§ 16.1-70 through 16.1-75) of Title 16.1, and § 17.1-515.2 of the**  
84 **Code of Virginia are repealed.**

85 **3. That Chapter 117 of the Acts of Assembly of 1946 and Chapter 199 of the Acts of Assembly of**  
86 **1960 are repealed.**

87 #

**Virginia Real Estate Time-Share Act: List of Technical Changes**

1. Striking the phrases "without limitation" or "but are not limited to" following the term "including, per § 1-218, which states that throughout the Code includes means includes, but not limited to.
2. Striking the words "and payable" after the word "due," and the words "unpaid and" before "past due," because they are unnecessary.
3. Striking plural words used after identical singular words on the basis of § 1-277, which states that throughout the Code any word used in the singular includes the plural.
4. Striking out the words/phrases: "thereof," "the same," "therein," "herein," "wherein," "thereto," "whereby," "thereafter," "therefrom," "hereof," "hereunder," and replacing such words with clearer, more explanatory language.
5. Striking out the term "and/or," a grammatical shortcut that is inherently ambiguous, and replacing it with the word "or" to reflect its meaning in the sense of either or both/all.
6. Replacing the word "must" with the word "shall" as necessary.
7. Spelling out the numbers one through nine.
8. Using numerals for the numbers 10 or more, except when the numbers begins a sentence or subdivision.
9. Replacing the word "which" with the word "that" as necessary.
10. Replacing the word "Virginia" with the phrase "the Commonwealth."
11. Replacing the word "attorney's" with the word "attorney" when referring to "attorney fees."

1 CHAPTER ~~21~~ XX.

2 ~~THE~~-VIRGINIA REAL ESTATE TIME-SHARE ACT.

3 **Drafting note: Existing Chapter 21, Virginia Real Estate Time-Share Act, is**  
4 **retained as proposed Chapter XX.**

5 Article 1.

6 General Provisions.

7 **Drafting note: Existing Article 1, containing general provisions for the Virginia**  
8 **Real Estate Time-Share Act, is retained as proposed Article 1.**

9 ~~§ 55-360. Title.~~

10 ~~This chapter shall be known and may be cited as the "Virginia Real Estate Time Share~~  
11 ~~Act."~~

12 **Drafting note: Existing § 55-360 is recommended for repeal on the basis of § 1-244,**  
13 **which states that the caption of a subtitle, chapter, or article operates as a short title**  
14 **citation. The short title citation is retained in the chapter title.**

15 ~~§ 55-361. Repealed.~~

16 **Drafting note: Repealed by Acts 1985, c. 517.**

17 ~~§ 55-362~~ 55.1-xxx. Definitions.

18 As used in this chapter, or in a time-share instrument, unless the context requires a  
19 different meaning:

20 "Additional land" ~~has the meaning ascribed to it in subsection C of § 55-367~~ means all  
21 land that a time-share developer has identified as land that may be added to a time-share project.

22 "Affiliate" means a person that directly, or indirectly through one or more  
23 intermediaries, controls, is controlled by, or is under common control with, the person specified.

24 "Alternative purchase" means anything valued in excess of \$100 ~~which that~~ is offered to  
25 a potential purchaser by the developer during the developer's sales presentation and ~~which that~~  
26 is purchased by such potential purchaser for more than \$100, even though the purchaser did not  
27 purchase a time-share. An alternative purchase is not a time-share. A membership camping

28 contract as defined in § 59.1-313 is not an alternative purchase. An alternative purchase shall be  
29 registered with the Board unless it is otherwise registered as a travel service under the Virginia  
30 Travel Club Act (§ 59.1-445 et seq.); and shall include, ~~without limitation,~~ vacation packages  
31 ~~(howsoever, however~~ denominated), and exit programs ~~(howsoever, however~~ denominated).

32 "Association" means the association organized under the provisions of § ~~55-368~~ 55.1-  
33 xxx.

34 "Board" means the Common Interest Community Board, ~~an agency within the meaning~~  
35 ~~of the Administrative Process Act (§ 2.2-4000 et seq.).~~

36 "Board of directors" means an executive and administrative entity, by whatever name  
37 denominated, designated in a time-share ~~estate project~~ instrument as the governing body of the  
38 time-share estate owners' association.

39 "Common elements" means the real estate, improvements ~~thereon~~ on such real estate,  
40 and the personalty ~~situate~~ situated within the time-share project that are subject to the time-share  
41 program. "Common elements" ~~shall~~ does not include the units and the time-shares.

42 "Consumer documents" means the aggregate of the following documents: the reverter  
43 deed, the note, ~~and~~ the deed of trust. ~~A consumer document shall be deemed one of the~~  
44 ~~consumer documents, and any document that is to be provided to consumers in connection with~~  
45 an offering.

46 "Contact information" means any information that can be used to contact an owner,  
47 including the owner's name, address, telephone number, email address, or user identity on any  
48 electronic networking service.

49 "Contract," "sales contract," "purchase contract," "contract of purchase," or "contract to  
50 purchase," which shall be interchangeable throughout this chapter ~~and shall mean, means~~  
51 legally binding instrument executed by the developer and a purchaser ~~whereby by which~~ the  
52 developer is obligated to sell and the purchaser is obligated to purchase either a time-share and  
53 its incidental benefits or an alternative purchase registered under this chapter.

54 "Conversion time-share project" means a real estate improvement ~~that, which~~ prior to the  
55 disposition of any time-share, was wholly or partially occupied by persons as their permanent  
56 residence or on a transient pay-as-you-go basis other than those who have contracted for the  
57 purchase of a time-share and those who occupy with the consent of such purchasers.

58 "Cost of ownership" means all of the owner's expenses related to a resale time-share due  
59 ~~and payable~~ between the date of a resale transfer contract and the transfer of the resale time-  
60 share.

61 "Deed" means the instrument by which title to a time-share estate is transferred from one  
62 person to another person.

63 "Deed of trust" means the instrument conveying the time-share estate that is given as  
64 security for the payment of the note.

65 "Default" means either a failure to have made any payment in full and on time or a  
66 violation of a performance obligation required by a consumer document for a period of no less  
67 than 60 days.

68 "Developer" means any person or group of persons acting in concert ~~who that~~ (i) offers  
69 to dispose of a time-share or its ~~or their~~ interest in a time-share unit for which there has not been  
70 a previous disposition or (ii) applies for registration of the time-share program.

71 "Developer control period" ~~has the meaning ascribed to it in § 55-369~~ means a period of  
72 time during which the developer or a managing agent selected by the developer manages and  
73 controls the time-share project and the common elements and units it comprises.

74 "Development right" means any right reserved by the developer to create additional units  
75 ~~which that~~ may be dedicated to the time-share program.

76 "Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-  
77 share, other than a transfer or release of security for a debt.

78 "Exchange agent" or "exchange company" means a person ~~or persons who exchange that~~  
79 exchanges or ~~offer offers~~ to exchange time-shares in an exchange program with other time-  
80 shares.

81 "Exchange program" means any opportunity or procedure for the assignment or  
82 exchange of time-shares among owners in other time-share programs as evidenced by a past or  
83 present written agreement executed between an exchange company and the developer or the  
84 time-share estate association; however, an "exchange program" shall not be either an incidental  
85 benefit or an opportunity or procedure ~~whereby by which~~ a time-share owner can exchange his  
86 time-share for another time-share within either the same time-share or another time-share  
87 project owned in part by the developer.

88 "Guest" means (i) a person who is on the project, additional land, or development at the  
89 request of an owner, developer, association, or managing agent; or (ii) a person otherwise  
90 legally entitled to be ~~thereon on such project, additional land, or development.~~ A guest "Guest"  
91 includes, ~~without limitation,~~ family members of owners, ~~;~~ time-share exchange participants, ~~;~~  
92 merchants, purveyors, or vendors; and employees ~~thereof, and~~ of such merchants, purveyors,  
93 and vendors; the developer ~~and; or the~~ association.

94 "Incidental benefit" means anything valued in excess of \$100 provided by the developer  
95 that is acquired by a purchaser upon acquisition of a time-share and includes ~~without limitation~~  
96 exchange rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral  
97 awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange  
98 program. An incidental benefit shall not be registered with the Board.

99 "Inherent risks of project activity" ~~mean means~~ those dangers or conditions that are an  
100 integral part of a project activity, including certain hazards, such as surface and subsurface  
101 conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic  
102 animals; and ordinary dangers of structures or equipment ordinarily used in association or time-  
103 share operations. "Inherent risks of project activity" also ~~include includes~~ the potential of a  
104 participant to act in a negligent manner that may contribute to injury to the participant or others,  
105 including failing to follow instructions given by the project professional or failing to exercise  
106 reasonable caution while engaging in the project activity.

107 "Lead dealer" means a person ~~who~~ that sells or otherwise provides to any other person  
108 contact information concerning five or more owners to be used for a resale service, ~~but~~  
109 excludes. "Lead dealer" does not mean developers, managing entities, or exchange companies to  
110 the extent that such entities are providing other persons with personal contact information about  
111 time-share owners in their own time-share plans or members of their own exchange program.

112 "Lien holder" means either a person ~~who~~ that holds an interest in an encumbrance that is  
113 not released of record as to a purchaser or such person's successor in interest ~~who~~ that acquires  
114 title to the time-share project at foreclosure ~~or~~, by deed in lieu of foreclosure, or by any other  
115 instrument however denominated.

116 "Managing agent" means a person ~~who~~ that undertakes the duties, responsibilities, and  
117 obligations of the management of a time-share project.

118 "Managing entity" means the managing agent or, if there is no managing agent, the time-  
119 share owners' association in a time-share estate project and the developer in a time-share use  
120 project.

121 "Material change" means a change in any information or document disclosed in or  
122 attached to the public offering statement ~~which~~ that renders inaccurate, incomplete, or  
123 misleading any information or document in such a way as to affect substantially a purchaser's  
124 rights or obligations, but ~~shall~~ does not include a change (i) in the real estate tax assessment or  
125 rate, utility charges or deposits, maintenance fees, association dues, assessments, special  
126 assessments, or any recurring time-share expense item, provided ~~the~~ that such change is made  
127 known (a) immediately to the prospective purchaser by a written addendum in the public  
128 offering statement and (b) to the Board by filing with the developer's annual report copies of the  
129 updated changes occurring over the immediately preceding 12 months; (ii) ~~which~~ that is an  
130 aspect or result of the orderly development of the time-share project in accordance with the  
131 time-share instrument; (iii) resulting from new, updated, or amended information contained in  
132 the annual report prepared and distributed pursuant to § ~~55-370.1~~ 55.1-xxx; (iv) correcting  
133 spelling, grammar, omissions, or other similar errors not affecting the substance of the public

134 offering statement; or (v) occurring in the issuance of an exchange company's updated annual  
135 report or disclosure document, provided that, upon its receipt by the developer, it shall be  
136 distributed in lieu of all others in order to satisfy § ~~55-374~~ 55.1-xxx.

137 "Note" means the instrument that evidences the debt occasioned by the deferred  
138 purchase of a time-share.

139 "Offering" or "offer" means any act that originates in the Commonwealth to sell, solicit,  
140 induce, or advertise, ~~which originates in this Commonwealth~~, whether by radio, television,  
141 telephone, newspaper, magazine, or mail, ~~whereby during which~~ a person is given an  
142 opportunity to acquire a time-share.

143 "Participant" means any person, other than a project professional, ~~who that~~ engages in a  
144 project activity.

145 "Person" means one or more natural persons, corporations, partnerships, associations,  
146 trustees of a trust, limited liability companies, or other entities, or any combination thereof,  
147 capable of holding title to real property.

148 "Possibility of reverter" means a provision contained in a reverter deed ~~whereby by~~  
149 which the time-share estate automatically reverts or transfers back to the developer upon  
150 satisfaction of the requirements imposed by § ~~55-376.1~~ 55.1-xxx.

151 "Product" means each time-share and its incidental benefits and all alternative purchases  
152 that are registered with the Board pursuant to this chapter.

153 ~~"Project" means the same as the term "time-share project."~~

154 "Project activity" means any activity carried out or conducted on a common element,  
155 within a time-share unit or elsewhere in the project, additional land, or development, that allows  
156 owners, their guests, and members of the general public to view, observe, participate, or enjoy  
157 activities, ~~including~~. "Project activity" includes swimming pools, spas, sporting venues, and  
158 cultural, historical, or harvest-your-own activities; other amenities and events; or natural  
159 activities and attractions for recreational, entertainment, educational, or social purposes. ~~An~~  
160 Such activity is a project activity whether or not the participant paid to participate in the activity.

161 ~~"Project instrument" means any recorded documents, by whatever name denominated,~~  
162 ~~which create the time share project and program and which may contain restrictions or~~  
163 ~~covenants regulating the use, occupancy, or disposition of time shares in a project.~~

164 "Project professional" means any person ~~who~~ that is engaged in the business of  
165 providing one or more project activities, whether or not for compensation. For the purposes of  
166 this definition, the developer, association, and managing entity shall each be deemed a project  
167 professional.

168 "Public offering statement" means the statement required by § ~~55-374~~ 55.1-xxx.

169 "Purchaser" means any person other than a developer or lender ~~who~~ that owns or  
170 acquires a product, or ~~who~~ that otherwise enters into a contract for the purchase of a product.

171 "Resale cost of ownership" means all of the owner's expenses related to a resale time-  
172 share due ~~and payable~~ between the date of a resale transfer contract and the transfer of such  
173 resale time-share.

174 "Resale purchase contract" means an agreement negotiated by a reseller by which an  
175 owner or a reseller agrees to sell, and a subsequent purchaser agrees to buy, a resale time-share.

176 "Resale service" means engaging, directly or indirectly, for compensation, in any of the  
177 following either in person or by any medium of communication: (i) selling or offering to sell or  
178 list for sale for the owner a resale time-share, (ii) buying or offering to buy a resale time-share  
179 for transfer to a subsequent purchaser, (iii) transferring a resale time-share acquired from an  
180 owner to a subsequent purchaser or offering to assist in such transfer, (iv) invalidating or  
181 offering to invalidate for an owner the title of a resale time-share, or (v) advertising or soliciting  
182 to advertise or promote the transfer or invalidation of a resale time-share. Resale service ~~shall~~  
183 does not include an ~~individual~~ individual's selling or offering to sell his own time-share unit.

184 "Resale time-share" means a time-share, wherever located, that has previously been sold  
185 to an owner who is a natural person for personal, family, or household use and that is  
186 transferred, or is intended to be transferred, through a resale service.

187 "Resale transfer contract" means an agreement between a reseller and the owner by  
188 which the reseller agrees to transfer or assist in the transfer of the owner's resale time-share.

189 "Reseller" means any person who, directly or indirectly, engages in a resale service.

190 "Reverter deed" means the deed from developer to a grantee that contains a possibility of  
191 reverter.

192 "Sales person" means a person who sells or offers to sell time-share interests in a time-  
193 share program.

194 "Situs" means the place outside the Commonwealth where a developer's time-share  
195 project is located.

196 ~~"Situs Time Share Act" means the Act, howsoever denominated, that regulates the~~  
197 ~~offering, disposition, and sale of time shares applicable to the property outside the~~  
198 ~~Commonwealth where the time-share project is located.~~

199 "Subsequent purchaser" means the purchaser or transferee of a resale time-share.

200 "Time-share" ~~or "timeshare"~~ means either a time-share estate or a time-share use plus its  
201 incidental benefits.

202 "Time-share estate" means a right to occupy a unit or any of several units during five or  
203 more separated time periods over a period of at least five years, including renewal options,  
204 coupled with a freehold estate or an estate for years in a time-share project or a specified portion  
205 ~~thereof of such time-share project.~~

206 "Time-share estate occupancy expense" ~~has the meaning ascribed to it in § 55-369~~  
207 ~~means all costs and expenses incurred in (i) the formation, organization, operation, and~~  
208 ~~administration, including capital contributions thereto, of the association and both its board of~~  
209 ~~directors and its members and (ii) all owners' use and occupancy of the time-share estate project,~~  
210 ~~including without limitation its completed and occupied time-share estate units and common~~  
211 ~~elements available for use. Such costs and expenses include maintenance and housekeeping~~  
212 ~~charges; repairs; refurbishing costs; insurance premiums, including the premium for~~  
213 ~~comprehensive general liability insurance required by subdivision 8 of § 55.1-xxx [55-368];~~

214 taxes; properly allocated labor, operational, and overhead costs; general and administrative  
215 expenses; the managing agent's fee; utility charges and deposits; the cost of periodic repair and  
216 replacement of walls and window treatments and furnishings, including furniture and  
217 appliances; filing fees and annual registration charges of the State Corporation Commission and  
218 the Board; attorney fees and accountant charges; and reserves for any of the foregoing.

219 "Time-share estate subject to reverter" means a time-share estate (i) entitling the holder  
220 thereof to occupy units not more than four weeks in any one year period; and (ii) for which the  
221 down payment is not more than 20 percent of the total purchase price of the time-share estate.

222 "Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with  
223 respect to the operation, maintenance, administration, or insuring of the time-shares, units, and  
224 common elements comprising the entire time-share project, whether or not incurred for the  
225 repair, renovation, upgrade, refurbishing, or capital improvements; and (ii) any allocations of  
226 reserves.

227 "Time-share instrument" or "project instrument" means any document, however  
228 denominated, ~~which that~~ creates the time-share project and program; and ~~which that~~ may  
229 contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in  
230 a project.

231 "Time-share owner" or "owner" means a person ~~who that~~ is an owner or co-owner of a  
232 time-share other than as security for an obligation.

233 "Time-share program" or "program" means any arrangement of time-shares in one or  
234 more time-share projects ~~whereby by which~~ the use, occupancy, or possession of real property  
235 has been made subject to either a time-share estate or time-share use in which such use,  
236 occupancy, or possession circulates among owners of the time-shares according to a fixed or  
237 floating time schedule on a periodic basis occurring over any period of time in excess of five  
238 years.

239 "Time-share project" or "project" means all of the real property subject to a time-share  
240 program created by the execution of a time-share instrument.

241 "Time-share unit" or "unit" means the real property or real property improvement in a  
242 project ~~which that~~ is divided into time-shares and designated for separate occupancy and use.

243 "Time-share use" means a right to occupy a time-share unit or any of several time-share  
244 units during five or more separated time periods over a period of at least five years, including  
245 renewal options, not coupled with a freehold estate or an estate for years in a time-share project  
246 or a specified portion ~~thereof of such time-share project~~. "Time-share use" ~~shall does~~ not mean a  
247 right to use ~~which that~~ is subject to a first-come, first-served, space-available basis as might  
248 exist in a country club, motel, hotel, health spa, campground, or membership or resort facility.

249 "Transfer" means a voluntary conveyance of a resale time-share to a person other than  
250 the developer, association, or managing entity of the time-share program of which the resale  
251 time-share is a part or to a person taking ownership by gift, foreclosure, or deed in lieu of  
252 foreclosure.

253 **Drafting note: The proposed definition for "additional land" is taken from existing**  
254 **§ 55-367. In the definitions of "alternative purchase," "guest," "incidental benefit," and**  
255 **"time-share occupancy expense," the phrase "without limitation" or "but are not limited**  
256 **to" is stricken following the term "including" on the basis of § 1-218, which states that**  
257 **throughout the Code "'Includes' means includes, but not limited to." In the definition of**  
258 **"Board," the phrase "an agency within the meaning of the Administrative Process Act (§**  
259 **2.2-4000 et seq.)" is removed as unnecessary. In the definition of "Board of Directors," the**  
260 **phrase "estate project" is stricken to use the defined term "time-share instrument." In the**  
261 **definitions of "cost of ownership" and "resale cost of ownership," the words "and**  
262 **payable" after the word "due" are stricken as unnecessary. The proposed definitions for**  
263 **"developer control period" and "time-share estate occupancy expense" are taken from**  
264 **existing § 55-369. In the definition of "consumer document," the sentence stating that "[a]**  
265 **consumer document shall be deemed one of the consumer documents" is stricken, as it is**  
266 **not explanatory of an example of a consumer document, and replaced with clarifying**  
267 **language. In the definition of "exchange agent," "or persons" is stricken on the basis of §**

268 1-277, which states that throughout the Code any word used in the singular includes the  
269 plural. The definition for the word "project" is relocated to the definition of "time-share  
270 project" on the basis that the definitions are identical. The definition for "project  
271 instrument" is stricken, and the proposed definition of "time-share instrument" is  
272 updated to include a "project instrument" on the basis that the definitions are identical.  
273 The definition of "Situs Time-Share Act" is stricken; that term is not used in this chapter.  
274 Technical changes are made.

275 § ~~55-361.1~~ 55.1-xxx. Applicability.

276 A. This chapter shall have exclusive jurisdiction and shall apply to any product offering  
277 or disposition made within ~~this the~~ Commonwealth after July 1, 1985, in a time-share project  
278 located within ~~this the~~ Commonwealth. Sections ~~55-360~~ 55.1-xxx, ~~55-361.1~~ 55.1-xxx, ~~55-362~~  
279 55.1-xxx, ~~55-362.1~~ 55.1-xxx, ~~55-363~~ 55.1-xxx, ~~55-364~~ 55.1-xxx, ~~55-365.1~~ 55.1-xxx, ~~55-369~~  
280 55.1-xxx, ~~55-370~~ 55.1-xxx, ~~55-370.1~~ 55.1-xxx, ~~55-372~~ 55.1-xxx, ~~55-373~~ 55.1-xxx, ~~55-375~~ 55.1-  
281 xxx, ~~55-380~~ 55.1-xxx, ~~55-381~~ 55.1-xxx, ~~55-382~~ 55.1-xxx, ~~55-384~~ 55.1-xxx, ~~55-385~~ 55.1-xxx,  
282 ~~55-389~~ 55.1-xxx, and ~~55-400 of this chapter~~ 55.1-xxx shall apply to a time-share project within  
283 ~~this the~~ Commonwealth ~~which that~~ was created prior to July 1, 1985.

284 B. This chapter shall not affect rights or obligations created by preexisting provisions of  
285 any time-share instrument ~~which that~~ transfers an estate or interest in real property.

286 C. This chapter shall apply to any product offering or disposition in a time-share project  
287 located outside the Commonwealth and offered for sale in the Commonwealth with the  
288 exception that Articles 2 (§ ~~55-366~~ 55.1-xxx et seq.), 3 (§ ~~55-374~~ 55.1-xxx et seq.), and 4 (§ ~~55-~~  
289 ~~387~~ 55.1-xxx et seq.) ~~of this chapter~~ shall apply only to the extent permitted by the laws of the  
290 situs.

291 **Drafting note: Technical changes.**

292 § ~~55-362.1~~ 55.1-xxx. Administrative agency.

293 ~~This chapter shall be administered by the~~ The Common Interest Community Board,  
294 ~~which is herein called the "Board."~~ shall administer this chapter.

295 **Drafting note: Technical change.**

296 § ~~55-363~~ 55.1-xxx. Status of time-share estates with respect to real property interests.

297 A. A document transferring or encumbering a time-share estate shall not be rejected for  
298 recordation within ~~this~~ the Commonwealth because of the nature or duration of that estate or  
299 interest, provided that the document complies with all other recordation requirements.

300 B. Each time-share estate constitutes for purposes of title a separate estate or interest in a  
301 unit.

302 C. For purposes of local real property taxation, each time-share unit, other than a unit  
303 operated for time-share use, shall be valued in the same manner as if such unit were owned by a  
304 single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit  
305 shall not be utilized by the commissioner of revenue or other local assessing officer as a factor  
306 in determining the assessed value of such unit. A unit operated as a time-share use, however,  
307 may be assessed the same as other ~~income-producing~~ income-producing and investment  
308 property. The commissioner of revenue or other local assessing officer shall list in the land book  
309 a time-share unit in the name of the association.

310 **Drafting note: Technical changes.**

311 § ~~55-364~~ 55.1-xxx. Applicability of local ordinances, regulations, and building codes.

312 A zoning, subdivision, or other ordinance or regulation ~~may~~ shall not impose any  
313 requirement upon a time-share project ~~which~~ that it would not otherwise impose upon a similar  
314 project under a different form of ownership.

315 **Drafting note: Technical change.**

316 § ~~55-364.1~~ 55.1-xxx. Use of terms.

317 A developer in its offering or disposition of a time-share may use interchangeably any  
318 term recognized in the industry, including ~~without limitation:~~ "time-share," "time-share  
319 interest," "interval ownership," "interval ownership interest," "vacation ownership," "vacation  
320 ownership interest," and "product." A developer shall not use the term "incidental benefit" or  
321 "alternative purchase" except in the proper context.

322 **Drafting note: The phrase "without limitation" is stricken following the term**  
323 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**  
324 **means includes, but not limited to."**

325 ~~§ 55-365. Repealed.~~

326 **Drafting note: Repealed by Acts 1985, c. 517.**

327 ~~§ 55-365.1 55.1-xxx.~~ Severability of provisions of time-share instruments.

328 All provisions of the time-share instruments shall be deemed severable, and any  
329 unlawful provision ~~thereof of such instrument~~ shall be void.

330 **Drafting note: Technical change.**

331 Article 2.

332 Creation, Termination, and Management.

333 **Drafting note: Existing Article 2, containing provisions relating to the creation,**  
334 **termination, and management of time-share projects, is retained as proposed Article 2.**

335 ~~§ 55-366 55.1-xxx.~~ Time-sharing permitted.

336 A time-share project shall be permitted on any land or improvement ~~thereon on such~~  
337 land lying within the Commonwealth unless prohibited by zoning then in effect or by the  
338 express language of any legally enforceable covenant, condition, or restriction, however  
339 denominated, contained in the governing documents of record for such land, including ~~without~~  
340 limitation, condominium instruments under the Condominium Act (~~§ 55-79.39 55.1-xxx~~ et  
341 seq.), a time-share instrument under this chapter, a declaration under the Virginia Real Estate  
342 Cooperative Act (~~§ 55-424 55.1-xxx~~ et seq.), or a master deed under the Horizontal Property  
343 Act (~~§ 55-79.1 55.1-xxx~~ et seq.). This chapter shall not be construed to affect the validity of any  
344 ~~provisions provision~~ of any time-share program or any expansion ~~thereof of such a program~~ or  
345 time-share instrument recorded or in existence prior to July 1, 1981.

346 **Drafting note: The phrase "without limitation" is stricken following the term**  
347 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**  
348 **means includes, but not limited to." Technical changes are made.**

349 | § ~~55-367.1~~ 55.1-xxx. Instruments.

350 | A. In order to create a time-share program for a time-share estate project, the developer  
351 | shall execute a time-share instrument prepared and executed in accordance with this chapter and  
352 | record it in the clerk's office where such time-share project is located. The time-share instrument  
353 | shall contain the following:

354 | 1. The name of the time-share project, which ~~name must~~ shall include or be followed by  
355 | a qualifying adjective or term outlined in § ~~55-364.1~~ 55.1-xxx;

356 | 2. The name of the locality and the state or situs in which the time-share project is  
357 | situated;

358 | 3. The legal description, street address, or other description sufficient to identify the  
359 | time-share project;

360 | 4. A legally sufficient description of the real estate constituting the time-share project;

361 | 5. A statement of the form of time-share program, i.e., whether it is a time-share estate or  
362 | time-share use;

363 | 6. Identification of time periods by letter, name, number, or combination thereof;

364 | 7. Identification of time-shares and, where applicable, the method ~~whereby~~ by which  
365 | additional time-shares may be created or withdrawn;

366 | 8. The formula, fraction, or percentage of the common expenses and any voting rights  
367 | assigned to each time-share;

368 | 9. Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-  
369 | shares;

370 | 10. The ownership interest, if any, in personal property available to time-share owners;

371 | 11. The program by which the managing entity, if any, will provide management of the  
372 | project;

373 | 12. The period for which units are designated and committed to the time-share program  
374 | and the property classification of the units at the expiration of such period;

375 | 13. Any provision for amending the time-share instrument;

376 14. A description of the events, including ~~but not limited to~~ condemnation and damage  
377 or destruction, upon which the time-share program may or shall be terminated before the  
378 expiration of its full term and the consequences of such termination, including ~~but not limited to~~  
379 the manner in which the time-share project or the proceeds from the disposition ~~thereof of such~~  
380 project shall be held or distributed among owners;

381 15. A statement of whether or not the developer reserves the right to add to or delete any  
382 incidental benefit;

383 16. A statement of whether or not the developer reserves the right to add to or delete any  
384 alternative purchase; and

385 17. Such other matters as the developer deems appropriate.

386 B. In order to create a time-share program for a time-share use project, the developer  
387 shall ~~either~~ (i) execute and record a time-share instrument as required by subsection A or (ii)  
388 execute a time-share instrument that takes the form of and is a part of the contract ~~which that~~  
389 contains the information required by subsection A.

390 C. If the developer explicitly reserves the right to develop additional time-shares, the  
391 time-share instrument shall also contain the following:

392 1. A legally sufficient description of all land ~~which that~~ may be added to the time-share  
393 project, which shall be referred to as "additional land";

394 2. A statement outlining the order in which portions of the additional land may be  
395 subjected to the exercise of each development right; or a statement that no assurances are made  
396 in that regard;

397 3. A statement of the time limit upon which the option to develop shall expire, together  
398 with a statement of the circumstances, if any, ~~which that~~ will terminate that option prior to the  
399 expiration of the specified time limit;

400 4. A statement of the maximum number of units ~~which that~~ may be added to the time-  
401 share project, if known, ~~and or~~, if the maximum number of units that may be added to the time-  
402 share project is not known, a statement to that effect; and

403           5. A statement of the property classification of the additional land if the developer fails  
404 to exercise the development rights as reserved in the time-share instrument.

405           **Drafting note: In subdivision A 14, the phrase "but not limited to" is stricken**  
406 **following the term "including" on the basis of § 1-218, which states that throughout the**  
407 **Code "'Includes' means includes, but not limited to." Technical changes are made.**

408           § ~~55-368~~ 55.1-xxx. Time-share instrument for time-share estate project.

409           In addition to the requirements of § ~~55-367~~ 55.1-xxx, the time-share instrument for a  
410 time-share estate project shall outline or prescribe reasonable arrangements for the management  
411 and operation of the time-share estate program and for the maintenance, repair, and furnishing  
412 of units ~~comprising~~ it comprises, which shall include, ~~but need not be limited to~~, provisions for  
413 the following:

414           1. Creation of an association, the members of which shall be the time-share estate  
415 owners. The association may be formed pursuant to the Virginia Nonstock Corporation Act (§  
416 13.1-801 et seq.); however, the association shall be formed prior to the time the project and  
417 program are registered with the Board. Nothing shall affect the validity of the association, once  
418 formed, and the rights applicable to it as granted by this chapter, notwithstanding the time when  
419 such association was formed;

420           2. Payment of costs and expenses of operating the time-share estate program and owning  
421 and maintaining the units ~~comprising~~ it comprises;

422           3. Employment and termination of employment of the managing agent for the project.  
423 Any agreement pertaining to the employment of the managing agent and executed during the  
424 developer control period shall be voidable by the association at any time after termination of the  
425 developer control period for the time-share project, and any provision in such agreement to the  
426 contrary is hereby declared to be void;

427           4. Termination of leases and contracts for goods and services for the time-share estate  
428 project, ~~which that~~ are entered into during the developer control period. Any such lease or  
429 contract shall become voidable at the option of the association upon termination of the

430 developer control period for the entire time-share project, or sooner if the provisions of such  
431 lease or contract so state;

432 5. Preparation and dissemination to time-share estate owners of the annual report  
433 required by § ~~55-370.1~~ 55.1-xxx;

434 6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of  
435 units by the time-share estate owners;

436 7. Collection of regular assessments, fees or dues, ~~and/or or~~ special assessments from  
437 time-share estate owners to defray all time-share expenses;

438 8. Comprehensive general liability insurance for death, bodily injury, and property  
439 damage arising out of, or in connection with, the use and enjoyment of the project by time-share  
440 estate owners, their guests, and other users. The costs associated with securing and maintaining  
441 such insurance shall be a time-share expense. Nothing ~~herein~~ in this subdivision shall be  
442 construed to obligate the managing entity to secure insurance on the conduct of the time-share  
443 estate owners, their guests, and other users, or the personal effects or property of such owners,  
444 guests, and users;

445 9. Methods for providing compensation or alternate use periods or monetary  
446 compensation to a time-share estate owner if his contracted-for unit cannot be made available  
447 for the period to which the owner is entitled by schedule or by confirmed reservation;

448 10. Procedures for imposing a monetary penalty or suspension of a time-share estate  
449 owner's rights and privileges in the time-share estate program or time-share project for failure of  
450 such owner to comply with provisions of the time-share instrument or the rules and regulations  
451 of the association with respect to the use and enjoyment of the units and the time-share project.  
452 Under these procedures, a time-share estate owner ~~must~~ shall be given reasonable notice and  
453 reasonable opportunity to be heard and explain the charges against him in person or in writing to  
454 the board of directors of the association before a decision to impose discipline is rendered; and

455 11. Employment of attorneys, accountants, and other professional persons as necessary  
456 to assist in the management of the time-share estate program and the units ~~comprising~~ it  
457 comprises.

458 **Drafting note: In the first paragraph, the phrase "but need not be limited to" is**  
459 **stricken following the term "include" on the basis of § 1-218, which states that throughout**  
460 **the Code "'Includes' means includes, but not limited to." In subdivision 7, the term**  
461 **"and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word**  
462 **"or" to reflect its meaning in the sense of either or both/all. Technical changes are made.**

463 § ~~55-369~~ 55.1-xxx. Developer control in time-share estate program.

464 A. The time-share instrument for a time-share estate program shall provide for a ~~period~~  
465 ~~of time, to be called the~~ "developer control period," ~~during which the developer or a managing~~  
466 ~~agent selected by the developer shall manage and control the time share estate project and the~~  
467 ~~common elements and units, or portions thereof, comprising it.~~ All costs associated with the  
468 control, management, and operation of the time-share estate project during the developer control  
469 period shall belong to the developer, except for time-share estate occupancy expenses that shall,  
470 if required by the developer in the time-share instrument, be allocated only to and paid by time-  
471 share estate owners other than the developer. ~~"Time share estate occupancy expenses" means all~~  
472 ~~costs and expenses incurred in (i) the formation, organization, operation, and administration,~~  
473 ~~including capital contributions thereto, of the association and both its board of directors and its~~  
474 ~~members and (ii) all owners' use and occupancy of the time share estate project including~~  
475 ~~without limitation its completed and occupied time share estate units and common elements~~  
476 ~~available for use. Such costs and expenses include but are not limited to maintenance and~~  
477 ~~housekeeping charges; repairs; refurbishing costs; insurance premiums, including the premium~~  
478 ~~for comprehensive general liability insurance required by subdivision 8 of § 55-368; taxes;~~  
479 ~~properly allocated labor, operational, and overhead costs; general and administrative expenses;~~  
480 ~~managing agent's fee; utility charges and deposits; the cost of periodic repair and replacement of~~  
481 ~~walls and window treatments and furnishings, including furniture and appliances; filing fees and~~

482 ~~annual registration charges of the State Corporation Commission and the Board; counsel fees~~  
483 ~~and accountant charges; and reserves for any of the foregoing.~~ Nothing shall preclude the  
484 developer, during the developer control period and at any time after the lapse of a purchaser's  
485 right of cancellation, and without regard to the recordation of the deed, provided the deed has  
486 been delivered to the purchaser or the purchaser's agent, from collecting an annual or specially  
487 assessed charge from each time-share estate owner for the payment of the time-share estate  
488 occupancy expenses by way of a "maintenance fee." However, any such funds received and not  
489 spent, or any other funds received and allocated to the benefit of the association, shall be  
490 transferred to the association by the developer at the termination of the developer control period.

491 B. Except to the extent that the purchase contract or time-share instrument expressly  
492 provides otherwise, fee simple title to the common elements shall be transferred to the time-  
493 share estate owners' association, free of charge, no later than at such time as the developer (i)  
494 transfers to purchasers legal or equitable ownership of at least 90 percent of the time-share  
495 estates, excluding any reacquisitions by the developer; (ii) is no longer the beneficiary on deeds  
496 of trust secured on at least 20 percent of the time-share estates; or (iii) has completed all of the  
497 promised common elements and facilities ~~comprising that~~ the time-share estate project  
498 comprises, whichever occurs last. The developer may, ~~but shall not be required to~~, make such  
499 transfer when the period has ended for a phase or portion of the time-share estate project. The  
500 transfer ~~herein~~ required of the developer by this subsection shall not exonerate the developer  
501 from the responsibility of completion of the promised and incomplete common elements once  
502 the transfer occurs. Upon transfer of the time-share project or portion to the association, the  
503 developer control period for such project or portion ~~thereof of such project~~ shall terminate.

504 **Drafting note: In subsection A, the definition of "developer control period" and**  
505 **"time-share estate occupancy expenses" is relocated to § 55.1-xxx [§ 55-362], the**  
506 **definitions section of this chapter. In subsection B, the phrase "but shall not be required**  
507 **to" is stricken after "may" as unnecessary. Technical changes are made.**

508 ~~§ 55-370~~ 55.1-xxx. Time-share estate owners' association control liens.

509           A. The board of directors of the association shall have the authority to adopt regular  
510 annual assessments and to levy periodic special assessments against each of the time-share  
511 estate unit owners and to collect the same from such owners according to law, if the purpose in  
512 so doing is determined by the board of directors to be in the best interest of the time-share  
513 project or time-share program and the proceeds are used to either pay common expenses or fund  
514 a reserve. In addition, the board of directors of the association shall have the authority to collect,  
515 on behalf of the developer or on its own account, the maintenance fee imposed by the developer  
516 pursuant to ~~§ 55-369~~ 55.1-xxx. The authority hereby granted and conferred upon the association  
517 shall exist notwithstanding any covenants and restrictions of record applicable to the project  
518 stated to the contrary, and any such covenants and restrictions are hereby declared void.

519           B. The developer may provide that it not be obligated to pay all or a portion of any  
520 assessment, dues, or other charges of the association, however denominated, passed, or adopted,  
521 pursuant to subsection A, if such developer so provides, in bold type, in the time-share  
522 instrument for the time-share estate project. If no such provision exists, the developer shall be  
523 responsible to pay the same assessment, dues, or other charges that a time-share estate owner is  
524 obligated to pay for each of its unsold time-shares existing at the end of the fiscal year of the  
525 association and no more if the board of directors of the association so determines. In no event  
526 shall either a time-share expense or the dues, assessment, or charges of the association  
527 discriminate against the developer.

528           C. The association shall have a lien on every time-share estate within its project for  
529 unpaid and past due regular or special assessments levied against that estate in accordance with  
530 the provisions of this chapter and for all unpaid and past due maintenance fees. The exemption  
531 created by § 34-4 shall not be claimed against the debt or lien of the association created by this  
532 section.

533           The association, in order to perfect the lien given by this subsection, shall file, before the  
534 expiration of four years from the time such special or regular assessment or maintenance fee  
535 became due ~~and payable~~, in the clerk's office of the county or city in which the project is

536 situated, a memorandum verified by the oath of any officer of the association or its managing  
537 agent and containing the following information:

538 1. The name and location of the project;

539 2. The name and address of each owner of the time-share on which the lien exists and a  
540 description of the unit in which the time-share is ~~situate~~ situated;

541 3. The amount of ~~unpaid and~~ past due special or regular assessments or ~~unpaid and~~ past  
542 due maintenance fees applicable to the time-share, together with the date when each became  
543 due;

544 4. The amount of any other charges owing occasioned by the failure of the owner to pay  
545 the assessments or maintenance fees, including late charges, interest, postage and handling,  
546 attorney fees, recording costs, and release fees;

547 5. The name, address, and telephone number of the association's trustee, if known at the  
548 time, who will be called upon by the association to foreclose on the lien upon the owner's failure  
549 to pay as provided in this subsection; and

550 6. The date of issuance of the memorandum.

551 Notwithstanding any other provision of this chapter, or any other provision of law  
552 requiring documents to be recorded in the deed books of the clerk's office of any court, from  
553 July 1, 1981, all memoranda of liens arising under this subsection shall be recorded in the deed  
554 books in such clerk's office. Any such memorandum shall be indexed in the general index to  
555 deeds, and such general index shall identify the lien as a lien for time-share estate regular or  
556 special assessments or maintenance fees.

557 ~~It shall be the duty of the~~ The clerk in whose office such memorandum ~~shall be~~ is filed  
558 as provided ~~herein to~~ in this subsection shall record and index ~~the same~~ such memorandum as  
559 provided in this subsection, in the names of the persons identified ~~therein~~ in such memorandum  
560 as well as in the name of the time-share estates owners' association. The cost of recording such  
561 memorandum shall be taxed against the owner of the time-share on which the lien is placed. The  
562 filing with the clerk of one memorandum on which is listed two or more delinquent time-share

563 estate unit owners is permitted in order to perfect the lien hereby allowed and the cost of filing  
564 in this event shall be the clerk's fee as prescribed in subdivision A 2 of § 17.1-275.

565 D. At any time after perfecting the lien pursuant to this section, the association may sell  
566 the time-share estate at a public sale, subject to prior liens. For purposes of this section, the  
567 association shall have the power both to sell and convey the time-share estate, and shall be  
568 deemed the time-share estate owner's statutory agent for the purpose of transferring title to the  
569 time-share estate. A nonjudicial foreclosure sale shall be conducted by a trustee and in  
570 accordance with the following:

571 1. The association shall give notice to the time-share estate owner, prior to  
572 advertisement, as required by subdivision 4. The notice shall specify (i) the debt secured by the  
573 perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the  
574 date, not less than 60 days from the date the notice is given to the time-share estate owner, by  
575 which the debt secured by the lien ~~must~~ shall be satisfied; and (iv) that failure to satisfy the debt  
576 secured by the lien on or before the date specified in the notice may result in the sale of the  
577 time-share estate. The notice shall further inform the time-share estate owner of the right to  
578 bring a court action in the circuit court of the county or city where the time-share project is  
579 located to assert the nonexistence of a debt or any other defenses of the time-share estate owner  
580 to the sale.

581 2. After expiration of the 60-day notice period provided in subdivision 1, the association  
582 may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the  
583 clerk's office of the circuit court in the county or city in which the time-share project is located.  
584 It shall be the duty of the clerk in whose office such appointment is filed to record and index the  
585 same, as provided in this subsection, in the names of the persons identified therein as well as in  
586 the name of the association. The association, at its option, may from time to time remove the  
587 trustee and appoint a successor trustee.

588 3. If, prior to the date of the foreclosure sale, the time-share estate owner ~~meets the~~  
589 ~~conditions specified in this subdivision prior to the date of the foreclosure sale~~ (i) satisfies the

590 debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pays all  
591 expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and  
592 reasonable attorney fees, the time-share estate owner shall have the right to have enforcement of  
593 the perfected lien discontinued prior to the sale of the time-share estate. ~~Such conditions are that~~  
594 ~~the time share estate owner: (i) satisfy the debt secured by lien that is the subject of the~~  
595 ~~nonjudicial foreclosure sale, and (ii) pay all expenses and costs incurred in perfecting and~~  
596 ~~enforcing the lien, including but not limited to advertising costs and reasonable attorney fees.~~

597 4. In addition to the advertisement required by subdivision 5, the association shall give  
598 written notice of the time, date, and place of any proposed sale in execution of the lien,  
599 including the name, address, and telephone number of the trustee, by personal delivery or by  
600 mail to (i) the present owner of the time-share estate to be sold at his last known address as such  
601 owner and address appear in the records of the association, (ii) any lienholder ~~who~~ that holds a  
602 note against the time-share estate secured by a deed of trust recorded at least 30 days prior to the  
603 proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of  
604 such a note secured by a deed of trust, provided that the assignment and address of the assignee  
605 are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the  
606 advertisement or the notice containing the same information to the owner by certified or  
607 registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at  
608 the addresses noted in the memorandum of lien, by ~~ordinary~~ regular mail no less than 14 days  
609 prior to such sale shall be a sufficient compliance with the requirement of notice.

610 5. The advertisement of sale by the association shall be in a newspaper having a general  
611 circulation in the ~~city or~~ county or city wherein the time-share estate to be sold and the time-  
612 share project, or any portion ~~thereof of such project~~, lies pursuant to the following provisions:

613 a. The association shall advertise once a week for four successive weeks; however, if the  
614 time-share estate and the time-share project or some portion ~~thereof of such project~~ is located in  
615 a city or in a county immediately contiguous to a city, publication of the advertisement five  
616 different days, which may be consecutive days, shall be deemed adequate. The sale shall be held

617 on any day following the day of the last advertisement that is no earlier than eight days  
618 following the first advertisement nor more than 30 days following the last advertisement.

619 b. Such advertisement shall be placed in that section of the newspaper where legal  
620 notices appear or where the type of time-share estate being sold is generally advertised for sale.  
621 The advertisement of sale, in addition to such other matters as the association finds appropriate,  
622 shall set forth:

623 (1) A description of the time-share estate to be sold, which description need not be as  
624 extensive as that contained in the deed of trust, but shall identify the time-share project by street  
625 address, if any, or, if none, shall give the general location of such time-share project with  
626 reference to streets, routes, or known landmarks with further identification of the time-share  
627 estate to be sold. Where available, tax map identification may be used ~~but is not required~~. The  
628 advertisement shall also include the date, time, place, and terms of sale and the name of the  
629 association. It shall set forth the name, address, and telephone number of the representative,  
630 agent, or attorney who is authorized to respond to inquiries concerning the sale; or

631 (2) In lieu of the requirements of subdivision (1), the advertisement shall set forth the  
632 date, time, place, and terms of sale and the name of the association; the street address of the  
633 time-share estate to be sold, if any, or, if none, the general location of the time-share project;  
634 and the name, address, and telephone number of the representative, agent, or attorney who is  
635 authorized to respond to inquiries and give additional information concerning the time-share  
636 estate to be sold, including providing in hard copy or electronic form a description of the time-  
637 share estate to be sold by street address, if any, or, if none, by the general location of the time-  
638 share project with reference to streets, routes, or known landmarks, and, where available, tax  
639 map identification. The advertisement under this subdivision (2) shall also include a website  
640 address where the information contained in subdivision (1) is displayed for the time-share estate  
641 to be sold.

642 c. In addition to the advertisement required by subdivisions 5 a and ~~5~~ b, the association  
643 may give such other further and different advertisement as the association finds appropriate.

644           6. In the event of postponement of the sale, which postponement shall be at the  
645 discretion of the association, advertisement of the postponed sale shall be in the same manner as  
646 the original advertisement of sale.

647           7. Failure to comply with the requirements for advertisement contained in this section  
648 shall, upon petition, render a sale of the property voidable by the court. Such petition shall be  
649 filed within 60 days of the sale or the right to do so shall lapse.

650           8. In the event of a sale, the association shall have the following powers and duties:

651           a. The association may sell two or more time-share estates at the sale. Written one-price  
652 bids may be made and shall be received by the trustee from the association or any person for  
653 entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure  
654 sale, including a person ~~who~~ that has submitted a written one-price bid. Upon request to the  
655 trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written  
656 bids. Unless otherwise provided in the time-share instrument, the association may bid to  
657 purchase the time-share estate at a foreclosure sale. The association may own, lease, encumber,  
658 exchange, sell, or convey the time-share estate. Whenever the written bid of the association is  
659 the highest bid submitted at the sale, such written bid shall be filed by the trustee with his  
660 account of sale required under subdivision 10 of this subsection and § 64.2-1309. The written  
661 bid submitted pursuant to this subsection may be prepared by the association, its agent, or its  
662 attorney.

663           b. The association may require of any bidder at any sale a cash deposit of as much as  
664 ~~33.33 percent~~ one-third of the sale price before his bid is received, which shall be refunded to  
665 him if the time-share estate is not sold to him through action of the trustee. The deposit of the  
666 successful bidder shall be applied to his credit at settlement, ~~or~~; if such bidder fails to complete  
667 his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and  
668 the balance, if any, shall be retained by the association in connection with that sale.

669           c. The association shall receive and receipt for the proceeds of sale, no purchaser being  
670 required to see to the application of the proceeds, and shall apply ~~the same such proceeds~~ in the

671 following order: first, to the reasonable expenses of sale, including reasonable attorney fees;  
672 second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to  
673 the satisfaction of the lien for the time-share estate owners' assessments; fourth, to the  
674 satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay  
675 the residue of the proceeds to the time-share estate owner or his assigns, provided, however, that  
676 the association as to such residue shall not be bound by any inheritance, devise, conveyance,  
677 assignment, or lien of or upon the unit owner's equity, without actual notice thereof prior to  
678 distribution.

679 9. The trustee shall deliver to the purchaser a trustee's deed conveying the time-share  
680 estate with special warranty of title. The trustee shall not be required to take possession of the  
681 time-share estate prior to the sale ~~thereof of such estate~~ or ~~to~~ deliver possession of the time-  
682 share estate to the purchaser at the sale.

683 10. If the sale of a time-share estate is made pursuant to this subsection and the  
684 accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed  
685 unless, within six months from the date of foreclosure, the sale is set aside by the court or an  
686 appeal is allowed by the Supreme Court of Virginia; and a decree is ~~therein~~ entered requiring  
687 such sale to be set aside.

688 When payment or satisfaction is made of a debt secured by the lien perfected by this  
689 subsection, such lien shall be released in accordance with the provisions of § ~~55-66.3~~ 55.1-xxx.  
690 For the purposes of § ~~55-66.3~~ 55.1-xxx, any officer of the time-share estate owners' association  
691 or its managing agent shall be deemed the duly authorized agent of the lien creditor.

692 E. The commissioner of accounts to whom an account of sale is returned in connection  
693 with the foreclosure of either a lien under subsection C or a purchase money deed of trust taken  
694 back by the developer in the sale of a time-share in order to satisfy § 64.2-1309 shall be entitled  
695 to a fee, not to exceed \$70, on each foreclosure of a lien under subsection C and not to exceed  
696 \$125 on each foreclosure of a purchase money deed of trust taken back by the developer.

697 F. Any time-share owner within the project having executed a contract for the  
698 disposition of the time-share, shall be entitled, upon request, to a recordable statement setting  
699 forth the amount of unpaid regular or special assessments or maintenance fees currently levied  
700 against that time-share. Such request shall be in writing, directed to the president of the time-  
701 share estate owners' association, and delivered to the principal office of the association. Failure  
702 of the association to furnish or make available such statement within 20 days from the actual  
703 receipt of such written request shall extinguish the lien created by subsection C as to the time-  
704 share involved. Payment of a fee reflecting the reasonable cost of materials and labor, not to  
705 exceed the actual cost ~~thereof of such materials and labor~~, may be required as a prerequisite to  
706 the issuance of such a statement.

707 **Drafting note: In subsection C, the phrase "and payable" is stricken after the word**  
708 **"due" as unnecessary. In subdivision C 3, the phrase "unpaid and" before "past due" is**  
709 **stricken as unnecessary. In subdivision D 3, the phrase "but not limited to" is stricken**  
710 **following the term "including" on the basis of § 1-218, which states that throughout the**  
711 **Code "'Includes' means includes, but not limited to." Subdivision D 3 is also restructured**  
712 **for clarity. In subdivision D 5 b (1), the phrase "but is not required" is stricken after the**  
713 **word "may" as unnecessary. Technical changes are made.**

714 § ~~55-370.01~~ 55.1-xxx. Time-share owners' association books and records; meetings; use  
715 of e-mail.

716 A. Subject to the provisions of subsection B, all books and records, or copies ~~thereof of~~  
717 such books and records, kept by or on behalf of the association shall be maintained so that such  
718 books and records, or ~~portions thereof~~ copies of such books and records, are reasonably  
719 available for inspection after written request by a member in good standing or his authorized  
720 agent. The association may charge such member or his agent a reasonable fee for copying the  
721 requested information. No books or records shall be removed from their location by the  
722 examining member or his agent. The right of inspection shall exist without reference to the  
723 duration of membership and may be exercised only during reasonable business hours and at a

724 mutually convenient time and location, under the supervision of the custodian, and upon 15  
725 days' written notice.

726 For purposes of this subsection, the requested books and records shall be considered  
727 "reasonably available" if copies ~~thereof~~ of such books and records are delivered to the  
728 requesting member or his agent within seven business days of the date the association receives  
729 the written request. However, the requesting member or his agent shall be permitted to inspect  
730 the books and records wherever located at any reasonable time, under reasonable conditions,  
731 and under the supervision of the custodian of the records. The custodian shall supply copies of  
732 the records where requested and upon payment of the copying fee.

733 The association shall provide members of the association with the location of the books  
734 and records, along with the name and address of the custodian, by any reasonable method,  
735 which may include posting in a reasonable location at the situs of the time-share project or in the  
736 annual report required by § ~~55-370.1~~ 55.1-xxx.

737 B. Books and records kept by or on behalf of an association may be withheld from  
738 inspection to the extent that they concern:

- 739 1. Personnel records;
- 740 2. An individual's medical records;
- 741 3. Records relating to business transactions that are currently in negotiation;
- 742 4. Privileged communications with legal counsel;
- 743 5. Complaints against an individual member of the association;
- 744 6. Agreements containing confidentiality requirements;
- 745 7. Pending litigation;
- 746 8. The name, address, phone number, electronic mail address, or other personal  
747 information of time-share owners or members of the association, unless such owner or member  
748 first approves of the disclosure in writing;
- 749 9. Disclosure of information in violation of law; or

750 10. Meeting minutes or other records of an executive session of the board of directors  
751 held in accordance with subsection D.

752 The association shall be under no obligation to provide requested records to the extent  
753 that they are matters of public record or are otherwise readily obtainable from another source.

754 C. The association shall maintain among its records a complete, up-to-date list of the  
755 names and addresses of all current members in good standing who are owners of time-share  
756 estates in the time-share project. The association shall not publish such list or provide a copy of  
757 it to any time-share owner or to any third party except the board of directors or the developer.  
758 However, the association shall mail to those persons ~~listed~~ named on the list materials provided  
759 by any member in good standing, upon written request of that member, if the purpose of the  
760 mailing is to advance legitimate association business. The use of any proxies solicited in this  
761 manner ~~must~~ shall comply with the provisions of the time-share instrument and this chapter. A  
762 mailing requested for the purpose of advancing legitimate association business shall occur  
763 within 45 days after receipt of a request from a member in good standing. The board of directors  
764 of the association shall be responsible for determining the appropriateness of any mailing  
765 requested pursuant to this subsection whose decision in this regard shall be final. The  
766 association shall be paid in advance for the association's actual costs in performing the mailing,  
767 including ~~but not limited to~~ postage, supplies, reasonable labor, and attorney fees.

768 D. Meetings of the board of directors shall be open to all members of record who are  
769 eligible to vote and who are in good standing. Minutes shall be recorded and shall be available  
770 as provided in subsection A. The board of directors may convene in closed session to consider  
771 personnel matters; consult with legal counsel; discuss and consider contracts, potential or  
772 pending litigation, and matters involving violations of the time-share instrument or rules and  
773 regulations adopted pursuant ~~thereto~~ to such instrument for which a member, his family  
774 members, tenants, or guests, or other invitees are responsible; or discuss and consider the  
775 personal liability of members to the association upon the affirmative vote in open meeting to  
776 assemble in closed session. The motion shall state specifically the purpose for the closed

777 session. Reference to the motion and the stated purpose for the closed session shall be included  
778 in the minutes. The board of directors shall restrict the consideration of matters during the  
779 closed portions of meetings only to those purposes specifically exempted and stated in the  
780 motion. No contract, motion, or other action adopted, passed, or agreed to in closed session shall  
781 become effective unless the board of directors, following the closed session, reconvenes in an  
782 open meeting and takes a vote on such contract, motion, or other action, which shall have its  
783 substance reasonably identified in the open meeting. The requirements of this section shall not  
784 require the disclosure of information in violation of law.

785 E. Notwithstanding any provisions of the Virginia Nonstock Corporation Act (§ 13.1-  
786 801 et seq.) to the contrary:

787 1. The bylaws of the association may prescribe different quorum requirements for  
788 meetings of its members; and

789 2. A director of the association may be removed from the office pursuant to any  
790 procedure provided in its articles of incorporation and, if none is provided, may be removed at a  
791 meeting called expressly for that purpose, with or without cause, by such vote as would suffice  
792 for his election.

793 F. Whenever ~~in~~ this chapter requires communication between the board of directors and  
794 a member of the association ~~is required~~ by mail, any electronic means may be used in the  
795 alternative, including ~~e-mail~~ email, provided that such electronic communication is personal and  
796 only between such board and such member.

797 G. Filings with the board may be made by any electronic means ~~providing, provided that~~  
798 such board is willing to accept ~~same~~ such format.

799 **Drafting note: In subsection A, the word "portions" is struck and replaced with the**  
800 **term "copies" for accuracy and consistency with the subsection. In subsection C, the**  
801 **phrase "but not limited to" is stricken following the term "including" on the basis of § 1-**  
802 **218, which states that throughout the Code "'Includes' means includes, but not limited**  
803 **to." Technical changes are made.**

804 § ~~55-370.1~~ 55.1-xxx. Time-share estate owners' association annual report.

805 A. Commencing with the time-share estate program and within 180 days after the close  
806 of each fiscal year thereafter, an annual report shall be prepared and distributed to all time-share  
807 estate owners. ~~The Such~~ annual report ~~required hereby~~ shall be prepared and distributed for each  
808 time-share estate project registered with the Board. During the developer control period, the  
809 annual report shall be prepared and distributed to all time-share purchasers by the developer or  
810 its designated managing entity ~~and thereafter~~. After the developer control period, such annual  
811 report shall be prepared and distributed by the association.

812 B. The annual report shall contain the following:

- 813 1. The full legal name of the time-share project and its address;
- 814 2. The full legal name of the association;
- 815 3. A list of the names and mailing addresses of the members of the association's board of  
816 directors and the name of the person who prepared the report;
- 817 4. The managing entity's name, address, and contact person, if any, for the project;
- 818 5. A statement of whether or not the developer control period has terminated for the  
819 time-share estate project;
- 820 6. Financial statements of the association audited by an independent certified public  
821 accounting firm of the association that contain at least the following:
- 822 a. A balance sheet as of the end of the fiscal year;
- 823 b. An income statement as of the end of the fiscal year; and
- 824 c. A statement of the net changes in the financial position of the association for the fiscal  
825 year just ended;
- 826 7. A statement of the time-share estates occupancy expenses, the regular assessment, and  
827 any special assessments or other charges due for the current year from each time-share estate  
828 owner;
- 829 8. A copy of the current budget reflecting the anticipated time-share estate occupancy  
830 expenses along with:

- 831 a. A statement as to who prepared the budget;
- 832 b. A statement of the budgetary assumptions concerning occupancy factors;
- 833 c. A description of any provision made in the budget for reserves for repairs and  
834 replacement;
- 835 d. A statement of any other reserves;
- 836 e. The projected financial liability for each time-share estate owner, including a  
837 statement of (i) the nature of all charges, assessments, maintenance fees, and other expenses that  
838 may be assessed; (ii) the current amounts assessed; and (iii) the method and formula for  
839 changing any such assessments; and
- 840 f. A statement of any services not reflected in the budget that the developer provides, or  
841 expenses that it pays, that the association expects may become a time-share expense at any  
842 subsequent time, and the projected time-share expense assessment attributable to each of those  
843 services or expenses for the association and for each time-share; and
- 844 9. A statement of the location of the books and records of the association along with the  
845 name and contact address of the custodian of such books and records.

846 C. In lieu of the annual report required by subsection A, during the first 12 months of the  
847 time-share program, the developer or the association shall prepare a budget that shall contain the  
848 information contained in subdivision B 8.

849 **Drafting note: Technical changes.**

850 § ~~55-371~~ 55.1-xxx. Time-share instrument for project.

851 In addition to the requirements of § ~~55-367~~ 55.1-xxx, the time-share instrument for a  
852 time-share use program shall prescribe and outline reasonable arrangements for the management  
853 and operation of the time-share use program and for the maintenance, repair, and furnishing of  
854 time-share use units ~~comprising same, which it comprises. Such~~ arrangements shall include, ~~but~~  
855 ~~need not be limited to,~~ provisions for the following:

856 1. Standards and procedures for upkeep, repair, and interior furnishing of time-share use  
857 units, for the replacements of such furnishings, and for providing maid, cleaning, linen, and  
858 similar services to the units during use and occupancy periods;

859 2. Adoption of standards and rules of conduct governing the use, enjoyment, and  
860 occupancy of time-share use units by owners;

861 3. Payment by the developer of the costs and expenses of operating the time-share use  
862 program and owning and maintaining the time-share use units ~~comprising~~ it comprises;

863 4. Selection of a managing agent to act for and on behalf of the developer should the  
864 developer elect not to undertake the duties, responsibilities, and obligations of the management  
865 of the time-share use program;

866 5. Procedures for establishing the rights of time-share use owners to occupancy, use, and  
867 enjoyment of time-share use units by prearrangement or under a first-reserved, first-served  
868 priority system;

869 6. Procedures for imposing and collecting regular ~~and/or~~ or special assessments,  
870 maintenance fees, or use fees from time-share use owners as necessary to defray all time-share  
871 expenses and in providing materials and services to the units, as ~~herein~~ required of the developer  
872 in this chapter;

873 7. Comprehensive general liability insurance for death, bodily injury, and property  
874 damage arising out of, or in connection with, the occupancy, use, and enjoyment of time-share  
875 use units by time-share use owners, their guests, and other users. The costs associated with  
876 securing and maintaining such insurance shall be a time-share expense. Nothing ~~herein~~ in this  
877 subdivision shall be construed to obligate the developer to secure insurance on the conduct of  
878 the time-share use owners, their guests, and other users, or the personal effects or property of  
879 such owners, guests, and users;

880 8. Methods for providing compensating or alternate use periods or monetary  
881 compensation to a time-share use owner if a time-share use unit cannot be made available for  
882 the period to which the owner is entitled by schedule or by a confirmed reservation; and

883 9. Procedures for imposing a monetary penalty or suspension of a time-share use owner's  
884 rights and privileges in the time-share use program or project or termination of the time-share  
885 use itself for failure of the time-share use owner to (i) comply with the provisions of the time-  
886 share use instrument; (ii) comply with the rules and regulations established by the developer  
887 with respect to the occupancy, use, and enjoyment of the time-share use units; ~~or the failure to~~  
888 (iii) pay the charges imposed by the developer against the time-share use owner for providing  
889 the materials and services as ~~herein~~ required of the developer in this chapter. Except in matters  
890 where the time-share use owner has failed to pay the charge imposed by the developer for a  
891 period of less than ~~sixty~~ 60 days after it has become due and payable, the owner shall be given  
892 notice and the opportunity to be heard.

893 **Drafting note: In the first paragraph, the phrase "but need not be limited to" is**  
894 **stricken following the term "include" on the basis of § 1-218, which states that throughout**  
895 **the Code "'Includes' means includes, but not limited to." In subdivision 6, the term**  
896 **"and/or," a grammatical shortcut that is inherently ambiguous, is replaced with the word**  
897 **"or" to reflect its meaning in the sense of either or both/all. Technical changes are made.**

898 § ~~55-372~~ 55.1-xxx. Partition.

899 No action for partition of a unit may be maintained except as permitted by the time-share  
900 instrument; or by subsection C of § ~~55-373~~ 55.1-xxx.

901 **Drafting note: Technical change.**

902 § ~~55-373~~ 55.1-xxx. Termination of certain time-shares.

903 A. This section applies to all time-share estate programs and, when provided by the  
904 time-share instrument, to time-share use programs.

905 B. A time-share project may be terminated in whole by the developer at any time and for  
906 any reason if such developer is the sole owner of all time-shares within the time-share project.  
907 Such termination shall be accomplished by the developer executing and recording a termination  
908 document where the time-share instrument is recorded. Time-shares subject to this section also  
909 may be terminated by written agreement of the time-share owners having at least ~~fifty-one~~ 51

910 percent of the time-shares, or by written agreement of such larger percentage of the time-share  
911 owners as may otherwise be provided in the time-share instrument. The termination agreement  
912 shall specify a date upon which it shall become void, unless it is recorded before that date in the  
913 clerk's office of the appropriate court where the time-share project is located.

914 C. If the termination agreement sets forth the material terms of a contract or proposed  
915 contract under which an estate or ~~interest in each time-share unit~~ interests equal to the sum of  
916 ~~the~~ time-shares ~~therein is are~~ to be sold and designates a trustee to effect the sale, the  
917 termination agreement becomes effective upon recordation, and title to that estate or interest  
918 vests upon termination in the trustee for the benefit of the time-share owners, to be transferred  
919 pursuant to the contract. If the termination agreement does not set forth the material terms of a  
920 contract or proposed contract under which an estate or ~~interest in each time-share unit~~ interests  
921 equal to the sum of the time-shares ~~therein is are~~ to be sold and designates a trustee to effect the  
922 sale, the termination agreement becomes effective upon recordation, and title to an estate or  
923 ~~interest in each time-share unit~~ interests equal to the sum of the time-shares therein vests upon  
924 termination in the time-share owners ~~thereof~~ in proportion to their respective interests as  
925 provided in subsection F, ~~and liens.~~ Liens on the time-shares shall accordingly encumber ~~those~~  
926 the respective interests; and in this instance, any co-owner of that estate or interest may  
927 ~~thereafter~~ maintain an action for partition or for allotment or sale in lieu of partition pursuant to  
928 the laws of the Commonwealth.

929 D. Except as otherwise specified in the termination agreement, so long as the former  
930 time-share owners or their trustee holds title to the estate or ~~interest~~ interests equal to the sum of  
931 the time-shares, each former time-share owner and his successor in interest have the same rights  
932 with respect to the use, enjoyment, and occupancy in the former time-share unit that ~~he~~ such  
933 former time-share owner and his successor in interest would have had if termination had not  
934 occurred, together with the same liabilities and other obligations imposed by this act or the time-  
935 share instrument.

936 E. After termination of all time-shares in a time-share project and adequate provision for  
937 payment of the claims of the creditors for time-share expenses, distribution shall be made, in  
938 proportion to their respective interests as provided in subsection F, to the former time-share  
939 owners and their successors in interest of (i) the proceeds of any sale pursuant to this section,  
940 (ii) the proceeds of any personalty held for the use and benefit of the former time-share owners,  
941 and (iii) any other funds held for the use and benefit of the former time-share owners.

942 F. The time-share instrument may specify the respective fractional or percentage interest  
943 ~~in the estate or interest in each unit equal to the sum of the time-share therein~~ that will be owned  
944 by each former time-share owner after termination, in accordance with the provisions of this  
945 section. Otherwise, not more than 180 days prior to the termination, an appraisal shall be made  
946 of the fair market value of each time-share by ~~1~~ one or more impartial qualified appraisers  
947 selected either by the trustee designated in the termination agreement, or by the managing entity  
948 if no trustee was so designated. The appraisal shall also state the corresponding fractional or  
949 percentage interests calculated in proportion to those values and in accordance with this  
950 subsection. A notice stating all of those values and corresponding interests and the return  
951 address of the sender shall be sent by certified or registered mail, by the managing entity or the  
952 trustee designated in the termination agreements, to all of the time-share owners. The appraisal  
953 governs the magnitude of each interest unless (i) at least ~~twenty-five~~ 25 percent of the time-  
954 share owners deliver, within ~~sixty~~ 60 days after the date the notices were mailed, written  
955 disapprovals to the return address of the sender of the notice, or (ii) the final judgment of a court  
956 of competent jurisdiction, entered during or after that period, holds that the appraisal should be  
957 set aside. The appraisal and the calculation of interests ~~must~~ shall be made in accordance with  
958 the following:

959 1. If the termination agreement sets forth the material terms of a contract or proposed  
960 contract for the sale of the estate or interests equal to the sum of the time-shares, each time-  
961 share conferring a right of occupancy during a limited number of time periods ~~must~~ shall be  
962 appraised as if the time until the date specified for the conveyance of the property had already

963 elapsed. Otherwise, each time-share of that kind ~~must~~ shall be appraised as if the time until the  
964 date specified pursuant to subsection B had already elapsed.

965 2. The interest of each time-share owner is the value of the time-share he owned divided  
966 by the sum of the values of all time-shares in the unit or units to which his time-share applies.

967 G. Foreclosure or enforcement of a lien or encumbrance against all of the time-shares in  
968 a time-share project does not of itself terminate those time-shares.

969 **Drafting note: In subsection C, language is reworded for clarity, accuracy, and**  
970 **consistency with the language regarding termination agreements set forth in subdivision F**  
971 **1. In subsection F, language is reworded for clarity. Technical changes are made.**

972 Article 3.

973 Protection of Purchasers.

974 **Drafting note: Existing Article 3, containing provisions related to the protection of**  
975 **purchasers of time-shares, is retained as proposed Article 3.**

976 § ~~55-374~~ 55.1-xxx. Public offering statement.

977 A. ~~The~~ Prior to the execution of a contract for the purchase of a time-share, the  
978 developer shall prepare and distribute to each prospective purchaser ~~prior to the execution of a~~  
979 contract for the purchase of a time share, a copy of the current public offering statement ~~about~~  
980 which regarding the time-share ~~relates~~. The public offering statement shall (i) fully and  
981 accurately disclose the material characteristics of the time-share project registered under this  
982 chapter and such time-share offered; and ~~shall~~ (ii) make known to each prospective purchaser all  
983 material circumstances affecting such time-share project. A developer need not make joint  
984 disclosures concerning two or more time-share projects owned by the developer or any related  
985 entity unless such projects are included in the same time-share program and marketed jointly at  
986 any of the time-share projects. The proposed public offering statement shall be filed with the  
987 Board; and shall be in a form prescribed by its regulations. The public offering statement may  
988 limit the information provided for the specific time-share project to which the developer's  
989 registration relates. The public offering statement shall include the following only to the extent

990 ~~that a given disclosure is applicable; otherwise no reference shall be required of the developer or~~  
991 ~~contained in the public offering statement:~~

992 1. The name and principal address of the developer and the time-share project registered  
993 with the Board about which the public offering statement relates, including:

994 a. The name, principal occupation, and address of every director, partner, limited  
995 liability company manager, or trustee of the developer;

996 b. The name and address of each person owning or controlling an interest of 20 percent  
997 or more in each time-share project registered with the Board;

998 c. The particulars of any indictment, conviction, judgment, decree, or order of any court  
999 or administrative agency against the developer or managing entity for violation of a federal,  
1000 state, local, or foreign country law or regulation in connection with activities relating to time-  
1001 share sales, land sales, land investments, security sales, construction or sale of homes or  
1002 improvements, or any similar or related activity;

1003 d. The nature of each unsatisfied judgment, if any, against the developer or the managing  
1004 entity, the status of each pending suit involving the sale or management of real estate to which  
1005 the developer, the managing entity, or any general partner, executive officer, director, limited  
1006 liability company manager, or majority stockholder thereof, is a defending party, and the status  
1007 of each pending suit, if any, of significance to any time-share project registered with the Board;  
1008 and

1009 e. The name and address of the developer's agent for service of any notice permitted by  
1010 this chapter.

1011 2. A general description of the time-share project registered with the Board and the units  
1012 and common elements promised available to purchasers, including ~~without limitation,~~ the  
1013 developer's estimated schedule of commencement and completion of all promised and  
1014 incomplete units and common elements.

1015 3. As to all time-shares offered by the developer:

1016 a. The form of time-share ownership offered in the project registered with the Board;

- 1017           b. The types, duration, and number of units and time-shares in the project registered with  
1018 the Board;
- 1019           c. Identification of units that are subject to the time-share program;
- 1020           d. The estimated number of units that may become subject to the time-share program;
- 1021           e. Provisions, if any, that have been made for public utilities in the time-share project  
1022 including water, electricity, telephone, and sewerage facilities;
- 1023           f. A statement to the effect of whether or not the developer has reserved the right to add  
1024 to or delete from the time-share program a time-share project or any incidental benefit or  
1025 alternative purchase; and
- 1026           g. If the developer utilizes the possibility of reverter, a statement to that effect referring  
1027 the purchaser to the reverter deed for an explanation ~~thereof~~ of such possibility of reverter.
- 1028           4. In a time-share estate program, a copy of the annual report or budget required by ~~§ 55-~~  
1029 ~~370.1~~ 55.1-xxx, which copy may take the form of an exhibit to the public offering statement. In  
1030 the case where multiple time-share projects are registered with the Board, the copy or exhibit  
1031 may be in summary form.
- 1032           5. In a time-share use program where the developer's net worth is ~~less~~ no more than  
1033 \$250,000, a current audited balance sheet and, where the developer's net worth exceeds such  
1034 amount, a statement by such developer that its equity in the time-share program exceeds that  
1035 amount.
- 1036           6. Any initial or special fee due from the purchaser at settlement together with a  
1037 description of the purpose and method of calculating the fee.
- 1038           7. A description of any liens, defects, or encumbrances affecting the time-share project  
1039 and in particular the time-share offered to the purchaser.
- 1040           8. A general description of any financing offered by or available through the developer.
- 1041           9. A statement that the purchaser has a nonwaivable right of cancellation, referring such  
1042 purchaser to that portion of the contract in which such right may be found.

1043 10. If the time-share interest in a condominium unit may be conveyed before that unit is  
1044 certified as substantially complete in accordance with § ~~55-79.58~~ 55.1-xxx, a statement of the  
1045 developer's obligation to complete the unit. Such statement shall include the approximate date  
1046 by which the condominium unit shall be completed, together with the form and amount of the  
1047 bond filed in accordance with subsection B of § ~~55-79.58:1~~ 55.1-xxx.

1048 11. Any restraints on alienation of any number or portion of any time-shares.

1049 12. A description of the insurance coverage provided for the benefit of time-share  
1050 owners.

1051 13. The extent to which financial arrangements, if any, have been provided for  
1052 completion of any incomplete but promised time-share unit or common element being then  
1053 offered for sale, including a statement of the developer's obligation to complete the promised  
1054 units and common elements ~~comprising that~~ the time-share project comprises that have not  
1055 begun, or that have begun but have not yet been completed.

1056 14. The extent to which a time-share unit may become subject to a tax or other lien  
1057 arising out of claims against other owners of the same unit.

1058 15. The name and address of the managing entity for the project.

1059 16. Copies of the project instrument and the association's articles of incorporation and  
1060 bylaws, each of which may be a supplement to the public offering statement.

1061 17. Any services that the developer provides or expense it pays and that it expects may  
1062 become at any subsequent time a time-share expense of the owners, and the projected time-share  
1063 expense liability attributable to each of those services or expenses for each time-share.

1064 18. A description of the terms of the deposit escrow requirements, including a statement  
1065 that deposits may be removed from escrow at the termination of the cancellation period.

1066 19. A description of the facilities, if any, provided by the developer to the association in  
1067 a time-share estate project for the management of the project.

1068 20. Any other information required by the Board to assure full and fair meaningful  
1069 disclosure to prospective purchasers.

1070 B. If any prospective purchaser is offered the opportunity to subscribe to or participate in  
1071 any exchange program, the public offering statement shall include, as an exhibit or supplement,  
1072 the disclosure document prepared by the exchange company in accordance with § ~~55-374.2~~  
1073 55.1-xxx and a brief narrative description of the exchange program, which shall include the  
1074 following:

1075 1. A statement of whether membership or participation in the program is voluntary or  
1076 mandatory;

1077 2. The name and address of the exchange company together with the names of its top  
1078 three officers and directors;

1079 3. A statement of whether the exchange company or any of its top three officers,  
1080 directors, or holders of a 10 percent or greater interest in the exchange company has any interest  
1081 in the developer, the managing entity, or the time-share project;

1082 4. A statement that the purchaser's contract with the exchange company is a contract  
1083 separate and distinct from the purchaser's contract with the developer; and

1084 5. A brief narrative description of the procedure ~~whereby~~ by which exchanges are  
1085 conducted.

1086 C. The public offering statement of a conversion time-share project shall also include the  
1087 following, which may take the form of an exhibit to the public offering statement:

1088 1. A specific statement of the amount of any initial or special fee, if any, due from the  
1089 purchaser of a time-share on or before settlement of the purchase contract and the basis of such  
1090 fee occasioned by the fact that the project is a conversion time-share project;

1091 2. Information on the actual expenditures, if available, made on all repairs, maintenance,  
1092 operation, or upkeep of ~~the any~~ building ~~or buildings in the project~~ within the last three years.  
1093 This information shall be set forth in a tabular manner within the proposed budget of the project.  
1094 If any such building ~~or buildings have~~ has not been occupied for a period of three years ~~then,~~  
1095 information shall be set forth for the period during which such building ~~or buildings were~~ was  
1096 occupied;

1097 3. A description of any provisions made in the budget for reserves for capital  
1098 expenditures and an explanation of the basis for such reserves occasioned by the fact that the  
1099 project is a conversion time-share project, or, if no provision is made for such reserves, a  
1100 statement to that effect; and

1101 4. A statement of the present condition of all structural components and major utility  
1102 installations in the building, which statement shall include the approximate dates of  
1103 construction, installations, and major repairs as well as the expected useful life of each such  
1104 item, together with the estimated cost, in current dollars, of replacing each such component.

1105 D. In the case of a conversion project, the developer shall give at least 90 days' notice to  
1106 each of the tenants of ~~the any~~ building ~~or buildings which that~~ the developer intends to submit to  
1107 the provisions of this chapter. During the first 60 days of such 90-day period, each of these  
1108 tenants shall have the exclusive right to contract for the purchase of a time-share from the unit  
1109 he occupies, but only if such unit is to be retained in the conversion project without substantial  
1110 alteration in its physical layout. Such notice shall be hand delivered or sent by first-class mail,  
1111 return receipt requested, and shall inform the tenants of the developer's intent to create a  
1112 conversion project. Such notice may also constitute the notice to terminate the tenancy as  
1113 provided for in § ~~55-222 55.1-xxx~~, except that, despite the provisions of § ~~55-222 55.1-xxx~~, a  
1114 tenancy from month to month may only be terminated upon 120 days' notice as set forth ~~herein~~  
1115 in this subsection when such termination is in regard to the creation of a conversion project. If,  
1116 however, a tenant so notified remains in possession of the unit he occupies after the expiration  
1117 of the 120-day period with the permission of the developer, in order to then terminate the  
1118 tenancy, such developer shall give the tenant a further notice as provided in § ~~55-222 55.1-xxx~~.

1119 The developer of a conversion project, shall, in addition to the requirements of § ~~55-~~  
1120 ~~391-1 55.1-xxx~~, include with the application for registration a copy of the notice required by this  
1121 subsection and a certified statement that such notice ~~which that~~ fully complies with the  
1122 provisions of this subsection shall be, at the time of the registration of the conversion project,

1123 mailed or delivered to each of the tenants in ~~the any~~ building ~~or buildings~~ for which registration  
1124 is sought.

1125 E. The developer shall amend the public offering statement to reflect any material  
1126 change in the time-share program or time-share project. If the developer has reserved in the  
1127 time-share instrument the right to add to or delete incidental benefits or alternative purchases,  
1128 the addition or deletion ~~thereof of such benefits or purchases~~ shall not constitute a material  
1129 change. Prior to distribution, the developer shall file with the Board the public offering  
1130 statement amended to reflect any material change.

1131 F. The Board may at any time require a developer to alter or supplement the form or  
1132 substance of the public offering statement to assure full and fair disclosure to prospective  
1133 purchasers. A developer may, ~~in its discretion~~, prepare and distribute a public offering statement  
1134 for each product offered or one public offering statement for all products offered.

1135 G. In the case of a time-share project located outside the Commonwealth, (i) the  
1136 developer may amend the public offering statement to reflect any additions or deletions of a  
1137 time-share project to the existing time-share program registered in the Commonwealth; and (ii)  
1138 similar disclosure statements required by other situs laws governing time-sharing may be  
1139 acceptable alternative disclosure statements.

1140 H. ~~The developer shall prepare and distribute to each prospective purchaser prior to the~~  
1141 ~~execution of a purchase contract for a registered alternative purchase, a copy of the public~~  
1142 ~~offering statement about which such alternative purchase relates. The public offering statement~~  
1143 ~~shall fully and accurately disclose the material characteristics of such alternative purchase. The~~  
1144 ~~public offering statement for an alternative purchase shall be filed with the Board and shall be in~~  
1145 ~~a form prescribed by its regulations, if any.~~

1146 ~~The public offering statement for an alternative purchase need not contain any~~  
1147 ~~information about the time share project, time share program or the time shares offered by the~~  
1148 ~~developer which was initially offered to such purchaser by the developer. If the developer so~~

1149 ~~elects, the public offering statement for an alternative purchase is not required to have any~~  
1150 ~~exhibits.~~

1151 ~~I.~~ The public offering statement may be in any format, including ~~a compact disc~~ any  
1152 electronic format, provided that the prospective buyer has available for review, along with  
1153 ample time for any questions and answers, a copy of the public offering statement prior to his  
1154 execution of a contract.

1155 **Drafting note: In subsection A, the phrase "otherwise no reference shall be**  
1156 **required of the developer or contained in the public offering statement" is stricken as**  
1157 **unnecessary. In subdivision A 2, the phrase "without limitation" is stricken following the**  
1158 **term "including" on the basis of § 1-218, which states that throughout the Code**  
1159 **"Includes' means includes, but not limited to." In subdivision A 5, the word "less" is**  
1160 **replaced with "no more" to include a net worth of \$250,000. In subdivision C 2 and**  
1161 **subsection D, the phrase "or buildings" is stricken after the word "building" on the basis**  
1162 **of § 1-277, which states that throughout the Code any word used in the singular includes**  
1163 **the plural. In subsection F, the phrase "in its discretion" is deleted as unnecessary.**  
1164 **Existing subsection H is recommended to be deleted on the basis of subsection C of**  
1165 **proposed § 55.1-xxx [§ 55-394.5], which specifically excludes this section from alternative**  
1166 **purchase provisions. In proposed subsection H, the term "compact disc" is stricken and**  
1167 **replaced with "electronic format" to account for modern technology.**

1168 ~~§ 55-374.1~~ 55.1-xxx. Certain advertising practices regulated.

1169 A. Any offering ~~which~~ that includes a gift or prize ~~must~~ shall disclose ~~therein~~ in such  
1170 offering, with the same prominence as such offer:

1171 1. The retail value of each gift or prize;

1172 2. The approximate odds against any given person obtaining each gift or prize if all  
1173 persons to whom the advertisement is disseminated do what is necessary to qualify for the  
1174 award of the gift or prize;

1175 3. If the number of gifts or prizes to be awarded is limited, a statement of the number of  
1176 gifts or prizes to be awarded or, in lieu ~~thereof~~ of such statement, the nature of such limitation;

1177 4. All rules, terms, requirements, and conditions ~~which must that shall~~ be fulfilled before  
1178 a prospective purchaser may claim any gift or prize, including whether the prospective  
1179 purchaser is required to attend a sales presentation in order to receive the gift or prize;

1180 5. The date upon which the offer expires; and

1181 6. A statement to the effect that the offer is being made for the purpose of soliciting the  
1182 purchase of a time-share, time-share interest, interval ownership, interval ownership interest,  
1183 vacation ownership, vacation ownership interest, or product, as appropriate.

1184 B. Any gift or prize offered in connection with an offering shall be delivered to the  
1185 prospective purchaser no later than the day the purchaser attends a sales presentation, if  
1186 required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a  
1187 time-share. In the event that the supply of gifts or prizes is exhausted at the time required for  
1188 delivery, the developer shall give the prospective purchaser a written, unconditional promise to  
1189 deliver such gift or prize no later than 30 days from the date required for delivery. If such gift or  
1190 prize is not obtainable, the developer shall deliver an item of equal or greater value.

1191 C. The offering or sale of any product registered with the Board is exempt from the  
1192 Virginia Securities Act (§ 13.1-501 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.),  
1193 the Subdivided Land Sales Act (§ 55-336 et seq.), Chapter 27.2 (§ 55-525.8 et seq.), the  
1194 Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), the Prizes and Gifts Act (§ 59.1-415  
1195 et seq.), and the Virginia Travel Club Act (§ 59.1-445 et seq.), ~~the Virginia Condominium Act~~  
1196 ~~(§ 55-79.39 et seq.), the Virginia Securities Act (§ 13.1-501 et seq.), the Virginia Home~~  
1197 ~~Solicitation Sales Act (§ 59.1-21.1 et seq.), the Subdivided Land Sales Act (§ 55-336 et seq.),~~  
1198 ~~Chapter 27.2 (§ 55-525.8 et seq.) of Title 55, and the Prizes and Gifts Act (§ 59.1-415 et seq.).~~

1199 **Drafting note: In subsection C, cross-references are reorganized into numerical**  
1200 **order. Technical changes.**

1201 ~~§ 55-374.2~~ 55.1-xxx. Exchange programs.

1202 A. Any exchange company ~~which~~ that offers an exchange program in the  
1203 Commonwealth shall prepare and register with the Board a disclosure document including, ~~but~~  
1204 ~~not limited to~~, the following:

1205 1. The name and address of the exchange company;

1206 2. The names and addresses of the top three officers, and all directors, of the exchange  
1207 company and, if the exchange company is privately held, all shareholders owning five percent  
1208 or more interest in the exchange company;

1209 3. Whether the exchange company or any of its officers or directors has any legal or  
1210 beneficial interest in any developer or managing agent for any time-share program participating  
1211 in the exchange program and, if so, the name and location of the time-share project and the  
1212 nature of the interest;

1213 4. Unless the exchange company is also the developer or an affiliate, a statement that the  
1214 purchaser's contract with the exchange company is a contract separate and distinct from the  
1215 sales contract;

1216 5. Whether the purchaser's participation in the exchange program is dependent upon the  
1217 continued affiliation of the time-share project with the exchange program;

1218 6. Whether the purchaser's membership or participation, or both, in the exchange  
1219 program is voluntary or mandatory;

1220 7. A complete and accurate description of the terms and conditions of the purchaser's  
1221 contractual relationship with the exchange company and the procedure by which changes in the  
1222 terms and conditions of the exchange contract may be made;

1223 8. A complete and accurate description of the procedure to qualify for and effectuate  
1224 exchanges;

1225 9. A complete and accurate description of all limitations, restrictions, or priorities  
1226 employed in the operation of the exchange program, including, ~~but not limited to~~, limitations on  
1227 exchanges based on seasonality, unit size, or levels of occupancy, expressed in ~~boldfaced~~

1228 ~~boldface~~ type, and, in the event that such limitations, restrictions, or priorities are not uniformly  
1229 applied by the exchange program, a clear description of the manner in which they are applied;

1230 10. Whether exchanges are arranged on a space available basis and whether any  
1231 guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

1232 11. Whether and under what circumstances an owner, in dealing with the exchange  
1233 company, may lose the use of occupancy of his time-share in any ~~properly applied for properly-~~  
1234 ~~applied-for~~ exchange, without being provided with substitute accommodations by the exchange  
1235 company;

1236 12. The fees or range of fees for participation by owners in the exchange program, a  
1237 statement of whether any such fees may be altered by the exchange company, and the  
1238 circumstances under which alterations may be made;

1239 13. The name and address of the site of each time-share property, accommodation, or  
1240 facility participating in the exchange program;

1241 14. The number of units in each property participating in the exchange program ~~which~~  
1242 ~~that~~ are available for occupancy and ~~which that~~ qualify for participation in the exchange  
1243 program, expressed within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51  
1244 and over;

1245 15. The number of owners with respect to each time-share program or other property  
1246 who are eligible to participate in the exchange program, expressed within the ~~following~~  
1247 ~~numerical groupings:~~ 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of  
1248 the criteria used to determine those owners currently eligible to participate in the exchange  
1249 program;

1250 16. The disposition made by the exchange company of time-shares deposited with the  
1251 exchange program by owners eligible to participate in the exchange program and not used by  
1252 the exchange company in effecting exchanges;

1253 17. The following information, which, except as provided in subsection B ~~of this section,~~  
1254 shall be independently audited by a certified public accountant or accounting firm in accordance

1255 | with the standards of the ~~Accounting-Auditing~~ Standards Board of the American Institute of  
1256 | Certified Public Accountants and reported for each year no later than July 1 of the succeeding  
1257 | year; ~~beginning no later than July 1, 1985~~:

1258 |         a. The number of owners enrolled in the exchange program. Such numbers shall disclose  
1259 | the relationship between the exchange company and owners as being either fee paying or  
1260 | gratuitous in nature;

1261 |         b. The number of time-share properties, accommodations, or facilities eligible to  
1262 | participate in the exchange program;

1263 |         c. The percentage of confirmed exchanges, which shall be the number of exchanges  
1264 | confirmed by the exchange company divided by the number of exchanges properly applied for,  
1265 | together with a complete and accurate statement of the criteria used to determine whether an  
1266 | exchange request was properly applied for;

1267 |         d. The number of time-shares for which the exchange company has an outstanding  
1268 | obligation to provide an exchange to an owner who relinquished a time-share during the year in  
1269 | exchange for a time-share in any future year; ~~and~~

1270 |         e. The number of exchanges confirmed by the exchange company during the year.

1271 |         18. A statement in ~~boldfaced boldface~~ type to the effect that the percentage described in  
1272 | subdivision 17 c-~~of this subsection~~ is a summary of the exchange requests entered with the  
1273 | exchange company in the period reported and that the percentage does not indicate a purchaser's  
1274 | or owner's probabilities of being confirmed to any specific choice or range of choices, since  
1275 | availability at individual locations may vary.

1276 |         B. The information required by subsection A shall be accurate as of a date ~~which that~~ is  
1277 | no more than 30 days prior to the date on which the information is delivered to the purchaser,  
1278 | except that the information required by ~~subsection subdivisions~~ subdivisions A, ~~subdivisions~~ 2, 12, 13, 14,  
1279 | 15, and 16 shall be accurate as of December 31 of the preceding year if the information is  
1280 | delivered between July 1 and December 31 of any year; information delivered between January  
1281 | 1 and June 30 of any year shall be accurate as of December 31 of the year prior to the preceding

1282 year. At no time shall such information be accurate as of a date ~~which that~~ is more than ~~eighteen~~  
1283 18 months prior to the date of delivery. ~~All references As used~~ in this section ~~to the word,~~ "year"  
1284 ~~shall mean means~~ calendar year.

1285 C. In the event that an exchange company offers an exchange program directly to the  
1286 purchaser, the exchange company shall deliver to such purchaser, simultaneously with such  
1287 offering and prior to the execution of any contract between the purchaser and the exchange  
1288 company, the information set forth in subsection A, ~~above~~. The requirements of this subsection  
1289 shall not apply to any renewal of a contract between a purchaser and an exchange company.

1290 D. Each exchange company ~~must shall~~ include the statement set forth in subdivision A  
1291 ~~18-of subsection A~~ on all promotional brochures, pamphlets, advertisements, or other materials  
1292 disseminated by the exchange company ~~which that~~ also contain the percentage of confirmed  
1293 exchanges described in subdivision A 17 c-~~of subsection A~~.

1294 E. An exchange company shall, on or before July 1 of each year, file with the Board and  
1295 the association for the time-share program in which the time-shares are offered or disposed, the  
1296 information required by this section with respect to the preceding year. If the Board determines  
1297 that any of the information supplied fails to meet the requirements of this section, the Board  
1298 may undertake enforcement action against the exchange company in accordance with the  
1299 provisions of Article 6 (§ ~~55-396 55.1-xxx~~ et seq.) ~~of this chapter~~. No developer shall have any  
1300 liability arising out of the use, delivery, or publication by the developer of written information  
1301 provided to it by the exchange company pursuant to this section. Except for written information  
1302 provided to the developer by the exchange company, no exchange company shall have any  
1303 liability with respect to (i) any representation made by the developer relating to the exchange  
1304 program or exchange company, or (ii) the use, delivery, or publication by the developer of any  
1305 information relating to the exchange program or exchange company. The failure of the  
1306 exchange company to observe the requirements of this section, or the use by it of any unfair or  
1307 deceptive act or practice in connection with the operation of the exchange program, shall be a  
1308 violation of this section.

1309 F. The Board may establish by regulation reasonable fees for registration of the  
1310 exchange company disclosure document. All fees shall be remitted by the Board to the State  
1311 Treasurer ~~of the Commonwealth~~, and shall be placed to the credit of the Common Interest  
1312 Community Management Information Fund established pursuant to § ~~55-529~~ 54.1-xxx.

1313 **Drafting note: In subsection A and subdivision A 9, the phrase "but not limited to"**  
1314 **is stricken following the term "including" on the basis of § 1-218, which states that**  
1315 **throughout the Code "'Includes' means includes, but not limited to." In subdivision A 17,**  
1316 **the reference to the "Accounting Standards Board" is updated to the correct reference to**  
1317 **the "Auditing Standards Board," and the reference to 1985 is deleted as obsolete.**  
1318 **Technical changes are made.**

1319 § ~~55-375~~ 55.1-xxx. Escrow of deposits.

1320 A. Any deposit made in connection with the purchase or reservation of a product shall be  
1321 held in escrow. All cash deposits shall be held in a separate bank account labeled and designated  
1322 solely for that purpose.

1323 Such escrow account shall be insured by an instrumentality of the federal government  
1324 and located in ~~Virginia~~ the Commonwealth. All deposits shall be held in escrow until (i)  
1325 delivered to the developer upon expiration of the purchaser's cancellation period, provided that  
1326 the purchaser's right of cancellation has not been exercised; (ii) delivered to the developer  
1327 because of the purchaser's default under a contract to purchase a time-share; or (iii) refunded to  
1328 the purchaser. Failure to establish escrow accounts or to make the deposits as required by this  
1329 section is prima facie evidence of willful violation of this section.

1330 B. The developer shall disclose in the contract or in the public offering that the deposit  
1331 may not be held in escrow after expiration of the cancellation period and that such deposit is not  
1332 protected as an escrow after expiration of the cancellation period. ~~This~~ Such disclosure shall  
1333 include a statement of whether or not the developer reserves the option to sell or assign any  
1334 promissory note given by a purchaser to another entity, whether or not such entity is affiliated

1335 with the developer. Both disclosures shall appear in ~~boldfaced~~ boldface type of a minimum size  
1336 of 10 points.

1337 C. There shall be filed with the ~~Common Interest Community~~ Board a bond, letter of  
1338 credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in  
1339 favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount  
1340 equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater.  
1341 Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-  
1342 shares in the project. The bond shall be with a surety company authorized to do business in  
1343 Virginia the Commonwealth.

1344 **Drafting note: In subsection C, "Common Interest Community" is stricken before**  
1345 **"Board" based on the chapter-wide definition of "Board" in § 55.1-xxx [§ 55-362].**  
1346 **Technical changes are made.**

1347 ~~§ 55-376~~ 55.1-xxx. Purchaser's rights of cancellation.

1348 A. A purchaser shall have the right to cancel the contract until midnight of the seventh  
1349 calendar day following the execution of such contract. If the seventh calendar day falls on a  
1350 Sunday or legal holiday, then the right to cancel the contract shall expire on the day immediately  
1351 following that Sunday or legal holiday. Cancellation ~~is to~~ shall be without penalty, and all  
1352 payments made by the purchaser before cancellation ~~must~~ shall be refunded within ~~forty five~~ 45  
1353 days after receipt of the notice of cancellation.

1354 B. If the purchaser elects to cancel a contract pursuant to subsection A, he shall ~~only~~ do  
1355 so ~~either~~ only (i) by hand-delivering the notice to the developer at its principal office or at the  
1356 project or (ii) by mailing the notice by certified United States mail, return receipt requested, to  
1357 the developer or its agent designated in the contract. Any such notice sent by certified mail shall  
1358 be effective on the date postmarked.

1359 C. If, because of the occurrence of a material change, the public offering statement is  
1360 amended between the time of contracting to purchase a time-share and the time of settlement,  
1361 the developer shall provide the amended public offering statement to the purchaser and the right

1362 of cancellation shall renew from the date of delivery of such amended public offering statement.  
1363 This subsection shall not apply if the public offering statement is amended by the developer  
1364 because of a change ~~which that~~ is not material or to disclose any change ~~which that~~ is an aspect  
1365 or result of the orderly development of the time-share project in accordance with the project  
1366 instrument.

1367 D. The right to cancel the contract as provided by this section shall not be waivable by  
1368 the time-share purchaser and any provision in the contract or time-share documents indicating a  
1369 waiver shall be void.

1370 E. A statement of the purchaser's right of cancellation as set forth in subsections A and B  
1371 shall appear in the contract above the purchaser's signature line. Such statement shall appear in  
1372 type no smaller than any other provisions of the contract, and the caption "PURCHASER'S  
1373 NONWAIVABLE RIGHT TO CANCEL" shall appear immediately preceding it in  
1374 conspicuous, ~~bold face~~ boldface type.

1375 **Drafting note: Technical changes.**

1376 § ~~55-376.1~~ 55.1-xxx. Possibility of reverter.

1377 A. A possibility of reverter contained in a reverter deed for a time-share estate subject to  
1378 reverter is valid, is enforceable in law and in equity, and shall operate to transfer title to the  
1379 time-share estate from each grantee ~~therein in such deed~~ back to the developer, provided that the  
1380 following conditions are satisfied:

1381 1. The reverter deed from the developer contains the possibility of reverter by insertion  
1382 of the language required by subsection E;

1383 2. A grantee in the reverter deed is in default and has been provided ~~thereafter~~ after such  
1384 default with at least two written notices to this effect with no less than a 10-calendar day right to  
1385 cure in each notice;

1386 3. A grantee in the reverter deed has been provided with no less than 30 calendar days  
1387 within which to cure the default before exercise of the possibility of reverter occurs;

1388 4. At the time of exercise of the possibility of reverter, the developer is the sole holder of  
1389 the note and the sole beneficiary under the deed of trust;

1390 5. The exercise by the developer of the possibility of reverter is evidenced by an  
1391 affidavit duly recorded where the reverter deed was recorded ~~which that~~ contains the following  
1392 information:

1393 a. A description of the time-share project and time-share estate and a statement that,  
1394 upon recordation of the affidavit, title to such time-share estate reverts back to the developer;

1395 b. A description and recitation of the reverter deed ~~which that~~ contained the possibility  
1396 of reverter and a reference of when and where such deed was recorded and its recording  
1397 information;

1398 c. A recitation that the purchaser defaulted in or violated a consumer document and  
1399 failed to cure such default or violation within a period of no less than 30 calendar days;

1400 d. A description of the note and deed of trust with a recitation that (i) the developer is the  
1401 sole holder of the note and the sole beneficiary under the deed of trust, (ii) such note is ~~cancelled~~  
1402 ~~canceled~~ and declared void, and (iii) such deed of trust is automatically released;

1403 e. A recitation that such purchaser's rights and entitlements in the time-share estate, the  
1404 time-share project, and the time-share program are extinguished effective the date of recordation  
1405 of the affidavit;

1406 f. The signature of a duly authorized representative of the developer verified under oath  
1407 as to its truth of the statements contained ~~therein in such affidavit~~; and

1408 6. A copy of the recorded affidavit described in subdivision A 5 is sent by the developer  
1409 to each purchaser at his address as maintained by the developer or the association, along with  
1410 the statement from the developer explaining the consequences of such affidavit with emphasis  
1411 on ~~subparts subdivisions A 5 a, d, and e of subdivision A-5~~.

1412 B. The recordation of the affidavit referred to in subdivision A 5 shall automatically:

1413 1. Transfer title to the time-share estate from each grantee in the reverter deed to the  
1414 developer without the need of a deed to the developer or consent from such grantee;

1415           2. Declare null and void and act as an automatic release of the deed of trust or mortgage  
1416 given by such grantee to finance a portion of the purchase price of the time-share estate with no  
1417 deficiency resulting;

1418           3. Void and act as an automatic release of any debt from such grantee to the developer  
1419 arising out of the purchase or financing of the time-share estate as evidenced by the note; and

1420           4. Extinguish any ownership or other property right or entitlements such grantee has in  
1421 and to the time-share estate, the time-share project, and the time-share program.

1422           C. The clerk of the court shall record such affidavit in the land books where the time-  
1423 share project is located, indexing the purchaser in the grantor indices and the developer in the  
1424 grantee indices. For indexing purposes only, the purchaser shall be referred to as the grantor and  
1425 the developer as the grantee. The cost of recording the affidavit shall be limited to the clerk's fee  
1426 only.

1427           D. In the exercise of the possibility of reverter, the developer shall be liable to the  
1428 purchaser for ~~his~~ the developer's failure to comply with the provisions of this section; however,  
1429 such failure shall not operate to defeat or diminish the transfer of title to the time-share estate  
1430 from each grantee in the reverter deed to the developer upon recordation of the affidavit referred  
1431 to in subdivision A 5. The developer's liability shall be limited to the amount paid by such  
1432 purchaser ~~towards~~ toward the purchase price of the time-share estate, exclusive of interest and  
1433 closing costs but without offset for the purchaser's utilization of the time-share program. The  
1434 court shall award court costs and reasonable ~~attorney's~~ attorney fees to the prevailing party.

1435           E. The reverter deed shall contain the following statement in order to possess the  
1436 possibility of reverter. The opening phrase shall be in ~~bold face~~, 10-point boldface type as  
1437 follows:

1438           "Loss of Time-Share Estate. Developer has inserted into this deed a "possibility of  
1439 reverter." By this concept, should a grantee of this reverter deed default in or violate an  
1440 obligation imposed by a consumer document for a period of at least 60 days and fail to cure  
1441 such violation or default within no less than 30 calendar days thereafter, title to the time-share

1442 will revert back to the developer upon the developer recording an affidavit to this effect where  
1443 this reverter deed is recorded. Only the developer can elect to exercise the possibility of reverter.  
1444 Each grantee in this reverter deed will be sent at least two notices of default or violation within  
1445 the 30-day period with no less than 10 days to cure in each instance. The notice will be sent to  
1446 the address of each grantee maintained at the office of the developer or the association. After the  
1447 cure period has lapsed and the developer records the affidavit, title to the time-share estate will  
1448 automatically vest in the developer and any note executed by grantee will be deemed canceled  
1449 and any recorded deed of trust securing such note shall be automatically released. The  
1450 possibility of reverter will itself lapse and become null and void at the soonest to occur of the  
1451 following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is  
1452 released of record is executed and recorded by the developer with a date of when the possibility  
1453 of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either  
1454 the Virginia Real Estate Time-Share Act or the time-share instrument which created such  
1455 program."

1456 F. The filing of the affidavit referred to in subdivision A 5 shall not result in the  
1457 requirement of any filing under Chapter 12 (§ 64.2-1200 et seq.) of Title 64.2.

1458 G. Any possibility of reverter not otherwise exercised by the developer pursuant to this  
1459 section shall itself lapse and become null and void at the soonest to occur of the following: (i)  
1460 the deed of trust is released of record, (ii) a statement that the deed of trust is released of record  
1461 is executed and recorded by the developer with a date of when the possibility of reverter was or  
1462 is to lapse, or (iii) when the time-share program terminates pursuant to either this chapter or the  
1463 time-share instrument.

1464 H. In exercising the possibility of reverter, the developer shall be entitled to retain as  
1465 liquidated damages all ~~monies~~ moneys paid by the purchaser in conformity with any consumer  
1466 document.

1467 I. The exercise of the possibility of reverter shall not operate to diminish or eliminate (i)  
1468 any debt of the purchaser to the time-share association or other third party occasioned by

1469 ownership of the time-share estate or participation in the time-share program or (ii) any  
1470 recorded lien junior in priority to the deed of trust lien referred to in this section.

1471 **Drafting note: Technical changes are made.**

1472 § ~~55-376.2~~ 55.1-xxx. Recording and delivery of deed.

1473 At such time as the time-share estate purchaser has fulfilled all of his obligations under  
1474 the contract and is entitled to a deed for his time-share estate, the developer shall file or cause to  
1475 be filed within 180 days ~~therefrom~~ after such date, with the clerk of the circuit court where the  
1476 time-share project is located, such deed for recordation. Upon receipt of the recorded deed  
1477 returned from the clerk's office, the developer shall, within 45 days ~~therefrom~~ after such receipt,  
1478 send or cause to be sent the original deed to the time-share estate purchaser.

1479 **Drafting note: Technical changes.**

1480 § ~~55-376.3~~ 55.1-xxx. Liability limited; liability actions prohibited.

1481 A. Except as provided in subsection B, a project professional is not liable for injury to or  
1482 death of a participant resulting from the inherent risks of project ~~activities~~ activity, so long as  
1483 the warning contained in § ~~55-376.4~~ 55.1-xxx is posted as required. Except as provided in  
1484 subsection B, no participant or participant's representative may maintain an action against or  
1485 recover from a project professional for injury, loss, damage, or death of the participant resulting  
1486 exclusively from any of the inherent risks of project ~~activities;~~ activity, provided that in any  
1487 action for damages against a project professional for a project activity, the project professional  
1488 shall plead the affirmative defense of assumption of the ~~risk~~ inherent risks of project activity by  
1489 the participant.

1490 B. Nothing in subsection A shall prevent or limit the liability of a project professional if  
1491 the project professional does any one or more of the following:

1492 1. Commits an act or omission that constitutes negligence or willful or wanton disregard  
1493 for the safety of the participant, and that act or omission proximately causes injury, damage, or  
1494 death to the participant;

1495           2. Has actual knowledge or reasonably should have known of a dangerous condition on  
1496 the land or in the facilities or equipment used in the project activity, or the dangerous propensity  
1497 of a particular animal used in such activity, and does not make the danger known to the  
1498 participant, and the danger proximately causes injury, damage, or death to the participant; or

1499           3. Intentionally injures the participant.

1500           C. Any limitation on legal liability afforded by this section to a project professional is in  
1501 addition to any other limitations of legal liability otherwise provided by law.

1502           **Drafting note: In subsection A, three text references are put in the consistent form**  
1503 **"inherent risks of project activity" for accuracy, as "inherent risks of project activity" is a**  
1504 **defined term.**

1505           § ~~55-376.4~~ 55.1-xxx. Warning required.

1506           A. The developer, association, or other project professional shall post and maintain signs  
1507 that contain the warning notice specified in subsection B. One sign shall be placed in a clearly  
1508 visible location at the entrance to the project and another at the site of the project activity. The  
1509 warning notice shall consist of a sign in black letters, with each letter to be a minimum of one  
1510 inch in height. Every written contract entered into by a project professional for the providing of  
1511 professional services, instruction, or the rental of equipment to a participant, whether or not the  
1512 contract involves project activities on or off the time-share project or at the site of the project  
1513 activity, shall contain in clearly readable print the warning notice specified in subsection B.

1514           B. The signs and contracts described in subsection A shall contain the following notice  
1515 of warning:

1516           "WARNING: Under Virginia law, there is no liability for an injury to or death of a  
1517 participant in a project activity conducted at this location if such injury or death results from the  
1518 inherent risks of ~~the~~ project activity. Inherent risks of project ~~activities~~ activity include, among  
1519 others, risks of injury inherent to land, equipment, and animals, as well as the potential for you  
1520 to act in a negligent manner that may contribute to your injury or death. You are assuming the  
1521 risk inherent risks of participating in this project activity."

1522 C. Failure to comply with the requirements concerning warning signs and notices  
1523 provided in this section shall prevent a project professional from invoking the privileges of  
1524 immunity provided by this chapter.

1525 **Drafting note: In subsection B, three text references in the notice of warning are**  
1526 **put in the consistent form "inherent risks of project activity" for accuracy, as "inherent**  
1527 **risks of project activity" is a defined term.**

1528 ~~§ 55-376.5~~ 55.1-xxx. Buyer's Acknowledgment.

1529 A. Prior to the execution of a purchase contract, a purchaser shall be given a separate  
1530 written document, titled "Buyer's Acknowledgment," to be signed by the purchaser and a  
1531 representative of the developer other than the salesperson for the transaction.

1532 B. The Buyer's Acknowledgment shall contain the following:

1533 1. The name and address of the developer;

1534 2. The name and address of the time-share project;

1535 3. Whether the developer currently offers a resale or rental program or a buy-back  
1536 program; and

1537 4. The following statement in at least 10-point boldface type:

1538 "There is no assurance that a purchaser may resell a time-share for a certain price or on  
1539 particular terms. By signing below, purchaser acknowledges that this purchase is (i) for personal  
1540 use and enjoyment and not for commercial or investment purposes and (ii) not being made  
1541 based upon any representation that the time-share has any future market value or resale  
1542 potential."

1543 **Drafting note: No change.**

1544 ~~§ 55-377. Repealed.~~

1545 **Drafting note: Repealed by Acts 1985, c. 517.**

1546 ~~§ 55-379. Repealed.~~

1547 **Drafting note: Repealed by Acts 1994, c. 580.**

1548 ~~§ 55-380~~ 55.1-xxx. Resale of time-shares.

1549           A. In the event of any resale of a time-share by a time-share owner, other than the  
1550 developer, such owner shall obtain from the developer or managing agent in the case of a time-  
1551 share use program or from the time-share estate owners' association in the case of a time-share  
1552 estate program and furnish to the purchaser prior to settlement on an executed agreement to  
1553 purchase the time-share, a certificate of resale ~~which~~ that shall include the following:

1554           1. A statement disclosing the effect on the proposed transfer of any right of first refusal  
1555 or other restraint on transfer of the time-share or any portion ~~thereof~~ of such time-share;

1556           2. A copy of the time-share instrument;

1557           3. A copy of the current bylaws and rules and regulations of the time-share estate  
1558 owners' association, if any, and the amendments ~~thereto~~ to such bylaws, rules, or regulations;

1559           4. A copy of the current annual report prepared pursuant to § ~~55-370.1~~ 55.1-xxx;

1560           5. A statement setting forth the amount of any expense liability and unpaid time-share  
1561 expense or special assessment currently due and payable from the selling time-share owner,  
1562 including the disclosures of any liens against the time-share due to the nonpayment of such fees  
1563 or charges;

1564           6. A statement of the nature and status of any known and pending suits or judgments  
1565 against the developer, managing entity, or time-share owners' association with reference to the  
1566 time-share project; and

1567           7. A copy of a Buyer's Acknowledgment form required by § ~~55-376.5~~ 55.1-xxx.

1568           B. The developer, managing agent, or such officer of the time-share owners' association  
1569 as the bylaws may specify, shall furnish the certificate of resale prescribed by subsection A  
1570 ~~hereof~~ upon the written request of any purchaser within 30 days of the receipt of such request.

1571 Payment of the reasonable costs of preparing the certificate may be required as a prerequisite to  
1572 the issuance of the certificate, but such fee shall not exceed \$50.

1573           C. A time-share owner providing a certificate pursuant to subsection A is not liable to  
1574 the purchaser for any erroneous information included in the certificate, other than for judgment  
1575 liens against the time-share being sold.

1576 D. A purchaser is not liable for any unpaid time-share expense liability or fee greater  
1577 than the amount set forth in the certificate prepared in conformity with subsection A. A time-  
1578 share owner is not liable to a purchaser for the failure or delay of the provider to provide the  
1579 certificate in a timely manner, but the purchase contract is voidable by the purchaser until the  
1580 certificate has been provided and for five days ~~thereafter~~ after the certificate has been provided  
1581 or until transfer, whichever occurs first.

1582 E. All rights of redress of a purchaser against a selling time-share owner, the developer,  
1583 the managing agent, or the association for the failure to obtain or receive the statement required  
1584 by subsection A are conclusively waived upon settlement on the time-share occurring.

1585 F. The responsibilities imposed by this section on the developer, managing agent, time-  
1586 share estate owners' association, or selling time-share owner shall not be waived.

1587 **Drafting note: Technical changes.**

1588 § ~~55-380.1~~ 55.1-xxx. Required resale disclosures.

1589 A. In addition to the requirements of § ~~55-394.1~~ 55.1-xxx, before receiving anything of  
1590 value for providing or offering to provide a resale service, a reseller shall disclose in writing to  
1591 the owner of a resale time-share:

- 1592 1. The name and permanent business address of the reseller;
- 1593 2. A commencement and transaction date for such resale service;
- 1594 3. The names and addresses of any affiliates and the primary website address used by the  
1595 reseller and such affiliates to be used to promote the resale time-share;
- 1596 4. Whether the reseller's rights are exclusive and, if so, the scope of such rights and  
1597 length of the exclusivity period;
- 1598 5. Whether any person, other than the owner, may occupy, rent, exchange, or use the  
1599 resale time-share during the resale service;
- 1600 6. The name of any person other than the owner who will receive any rent or other  
1601 consideration from the use of the resale time-share during the resale service;

1602 7. A description of each resale service to be provided and the fees, costs, or commissions  
1603 for each;

1604 8. A description sufficient to identify the resale time-share;

1605 9. The jurisdiction issuing the license for any services by a licensed real estate broker or  
1606 salesperson; and

1607 10. The following in at least 10-point ~~conspicuous~~ boldface type:

1608 a. The ratio of (i) the number of resale time-shares listed for sale to the number of resale  
1609 time-shares actually sold by the reseller for each of the past two calendar years or (ii) the total  
1610 amount of advance fees collected compared with the total amount of fees and commissions  
1611 received by the reseller upon sale of resale time-shares for the past two calendar years ~~and,~~  
1612 followed by this statement: "Do not rely on past performance as an indicator of the likelihood of  
1613 sale of your time-share."; and

1614 b. If the retail service is limited to the placement of advertisements, this statement:  
1615 "There is no guarantee that you will sell your time-share at all or within any period of time by  
1616 placing this advertisement. Our only obligation to you is to post your advertisement on our  
1617 website for the agreed length of time and forward all inquiries we receive to you."

1618 B. A resale transfer contract shall include the following disclosures by the reseller:

1619 1. The disclosures required by subdivisions A 1 through ~~A~~ 7;

1620 2. A description legally sufficient for the transfer of the resale time-share;

1621 3. A description of the document by which the owner is to (i) grant rights in the resale  
1622 time-share to the reseller or any other person, including a power of attorney or similar  
1623 document, and (ii) transfer the resale time-share to a subsequent purchaser;

1624 4. Any fees or costs the time-share owner is required to pay or reimburse to the reseller  
1625 or transfer company to complete the transfer;

1626 5. The date by which the transfer of the resale time-share from the owner to the reseller,  
1627 a third person, or a subsequent purchaser will be completed, not to exceed 180 days from the  
1628 effective date of the resale transfer contract;

1629           6. If the resale time-share will be transferred to a transferee other than a subsequent  
1630 purchaser, the contact information of such transferee;

1631           7. A statement that the reseller will (i) provide the owner written evidence of transfer of  
1632 the resale time-share to a subsequent purchaser within 30 days of such transfer and (ii) send  
1633 notice of the transfer to the association and managing entity of the time-share program for the  
1634 resale transfer and any exchange company in which the resale time-share was enrolled; and

1635           8. The following statements in 10-point boldface type:

1636           a. "No later than 180 days from the date of this agreement, we will transfer your time-  
1637 share to another person. If transfer does not occur within that period, we will pay or reimburse  
1638 to you the cost of ownership of your time-share for that period. If we breach our agreement, you  
1639 will continue to be responsible for such cost of ownership."; and

1640           b. "Your time-share may be sold at any price by us without your approval. If sold for a  
1641 price in excess of our fee, we have no obligation to send you the excess."

1642           C. A resale purchase contract shall require the reseller to obtain the certificate of resale  
1643 described in subsection A of ~~§ 55-380~~ 55.1-xxx and shall also include the following:

1644           1. A description legally sufficient for transfer of the resale time-share;

1645           2. The name and address of the developer or managing agent for a time-share use project  
1646 or the association for a time-share estate project;

1647           3. Identification of the party responsible for notifying the developer, managing entity,  
1648 association, or exchange company, as the case may be, of the transfer of the resale time-share;

1649           4. Identification of the first year in which the subsequent purchaser is entitled to use and  
1650 occupy the resale time-share; and

1651           5. The following statement in 10-point boldface type: "A certificate of resale is required  
1652 to be provided to you containing important documents concerning the time-share project for  
1653 your review. Settlement waives the right to receipt of such information."

1654           **Drafting note: In subdivision A 10, the word "conspicuous" is replaced with**  
1655 **"boldface" for consistency throughout this chapter. Technical changes are made.**

1656 § ~~55-381~~ 55.1-xxx. Liens.

1657 A. In the case of time-share estate transfers, unless the purchaser expressly agrees to take  
1658 subject to or assume a lien prior to transferring a time-share estate other than by deed in lieu of  
1659 foreclosure, the developer shall either: (i) record or furnish to the purchaser as part of  
1660 settlement, releases of all liens affecting that time-share estate, or (ii) provide a surety bond or  
1661 title insurance against the lien, as provided for liens on real estate in ~~this the~~ the Commonwealth.

1662 B. Unless a time-share owner or his predecessor in title agrees otherwise with the lienor,  
1663 if a lien other than an underlying mortgage or deed of trust becomes effective against more than  
1664 one time-share in a time-share project, any time-share owner is entitled to a release of a time-  
1665 share from the lien upon payment of the amount of the lien attributable to the time-share. The  
1666 amount of the payment shall be proportionate to the ratio that the time-share owner's liability  
1667 bears to the liabilities of all time-share owners whose interests are subject to the lien. Upon  
1668 receipt of payment, the lien-holder shall promptly deliver to the time-share owner a release of  
1669 the lien covering that time-share. After payment, the managing entity may not assess or have a  
1670 lien against that time-share for any portion of the expenses incurred in connection with that lien.

1671 **Drafting note: Technical changes.**

1672 § ~~55-382~~ 55.1-xxx. Effect of violations on rights of action; ~~attorney's attorney~~ fees; prior  
1673 determination of ~~Real Estate Common Interest Community~~ Board required for certain  
1674 violations.

1675 A. If a developer or any other person subject to this chapter violates any provision ~~hereof~~  
1676 of this chapter or any provision of the time-share instrument, any person or class of persons  
1677 adversely affected by the violation has a claim for appropriate relief. The court may also award  
1678 reasonable ~~attorney's attorney~~ fees to the prevailing party.

1679 B. Prior to the commencement of any action alleging a failure to comply with the  
1680 provisions of § ~~55-375~~ 55.1-xxx or ~~55-386~~ 55.1-xxx, however, an aggrieved owner shall first  
1681 seek a determination from the Board as to whether compliance with § ~~55-375~~ 55.1-xxx or ~~55-~~

1682 ~~386~~ 55.1-xxx has occurred. The Board shall make such determination within 120 days of the  
1683 request ~~therefore~~ for a determination.

1684 **Drafting note: In the catchline, "Real Estate" is stricken and replaced with**  
1685 **"Common Interest Community" for accuracy, as the Common Interest Community Board**  
1686 **is the proper agency making determinations pursuant to this section. Technical changes**  
1687 **are made.**

1688 § ~~55-383~~ 55.1-xxx. Statute of limitations; actions; limitation on rescission rights.

1689 A. Except as otherwise provided in § ~~55-389~~ 55.1-xxx, a judicial proceeding where the  
1690 sufficiency of the time-share instrument, the accuracy of the public offering statement, or  
1691 validity of any contract of purchase is in issue and a rescission of the contract or damages is  
1692 sought shall be commenced within two years after the date of the contract of purchase,  
1693 notwithstanding that the purchaser's terms of payments may extend beyond this period of  
1694 limitation; however, with respect to the enforcement of provisions in the contract of purchase  
1695 ~~which~~ that require the continued furnishing of services and the reciprocal payments to be made  
1696 by the purchaser, the period of bringing a judicial proceeding ~~will~~ shall continue for a period of  
1697 two years for each breach.

1698 Rescission of the contract shall not be granted by the court unless (i) the inaccuracy of  
1699 the public offering statement or the insufficiency of the time-share instrument directly and  
1700 adversely affected the purchaser's right to participate in the time-share program or to own his  
1701 time-share or (ii) at the time of the contract, the developer has sold more time-shares than there  
1702 are time-share units that have been completed or bonded to accommodate such sales. Further, if  
1703 damages are awarded, the amount of the damages shall be limited to actual damages sustained.

1704 B. If a developer has substantially complied in good faith with the provisions of this  
1705 chapter, a nonmaterial error or omission shall not be actionable. A nonmaterial error or omission  
1706 shall not be sufficient to permit a purchaser to cancel a contract after the cancellation period  
1707 provided by § ~~55-376~~ 55.1-xxx has expired.

1708 **Drafting note: No change.**

1709 § ~~55-384~~ 55.1-xxx. Class actions.

1710 A. No time-share owner can bring an action on behalf of other time-share owners unless  
1711 he has received the written authorization to represent all other time-share owners within the  
1712 project.

1713 B. Notwithstanding the provisions of subsection A ~~of this section~~, the association may  
1714 bring an action on behalf of the time-share owners with the authorization of the time-share  
1715 owners within the project upon the two-thirds majority vote of the board of directors, if such  
1716 action is found to be in the best interest of the association.

1717 C. For purposes of this section, the developer shall not be deemed a time-share owner  
1718 and his written permission shall not be required.

1719 **Drafting note: Technical change.**

1720 § ~~55-385~~ 55.1-xxx. Financial records.

1721 The person or entity responsible for either making or collecting common expense  
1722 assessments or maintenance assessments shall keep detailed financial records. All financial and  
1723 other records shall be made reasonably available at such person's or entity's office for  
1724 examination by any time-share owner and his authorized agents.

1725 **Drafting note: No change.**

1726 § ~~55-386~~ 55.1-xxx. Developer's obligation to complete.

1727 A. The developer shall complete all promised and incomplete units and common  
1728 elements being offered and described in the time-share instrument and the public offering  
1729 statement. The developer shall be excused for ~~the any~~ any period ~~or periods~~ of delay in the  
1730 completion of such promised units and common elements when delayed, hindered, or prevented  
1731 from doing so by causes beyond the developer's control, which shall include: (i) labor disputes  
1732 not caused by the developer; (ii) riots; (iii) civil commotion or insurrection; (iv) war or warlike  
1733 operations; (v) governmental restrictions, regulations, or control; (vi) inability to obtain any  
1734 materials or services; (vii) fire or other casualties; (viii) acts of God; or (ix) forces not under the  
1735 control or supervision of the developer.

1736 B. The developer shall file with the Board a payment and performance bond in the sum  
1737 equal to 100 percent of the estimated cost of completing all promised and incomplete units and  
1738 common elements comprising the time-share project described in the time-share instrument and  
1739 the public offering statement. Such bond shall be conditioned upon the completion of such units  
1740 and common elements in conformity with the plans and specifications for such improvements.  
1741 The bond shall be with a surety company authorized to do business in the Commonwealth. The  
1742 Board may accept cash or an irrevocable letter of credit in lieu of the bond required by this  
1743 section. The Board shall be the sole determiner of the form, amount, content, obligee, and  
1744 conditions of the letter of credit. Should it become necessary for the Board to call upon the letter  
1745 of credit in order to assure completion of the improvements, the Board shall have the authority  
1746 to petition a court of competent jurisdiction to appoint a receiver to administer such completion.

1747 **Drafting note: In subsection A, the phrase "or periods" is stricken after the word**  
1748 **"period" on the basis of § 1-277, which states that throughout the Code any word used in**  
1749 **the singular includes the plural. A technical change is made.**

1750 Article 4.

1751 Financing.

1752 **Drafting note: Existing Article 4, containing provisions related to the financing of**  
1753 **time-share programs, is retained as proposed Article 4.**

1754 § ~~55-387.55.1-xxx~~. Financing of time-share programs.

1755 In the developer's financing of a time-share program, the developer shall retain financial  
1756 records of the schedule of payments required to be made and the payments made by it to any  
1757 person or entity ~~which~~ that is the holder of an underlying blanket mortgage, deed of trust,  
1758 contract of sale, or other lien or encumbrance.

1759 **Drafting note: Technical change.**

1760 § ~~55-388.55.1-xxx~~. Purchaser's rights under developer's foreclosure.

1761 The developer whose project is subject to an underlying blanket lien or encumbrance  
1762 shall protect a nondefaulting purchaser from foreclosure or cancellation by the lien holder by

1763 securing from such lien holder or ~~placing of record~~ recording of a nondisturbance clause,  
1764 subordination agreement, or partial release of the lien as to that time-share sold to such  
1765 purchaser.

1766 **Drafting note: Technical change.**

1767 § ~~55-389~~ 55.1-xxx. Protection of lien holder.

1768 Any lien holder of a time-share interest in any time-share program shall have the  
1769 following rights:

1770 1. The lien holder shall have its lien rights preserved as against any purchaser of a time-  
1771 share who claims that the time-share instrument is invalid, void, or voidable, ~~thirty~~ 30 days after  
1772 written notice by certified mail or personal delivery has been given by the developer or lien  
1773 holder to the purchaser. The notice ~~must~~ shall state that the developer has assigned the  
1774 receivables to the lien holder and that the purchaser has ~~thirty~~ 30 days within which to object  
1775 and specify the invalidity or defect contained within such time-share instrument. The notice  
1776 required by this section may be included in the blanket encumbrance, in the contract, or in any  
1777 note, deed of trust, or mortgage executed by the purchaser in connection with the purchaser's  
1778 deferred purchase of a time-share.

1779 2. Any purchaser who fails to indicate that the time-share instrument is invalid, void, or  
1780 voidable as provided in subdivision 1 waives, or is estopped to raise, the same in any subsequent  
1781 enforcement of the collection of the receivable by the lien holder.

1782 **Drafting note: Technical changes.**

1783 Article 5.

1784 Registration.

1785 **Drafting note: Existing Article 5, containing provisions related to the registration of**  
1786 **time-share programs, is retained as proposed Article 5.**

1787 § ~~55-390~~ 55.1-xxx. Registration of time-share program required.

1788 A. A developer may not offer or dispose of any interest in a time-share program unless  
1789 the time-share project and its program have been properly registered with the Board. A

1790 developer may accept a nonbinding reservation together with a deposit if the deposit is placed in  
1791 an escrow account with an institution having trust powers within ~~this~~ the Commonwealth and is  
1792 refundable at any time at the purchaser's option. In all cases, the reservation ~~must~~ shall require a  
1793 subsequent affirmative act by the purchaser via a separate instrument to create a binding  
1794 obligation. A developer may not dispose of or transfer a time-share while an order revoking or  
1795 suspending the registration of the time-share program is in effect. In the case of a time-share  
1796 project located outside ~~this~~ the Commonwealth and properly registered in the situs, the Board  
1797 may accept a substitute application for registration.

1798 B. ~~[Repealed.]~~

1799 C. The developer shall maintain records of names and addresses of current independent  
1800 contractors employed by it for time-share sales purposes.

1801 **Drafting note: Technical changes.**

1802 ~~§ 55-391. Repealed.~~

1803 **Drafting note: Repealed by Acts 1985, c. 517.**

1804 ~~§ 55-391.1~~ 55.1-xxx. Application for registration.

1805 A. The application for registration shall be filed in a form prescribed by the Board's  
1806 regulations and shall include the following:

1807 1. An irrevocable appointment to the Board to receive service of process in any  
1808 proceeding arising under this chapter against the developer or the developer's agent if  
1809 nonresidents of the Commonwealth;

1810 2. The states or jurisdictions in which an application for registration or similar document  
1811 has been filed and any adverse order, judgment, or decree entered in connection with the time-  
1812 share project by the regulatory authorities in each jurisdiction or by any court;

1813 3. The applicant's name, address, and the organizational form, including the date, and  
1814 jurisdiction under which the applicant was organized, and the address of its principal office and  
1815 each of its sales offices in the Commonwealth;

1816 4. The name, address, and principal occupation for the past five years of every officer of  
1817 the applicant or person occupying a similar status or performing similar functions; and the  
1818 extent and nature of his interest in the applicant or the time-share project as of a specified date  
1819 within ~~thirty~~ 30 days of the filing of the application;

1820 5. A statement, in a form acceptable to the Board, of the condition of the title to the time-  
1821 share project, including encumbrances as of a specified date within ~~thirty~~ 30 days of the date of  
1822 application, by a title opinion of a licensed attorney not a salaried employee, officer, or director  
1823 of the applicant or owner, or by other evidence of a title acceptable to the Board;

1824 6. A copy of the instruments ~~which that~~ will be delivered to a purchaser to evidence his  
1825 interest in the time-share and copies of the contracts and other agreements ~~which that~~ a  
1826 purchaser will be required to agree or to sign;

1827 7. A copy of any management agreements, employment contracts, or other contracts or  
1828 agreements affecting the use, maintenance, or access of all or any part of the time-share project;

1829 8. A statement of the zoning and other governmental regulations affecting the use of the  
1830 time-share, including the site plans and building permits and their status; and any existing tax  
1831 and existing or proposed special taxes or assessments ~~which that~~ affect the time-share;

1832 9. A narrative description of the promotional plan for the disposition of the time-shares;

1833 10. The proposed public offering statement and its exhibits;

1834 11. Any bonds required to be posted pursuant to the provisions of this chapter;

1835 12. The time-share owners' annual report or budget required by ~~§ 55-370.1~~ 55.1-xxx to  
1836 the extent available;

1837 13. A description of each product the developer seeks to register with the Board; and

1838 14. Any other information ~~which that~~ the Board believes necessary to assure full and fair  
1839 disclosure.

1840 B. The developer shall immediately report to the Board any material changes in the  
1841 information contained in an application for registration.

1842 C. Nothing shall prevent a developer from registering with the Board a time-share  
1843 project where construction is yet to begin, or, if construction has begun, where construction is  
1844 not yet complete.

1845 **Drafting note: Technical changes.**

1846 ~~§ 55-392. Repealed.~~

1847 **Drafting note: Repealed by Acts 1985, c. 517.**

1848 ~~§ 55-392.1 55.1-xxx.~~ Filing fee.

1849 The Board may by regulation establish reasonable fees for registration. ~~Until such~~  
1850 ~~regulations are adopted by the Board, the fee shall be in an amount equal to \$1 per time share,~~  
1851 ~~except that the initial application fee shall not be less than \$500 nor more than \$1,500, and the~~  
1852 ~~fee for any application for registration of additional units shall be not less than \$200.~~ All fees  
1853 shall be remitted by the Board to the State Treasurer ~~of the Commonwealth~~, and shall be placed  
1854 to the credit of the Common Interest Community Management Information Fund established  
1855 pursuant to ~~§ 55-529~~ 54.1-xxx.

1856 **Drafting note: Language regarding amount of registration fees prior to the Board**  
1857 **establishing such fees by regulation is stricken because the Board has established such**  
1858 **fees.**

1859 ~~§ 55-393. Repealed.~~

1860 **Drafting note: Repealed by Acts 1985, c. 517.**

1861 ~~§ 55-393.1 55.1-xxx.~~ Receipt of application; effectiveness of registration.

1862 A. Upon receipt of the application for registration in proper form, the Board, within five  
1863 business days, shall issue a notice of filing to the applicant. Within ~~twenty~~ 20 days after receipt  
1864 of the application, the Board shall review the application to determine whether the application  
1865 and supporting documents satisfy the requirements of this chapter and the Board's regulations.  
1866 Within ~~sixty~~ 60 days from the date of the notice of filing, the Board shall enter an order  
1867 registering or rejecting the application. If no order of rejection is entered within ~~sixty~~ 60 days

1868 from the date of the notice of filing, the time-share project shall be deemed registered unless the  
1869 applicant has consented in writing to a delay.

1870 B. If the Board determines after review of the application and documents provided by  
1871 the applicant that the requirements of § ~~55-391.1~~ 55.1-xxx have been met, it shall issue an order  
1872 registering the time-share project and shall designate the form of the public offering statement.

1873 C. If the Board determines that any of the requirements of § ~~55-391.1~~ 55.1-xxx have not  
1874 been met, the Board shall notify the applicant that the application for registration ~~must~~ shall be  
1875 corrected in the particulars specified within ~~twenty~~ 20 days. If the requirements are not met  
1876 within the time allowed, the Board shall enter an order rejecting the registration, which shall  
1877 include the findings of fact upon which the order is based. The order rejecting the registration  
1878 shall become effective ~~twenty~~ 20 days after issuance. During this ~~twenty-day~~ 20-day period, the  
1879 applicant may petition for reconsideration and shall be entitled to a hearing or to correct the  
1880 particulars specified in the Board's notice. Such order of rejection shall not take effect, in any  
1881 event, until such time as the hearing, if requested, is given to the applicant.

1882 **Drafting note: Technical changes.**

1883 ~~§ 55-394. Repealed.~~

1884 **Drafting note: Repealed by Acts 1985, c. 517.**

1885 ~~§ 55-394.1~~ 55.1-xxx. Annual report; amendments.

1886 A. The developer shall file a report in the form prescribed by the Board's regulations by  
1887 June 30 of each year the registration is effective. The developer of any time-share project  
1888 initially registered with the Board between January and June shall not be required to file an  
1889 annual report for the year in which it was initially registered. The report shall reflect any  
1890 material changes in information contained in the original application for registration or in the  
1891 immediately preceding annual report, whichever is later, and shall be accompanied by the  
1892 appropriate fee established by the Board's regulations or pursuant to § ~~55-392.1~~ 55.1-xxx.

1893 B. During the developer control period in a time-share estate program, the developer  
1894 shall file a copy of the unit owners' association annual report required by § ~~55-370.1~~ 55.1-xxx  
1895 along with the annual report required by this section.

1896 C. The developer shall amend or supplement its registration with the Board to report any  
1897 material change in the information required by §§ ~~55-374~~ 55.1-xxx and ~~55-391.1~~ 55.1-xxx. Such  
1898 amendments or supplemental information shall be filed with the Board within 20 business days  
1899 after the occurrence of the material change.

1900 **Drafting note: No change.**

1901 § ~~55-394.2~~ 55.1-xxx. Termination of registration.

1902 A. In a time-share estate program, if the annual report indicates that the developer has  
1903 transferred title to the time-share owners' association and that no further development rights  
1904 exist, the Board shall issue an order terminating the registration of time-share projects.

1905 B. The Board shall issue an order terminating the registration of a time-share project  
1906 upon application by the developer in which the developer states that no further development  
1907 right of the project is anticipated and that the developer has ceased sales of time-shares at the  
1908 project.

1909 C. Notwithstanding any other provisions of this chapter, the Board may administratively  
1910 terminate the registration of a time-share project if:

1911 1. The developer has not filed an annual report in accordance with § ~~55-394.1~~ 55.1-xxx  
1912 for three or more consecutive years; or

1913 2. The developer's registration with the State Corporation Commission, if applicable, has  
1914 not been active for five or more consecutive years.

1915 **Drafting note: No change.**

1916 § ~~55-394.3~~ 55.1-xxx. Registration required for time-share resellers; exemptions;  
1917 prohibited practices.

1918 A. A reseller shall not provide or offer to provide any resale service unless he is  
1919 registered with the Board.

1920 B. The application for registration shall be filed in a form prescribed by the Board's  
1921 regulations and shall include such information as required by the Board. A reseller shall  
1922 immediately report to the Board any material changes in the information contained in an  
1923 application for registration. The Board may by regulation establish reasonable fees for  
1924 registration under this section. All fees shall be remitted by the Board to the Treasurer of  
1925 Virginia, and shall be placed to the credit of the Common Interest Community Management  
1926 Information Fund established pursuant to § ~~55-529~~ 55.1-xxx.

1927 C. The registration requirements shall not apply to:

1928 1. A person who solely or with affiliates engages in a resale service with respect to an  
1929 aggregate of no more than 12 resale time-shares per calendar year;

1930 2. A person who owns or acquires more than 12 resale time-shares and who  
1931 subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

1932 3. The owner, its agents, and employees of a regularly published newspaper, magazine,  
1933 or other periodical publication of general circulation; broadcast station; website; or billboard, to  
1934 the extent their activities are limited to solicitation and publication of advertisements and the  
1935 transmission of responses to the persons who place the advertisements. Any person who would  
1936 otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person  
1937 (i) solicits the placement of the advertisement by representing that the advertisement will  
1938 generate cash, a certain price, or a similar type of representation for the time-share owner's  
1939 resale time-share; (ii) makes a recommendation as to the sales price for which to advertise the  
1940 resale time-share; (iii) makes any representations to the person placing the advertisement  
1941 regarding the success rate for selling resale time-shares advertised with such person; or (iv)  
1942 makes any misrepresentations as described in this chapter;

1943 4. Sale by a developer or a party acting on its behalf of a resale time-share under a  
1944 current registration of the time-share program in which the resale time-share is included;

1945           5. Sale by an association, a managing entity, or a party acting on its behalf of a resale  
1946 time-share owned by the association, provided that the sale is in compliance with subsection C  
1947 of § ~~55-380.1~~ 55.1-xxx; or

1948           6. Attorneys, title agents, title companies, or escrow companies providing closing  
1949 services in connection with the transfer of a resale time-share.

1950           D. No reseller shall:

1951           1. Fail to disclose information in writing concerning the marketing, sale, or transfer of  
1952 resale time-shares required by this chapter prior to accepting any consideration or with the  
1953 expectation of receiving consideration from any time-share owner, seller, or buyer.

1954           2. Make false or misleading statements concerning offers to buy or rent; the value,  
1955 pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers  
1956 when engaged in time-share resale activities.

1957           3. Misrepresent the likelihood of selling a resale time-share interest.

1958           4. Misrepresent the method by or source from which the reseller or lead dealer obtained  
1959 the contact information of any time-share owner.

1960           5. Misrepresent price or value increases or decreases, assessments, special assessments,  
1961 maintenance fees, or taxes or ~~guaranteeing guarantee~~ sales or rentals in order to obtain money or  
1962 property.

1963           6. Make false or misleading statements concerning the identity of the reseller or any of  
1964 its affiliates or the time-share resale entity's or any of its affiliate's experience, performance,  
1965 guarantees, services, fees, or commissions, availability of refunds, length of time in business, or  
1966 endorsements by or affiliations with developers, management companies, or any other third  
1967 parties.

1968           7. Misrepresent whether or not the reseller or its affiliates, employees, or agents hold, in  
1969 any state or jurisdiction, a current real estate sales or broker's license or other government-  
1970 required license.

1971 8. Misrepresent how funds will be utilized in any time-share resale activity conducted by  
1972 the reseller.

1973 9. Misrepresent that the reseller or its affiliates, employees, or agents have specialized  
1974 education, professional affiliations, expertise, licenses, certifications, or other specialized  
1975 knowledge or qualifications.

1976 10. Make false or misleading statements concerning the conditions under which a time-  
1977 share owner, seller, or buyer may exchange or occupy the resale time-share interest.

1978 11. Represent that any gift, prize, membership, or other benefit or service will be  
1979 provided to any time-share owner, seller, or buyer without providing such gift, prize,  
1980 membership, or other benefit or service in the manner represented.

1981 12. Misrepresent the nature of any resale time-share interest or the related time-share  
1982 plan.

1983 13. Misrepresent the amount of the proceeds, or fail to pay the proceeds, of any rental or  
1984 sale of a resale time-share interest as offered by a potential renter or buyer to the time-share  
1985 owner who made such resale time-share interest available for rental or sale through the reseller.

1986 14. Fail to transfer any resale time-share interests as represented and required by this  
1987 chapter or to provide written evidence to the time-share owner of the recording or transfer of  
1988 such time-share owner's resale time-share interest as required by this chapter.

1989 15. Fail to pay any annual assessments, special assessments, personal property or real  
1990 estate taxes, or other fees relating to an owner's resale time-share interest as represented or  
1991 required by this chapter.

1992 16. Misrepresent or misuse the intended purpose of a power of attorney or similar  
1993 document to the detriment of any grantor of such power of attorney.

1994 **Drafting note: Technical changes are made.**

1995 § ~~55-394.4~~ 55.1-xxx. Recordkeeping by resellers.

1996           A. If contact information has been obtained by a reseller from any source, including a  
1997 lead dealer, the reseller and lead dealer shall maintain the following records for a period of five  
1998 years from the last date of contact between the reseller and the owner:

1999           1. The name; home address; work address, if different; telephone number; email address,  
2000 if any; and a copy of a current government-issued photographic identification (e.g., driver's  
2001 license, passport, or military identification card) of the lead dealer who provided the contact  
2002 information;

2003           2. The date, time, and place of the transaction at which the contact information was  
2004 obtained, along with the amount of consideration paid and a signed receipt from the lead dealer  
2005 or copy of a ~~cancelled~~ canceled check; and

2006           3. A copy of the contact information obtained in the exact form and media in which  
2007 received.

2008           B. A reseller shall maintain records for at least five years after each transaction involving  
2009 resale service including resale transfer agreements and resale purchase agreements.

2010           C. In any civil or criminal action based on a violation of this section, there shall be a  
2011 presumption that contact information was wrongfully obtained if a reseller or lead dealer fails to  
2012 produce the records required by this section.

2013           D. Any person who establishes that a reseller or lead dealer wrongfully obtained or  
2014 wrongfully used contact information with respect to time-share owners or members of an  
2015 exchange program shall, in addition to any other remedies that may be available in law or  
2016 equity, be entitled to recover from such reseller or lead dealer an amount equal to \$1,000 for  
2017 each time-share owner or member about whom contact information was wrongfully obtained or  
2018 used. The prevailing person in any such action shall also be entitled to recover reasonable  
2019 attorney fees and costs.

2020           **Drafting note: Technical change.**

2021           § ~~55-394.5~~ 55.1-xxx. Alternative purchase; registration.

2022 A. The application for registration of an alternative purchase shall be filed in a form  
2023 prescribed by the Board and shall include the following:

2024 1. A general description of the types of alternative purchases offered;

2025 2. A copy of the terms and conditions applicable to the alternative purchases; and

2026 3. The name, address, and contact information of the developer offering the alternative  
2027 purchases.

2028 B. Any material change to the standard terms and conditions applicable to an alternative  
2029 purchase shall be filed with the Board within 30 days of such change being effective. Changes  
2030 to the length of stay, location, or price shall not require an amendment of the registration,  
2031 provided that the terms and conditions applicable to such alternative purchases are on file with  
2032 the Board.

2033 C. The provisions of §§ ~~55-374~~ 55.1-xxx and ~~55-375~~ 55.1-xxx shall not apply to  
2034 alternative purchases registered under this section.

2035 **Drafting note: Technical change.**

2036 ~~§ 55-395. Repealed.~~

2037 **Drafting note: Repealed by Acts 1985, c. 517.**

2038 Article 6.

2039 Administration.

2040 **Drafting note: Existing Article 6, containing provisions related to the**  
2041 **administration of the Virginia Real Estate Time-Share Act, is retained as proposed Article**  
2042 **6.**

2043 ~~§ 55-396~~ 55.1-xxx. General powers and duties of Board.

2044 A. The Board may adopt, amend, and repeal rules and regulations and issue orders  
2045 consistent with and in furtherance of the objectives of this chapter. The Board may prescribe  
2046 forms and procedures for submitting information to the Board.

2047 B. The Board may accept grants in aid from any governmental source and may contract  
2048 with agencies charged with similar functions in this or other jurisdictions, in furtherance of the  
2049 objectives of this chapter.

2050 C. The Board may cooperate with agencies performing similar functions in this and  
2051 other jurisdictions to develop uniform filing procedures and forms, uniform disclosure  
2052 standards, and uniform administrative practices, and may develop information that may be  
2053 useful in the discharge of the Board's duties.

2054 D. 1. ~~If the~~ The Board may issue an order requiring the developer or reseller to cease and  
2055 desist from the unlawful practice and to take such affirmative action as in the judgment of the  
2056 Board will carry out the purposes of this chapter if it determines after legal notice and  
2057 opportunity for hearing that a developer or reseller or an agent of a developer or reseller has:

2058 a. Made any representation in any document or information filed with the Board ~~which~~  
2059 that is false or misleading;

2060 b. Engaged or is engaging in any unlawful act or practice;

2061 c. Disseminated or caused to be disseminated orally, or in writing, any false or  
2062 misleading promotional materials in connection with a time-share program;

2063 d. Concealed, diverted, or disposed of any funds or assets of any person in a manner  
2064 impairing rights of purchasers of time-shares in the time-share program;

2065 e. Failed to perform any stipulation or agreement made to induce the Board to issue an  
2066 order relating to that time-share program;

2067 f. Otherwise violated any provision of this chapter or any of the Board's rules and  
2068 regulations or orders; or

2069 g. Disposed of any time-share in a project without first complying with the requirements  
2070 of this chapter, ~~it may issue an order requiring the developer to cease and desist from the~~  
2071 ~~unlawful practice and to take such affirmative action as in the judgment of the Board will carry~~  
2072 ~~out the purposes of this chapter.~~

2073           2. If the Board makes a finding of fact at a hearing that the public interest will be  
2074 irreparably harmed by delay in issuing an order, as prescribed in subdivision 1 ~~of this~~  
2075 ~~subsection~~, it may issue a temporary cease and desist order. The Board shall not issue more than  
2076 one temporary cease and desist order with reference to such finding of fact as prescribed in this  
2077 subsection. With the issuance of a temporary cease and desist order, the Board, by registered  
2078 mail or other personal written service, shall give notice of the issuance to the developer or the  
2079 reseller. Every temporary cease and desist order shall include in its terms:

2080           a. A provision clearly stating the reasons for issuing such cease and desist order, the date  
2081 of the hearing on its issuance, and the nature and extent of the facts and findings on which the  
2082 order was based;

2083           b. A provision that a hearing by the Board may be held, after due notice but not more  
2084 than ~~fifteen~~ 15 days from the date such temporary cease and desist order is effective, to  
2085 determine whether or not a cease and desist order as called for in the immediately preceding  
2086 subsection shall be issued;

2087           c. A provision that such temporary cease and desist order may remain in full force for a  
2088 period of not more than ~~fifteen~~ 15 days from the date of its issuance or the date on which the  
2089 Board has determined that an order as prescribed in subdivision 1 ~~of this subsection~~ is to be  
2090 issued, whichever shall occur first; and

2091           d. A provision that a failure to comply with such temporary cease and desist order will  
2092 be a violation of this chapter. ~~The Board shall not issue more than one temporary cease and~~  
2093 ~~desist order with reference to such finding of fact as prescribed in this subsection.~~

2094           E. The Board may also issue a cease and desist order if the developer has not registered  
2095 the time-share program as required by this chapter or if a reseller has not registered as required  
2096 by this chapter.

2097           F. The Board, after notice and hearing, may issue an order revoking the registration of  
2098 the developer's time-share program or the registration of a reseller upon determination that such  
2099 developer, reseller, or agent ~~thereof~~ of such developer or reseller has failed to comply with a

2100 cease and desist order issued by the Board affecting the developer's time-share program or the  
2101 reseller.

2102 G. If it appears that any person has engaged, is engaging, or is about to engage in any act  
2103 or practice in violation of this chapter or any of the Board's rules, regulations, or orders  
2104 applicable ~~thereto~~ to this chapter, the Board, without prior administrative proceedings, may  
2105 bring suit in the circuit court of the ~~city or~~ county or city in which any portion of the time-share  
2106 project is located to enjoin that act or practice or for other appropriate relief. The Board is not  
2107 required to post a bond or prove that no adequate remedy at law exists.

2108 H. Upon request of a time-share owner, the Board shall, in accordance with subsection B  
2109 of § ~~55-382~~ 55.1-xxx, issue its determination whether compliance with § ~~55-375~~ 55.1-xxx or ~~55-~~  
2110 ~~386~~ 55.1-xxx has occurred.

2111 **Drafting note: The stricken language in subdivision D 1 g is relocated to subdivision**  
2112 **D 1 because it applies generally to all of subdivision D 1. The stricken language in**  
2113 **subdivision D 2 d is relocated to subdivision D 2 because it applies generally to all of**  
2114 **subdivision D 2. Technical changes are made.**

2115 § ~~55-397~~ 55.1-xxx. Cancellation of cease and desist order; reinstatement of registration  
2116 of developer.

2117 A. The Board shall stipulate to the developer or reseller the reason for any cease and  
2118 desist order, or revocation of registration as outlined in § ~~55-396~~ 55.1-xxx, by no later than the  
2119 time such order or revocation is to become effective.

2120 B. Should the developer or reseller satisfy the Board that it has corrected the reasons for  
2121 the cease and desist order or revocation of registration, then the Board shall promptly cancel  
2122 such order or reinstate the registration, and thereafter the developer or reseller may continue its  
2123 offering or disposition of time-shares.

2124 **Drafting note: No change.**

2125 § ~~55-398~~ 55.1-xxx. Board regulation of public offering statement.

2126           The Board may at any time require a developer to alter or supplement the form or  
2127 substance of a public offering statement to assure adequate and accurate disclosure to  
2128 prospective purchasers.

2129           **Drafting note: No change.**

2130           § ~~55-399~~ 55.1-xxx. Investigations.

2131           A. The Board may:

2132           1. Make necessary public or private investigations within or outside ~~this~~ the  
2133 Commonwealth to determine whether any person has violated or is about to violate any  
2134 provision of this chapter or any rule, regulation, or order issued ~~hereunder~~ pursuant to this  
2135 chapter, or to aid in the enforcement of this chapter in prescribing rules, regulations, and forms  
2136 ~~hereunder~~ under this chapter;

2137           2. Require or permit any person to file a statement in writing, under oath or otherwise as  
2138 the Board determines, as to all facts and circumstances concerning the matter to be investigated.

2139           B. For the purpose of any investigation or proceeding under the chapter, the Board may  
2140 administer oaths or affirmations, and upon ~~such~~ motion or upon request of any party, may  
2141 subpoena witnesses, compel their attendance, take evidence, and require the production of any  
2142 matter ~~which~~ that is relevant to the investigation, including the existence, description, nature,  
2143 custody, condition, and location of any books, documents, or other tangible things and the  
2144 identity and location of persons having knowledge of relevant facts, or any other matter  
2145 reasonably calculated to lead to the discovery of material evidence.

2146           C. Any proceeding or hearing of the Board under this chapter, ~~wherein~~ in which  
2147 witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter  
2148 is to be produced to ascertain material evidence, shall take place within the County of Henrico  
2149 and such proceeding shall be held before the Board sitting in regular session, but not less  
2150 frequently than monthly.

2151 D. Upon failure to obey a subpoena or to answer questions propounded by the Board,  
2152 and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit  
2153 Court of the County of Henrico for an order compelling compliance.

2154 E. Except as otherwise provided in this chapter, all proceedings under this chapter shall  
2155 be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

2156 **Drafting note: Technical changes.**

2157 § ~~55-399.1~~ 55.1-xxx. Proceedings before the Board.

2158 A. Any proceeding or hearing of the Board under this chapter ~~wherein in which~~  
2159 witnesses are subpoenaed and their attendance required for the taking of evidence or the  
2160 production of documents to ascertain material evidence, shall take place in the County of  
2161 Henrico.

2162 B. Except as otherwise provided in this chapter, all hearings under this chapter shall be  
2163 in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall be conducted  
2164 by a hearing officer in accordance with § 2.2-4024.

2165 **Drafting note: Technical changes.**

2166 § ~~55-400~~ 55.1-xxx. Penalties.

2167 A. Any person who willfully violates any of the provisions of § ~~55-374~~ 55.1-xxx, ~~55-~~  
2168 ~~374.1~~ 55.1-xxx, ~~55-374.2~~ 55.1-xxx, ~~55-375~~ 55.1-xxx, ~~55-376~~ 55.1-xxx, ~~55-381~~ 55.1-xxx, ~~55-~~  
2169 ~~385~~ 55.1-xxx, or ~~55-390~~ 55.1-xxx, or any order issued pursuant to §§ ~~55-396~~ 55.1-xxx through  
2170 ~~55-399~~ shall be 55.1-xxx is guilty of a Class 5 felony.

2171 Any person who willfully violates any of the provisions of § ~~55-376.5~~ 55.1-xxx, ~~55-~~  
2172 ~~380.1~~ 55.1-xxx, or ~~55-394.3~~ 55.1-xxx or any order issued pursuant to §§ ~~55-396~~ 55.1-xxx  
2173 through ~~55-399~~ 55.1-xxx regarding a violation of § ~~55-376.5~~ 55.1-xxx, ~~55-380.1~~ 55.1-xxx, or  
2174 ~~55-394.3~~ shall be 55.1-xxx is guilty of a Class 1 misdemeanor.

2175 Each violation shall be deemed a separate offense.

2176 B. Any developer, member, agent or affiliate of any developer of time-shares registered  
2177 pursuant to § ~~55-393.1~~ 55.1-xxx, or any reseller, who violates any provision of this chapter or

2178 regulations promulgated pursuant to this chapter, and who is not criminally prosecuted, may be  
2179 subject to a ~~monetary civil~~ penalty. If it has been determined by the Board upon or after a  
2180 hearing that a respondent has violated this chapter or the Board's rules and regulations, the  
2181 Board shall proceed to determine the amount of the ~~monetary civil~~ penalty for such violation,  
2182 which shall not exceed \$2,000 for each violation. Such penalty may be sued for and recovered  
2183 in the name of the Commonwealth.

2184 **Drafting note: Technical changes.**

2185 #

## Subtitle I

**Chapter 1: CREATION AND LIMITATION OF ESTATES; ~~THEIR QUALITIES.~~**

**General Notes: inserted four new Articles into this Chapter; taken from existing Chapter 1, one section from existing Chapter 8 (Clouds on Title), one section from existing Chapter 3 (Property Rights of Married Women), and existing Chapter 20 (Virginia Solar Easements Act)**

additional note: the remaining sections (§§ 55-154, 55-154.1, 55-154.2, and 55-155) from existing Chapter 8 of Title 55 related to mineral rights are logically relocated to proposed Chapter 14.7:3 of Title 45.1.

additional note: existing § 55-19.5 is proposed to be relocated to Article 2 of Chapter 1 of Title 64.2.

**Article 1: Creation and Transfer of Estates**

§ 55-1. Aliens may acquire, hold, and transmit real estate; when reciprocity required.

§ 55-2. When deed or will necessary to convey estate; no parol partition or gift valid.

§ 55-3. When gift of ~~goods or chattels~~ personal property invalid.

§ 55-4. Suicide or attainder of felony.

§ 55-5. Estates to lie in grant as well as in livery.

§ 55-6. Same estates may be created by deed as by will.

§ 55-7. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal held by fiduciary.

~~§ 55-7.1. Repealed.~~

~~§ 55-7.2. Repealed.~~

§ 55-8. Default or surrender of tenant for life not to prejudice remainderman, etc.

§ 55-9. Conveyance of estate or interest in property by grantor to himself and another.

§ 55-10. Deed ~~good~~ valid for grantor's right; operation of warranty.

§ 55-11. Grant, etc., without words of limitation.

§ 55-12. Fee tail converted into fee simple.

§ 55-14. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's Case abolished.

§ 55-14.1. Doctrine of worthier title abolished.

§ 55-15. When contingent remainder not to fail.

§ 55-16. When remainders not defeated.

§ 55-17. In what conveyances possession transferred to the use.

§ 55-17.1. Land trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

§ 55-18. Deed of release effectual.

~~§§ 55-19, 19.1, 19.2, 19.3, 19.4: Repealed.~~

§ 55-22. When person not a party, etc., may take or sue under instrument.

§ 55-23. Informalities in deeds made by attorneys-in-fact.

§ 55-24. Time for objections to irregularities in advertising sales made by trustees.

§ 55-25. Recovery at death of life tenant of taxes paid on life estate.

~~§ 55-25.1: Repealed.~~

§ 55-153. Removal of a cloud on title; nature of plaintiff's title.

note: relocated from existing Chapter 8 because majority of Chapter 8 is proposed to be relocated to Title 45.1.

§ 55-47.01. Equitable separate estates abolished.

note: relocated from existing Chapter 3 because the majority of Chapter 3 is proposed for repeal as obsolete

## Article 2: Rule Against Perpetuities.

§ 55-12.1. Uniform Statutory Rule Against Perpetuities.

§ 55-12.2. When nonvested property interest or power of appointment created.

§ 55-12.3. Reformation.

§ 55-12.4. Exclusions from statutory rule against perpetuities.

§ 55-12.5. Prospective application.

§ 55-12.6. Uniformity of application and construction.

§ 55-13. Certain limitations construed.

§ 55-13.1 Employee trusts.

§ 55-13.2. Determination of "lives in being" for purpose of rule against perpetuities.

§ 55-13.3. Application of the rule against perpetuities to nondonative transfers.

### Article 3. Joint Ownership of Real or Personal Property.

§ 55-20. Survivorship between joint tenants abolished.

~~§ 55-21. Exceptions to § 55-20.~~

note: This section is now subsection B of 55-20.

§ 55-20.1. Joint ownership in real and personal property.

§ 55-20.2. Tenants by the ~~entireties~~ entirety in real and personal property; certain trusts.

Article 4. Virginia Solar Easements Act. (note: Proposed Article 4 contains sections from existing Chapter 20, the Virginia Solar Easements Act.)

~~§ 55-352. Short Title.~~

§ 55-353. Creation of solar easements.

§ 55-354. Contents of solar easement agreements.

~~§§ 55-355, 356, 357, 358, 359. Reserved.~~

## **Chapter 2: FORM AND EFFECT OF DEEDS AND LEASES**

## **Chapter 3: FRAUDULENT AND VOLUNTARY CONVEYANCES, ~~BULK AND~~ CONDITIONAL SALES, ETC.; WRITING NECESSARY TO BE RECORDED.**

**General notes: Taken from existing Chapter 5.**

§ 55-80. Void fraudulent acts; bona fide purchasers not affected.

§ 55-81. Voluntary gifts, etc., void as to prior creditors.

§ 55-82. Creditor's suits to avoid such gifts, etc.

§ 55-82.1. Creditor's suits; attorney fees.

§ 55-82.2. Authority of court to set aside.

~~§§ 55-83, 84, 85, 86. Repealed.~~

§ 55-87. Loans and reservations of a use or property to be recorded.

~~§§ 55-88, 89, 90, 91, 92, 93, 94. Repealed.~~

§ 55-95. Certain recorded contracts as valid as deeds.

§ 55-96. Contracts, etc., void as to creditors and purchasers until recorded;  
priority of credit line deed of trust.

~~§ 55-96.1. Repealed.~~

§ 55-97. Where to be recorded.

~~§§ 55-98, 99. Repealed.~~

§ 55-100. Recordation of instruments affecting civil aircraft of United States.

§ 55-101. Priority of writings, when admitted to record same day.

~~§ 55-102.~~ RECOMMENDING for repeal as obsolete (no amendments since 1919,  
no cases since 1875 have cited it/ addressed it.)

§ 55-103. Words "creditors" and "purchasers," how construed.

§ 55-104. Lien of subsequent purchaser for purchase money paid before notice.

§ 55-105. When purchaser not affected by record of deed or contract.

**CHAPTER 4: APPORTIONMENT OF MONEYS; MANAGEMENT OF INSTITUTIONAL FUNDS COMMUTATION AND VALUATION OF CERTAIN ESTATES.**

**General notes: taken from existing Chapter 15**

Article. 1 Uniform Principal and Income Act.

~~§§ 55-253 through 55-268. Repealed.~~

Article 1.1. Uniform Management of Institutional Funds Act.

~~§§ 55-268.1 through 55-268.10. Repealed.~~

Article 1.2. Uniform Prudent Management of Institutional Funds Act.

~~§§ 55-268.11 through 55-268.20. Repealed.~~

Article 2. Commutation and Valuation of Certain Estates and Interests; Tables.

**note: no longer a need for an article since all other articles repealed.**

~~§ 55-269. Repealed.~~

§ 55-269.1 Annuity Table.

§ 55-270. Rule of Calculation under § 55.1-xxx [55-269.1].

~~§ 55-271. Example.~~

note: § 55-271 is now subsection B of 55-270.

~~§ 55-272. Repealed.~~

§ 55-272.1. Table of uniform seniority.

§ 55-273. Rule of calculation under ~~§ 55-272.1~~ 55.1-xxx.

§ 55-274. Makehamized mortality table.

~~§ 55-275. Repealed.~~

§ 55-276. Commutation in case of persons under disability.

§ 55-277. Commutation of certain life estates.

Sections to be Relocated to other  
Titles

8/7/2017 10:28 AM

Page 1 of 6

1                   **Proposed Sections to Relocate Out of Title 55 (from Subtitle I)**

2

3                   **Relocation to Title 45.1:**

4

~~TITLE 55~~

5

~~PROPERTY AND CONVEYANCES~~

6

~~CHAPTER 8~~ 14.7:3.

7

~~CLOUDS ON TITLE~~ MINERAL RIGHTS.

8

**Drafting note: Three sections from existing Chapter 8 of Title 55 related to mineral rights are logically relocated as proposed Chapter 14.7:3 of Title 45.1.**

9

~~§ 55-154~~ 45.1-161.311:9. Presumption that no minerals, coals, oils, or ores exist in certain lands.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

In any case when a claim to minerals, coals, oils, ores, or subsurface substances, in, on, or under lands in the Commonwealth, except lands lying west of the Blue Ridge Mountains other than in the ~~counties~~ Counties of Amherst, Augusta, Bland, Giles, Rockingham, Nelson, Botetourt, Roanoke, Craig, Page, and Shenandoah or counties having a population of more than 16,500 but less than 16,900, of more than 32,000 but less than 32,940, of more than 30,000 but less than 31,000, of more than 15,700 but less than 16,000, of more than 60,000 but less than 70,000, of more than 5,000 but less than 5,350, and of more than 26,670 but less than 26,800, of more than 26,300 but less than 27,525, of more than 6,200 but less than 6,750, of 17,500 but less than 18,200, of 56,000 but less than 57,500, of 53,000 but less than 54,500, or in any county having population of more than 21,950 but less than 22,000, or in the case of manganese ores only in counties having a population of more than 21,300 and less than 21,900 or in any county having a population of more than 43,000 but less than 50,000, ~~or~~ the right to enter such land for the purpose of exploring, mining, boring and sinking shafts for such minerals, coals, oils, ores or subsurface substances is derived or reserved by any writing made 35 years or more prior to the institution of the suit ~~hereinafter mentioned pursuant to § 45.1-161.311:11,~~ and ~~(a) Such~~ (i) such

27 right to explore or mine has not for a like period been exercised and for a like period the person  
28 having such claim or right has never been charged with taxes thereon but all the taxes on the  
29 land have been charged to and paid by the person holding the land subject thereto, and for a like  
30 period no deed of bargain and sale of such claim or reservation in such mineral rights in the  
31 lands embraced in such claim has been recorded in the clerk's office of the county wherein the  
32 lands are located; or ~~(b) When~~ (ii) when the right to explore and mine has been exercised and  
33 the minerals, coals, oils, ores, and subsurface substances in or on the land have been exhausted  
34 and the right of mining or boring has been abandoned for a like period, then it shall be prima  
35 facie presumed that no minerals, coals, oils, ores, or subsurface substances exist in, on, or under  
36 such land.

37 **Drafting note: Technical changes.**

38 § ~~55-154.2~~ 45.1-161.311:10. Presumption regarding estate of owner of mineral rights.

39 A. Except as otherwise provided in the deed by which the owner of minerals derives  
40 title, the owner of minerals shall be presumed to be the owner of the shell, container chamber,  
41 passage, and space opened underground for the removal of the minerals, with full right to haul  
42 and transport minerals from other lands and to pass men, materials, equipment, water, and air  
43 through such space. No injunction shall lie to prohibit the use of any such shell, container  
44 chamber, passage, or space opened underground by the owner of minerals for the purposes  
45 herein described. The provisions of this subsection shall not affect contractual obligations and  
46 agreements entered into prior to July 1, 1981.

47 B. Notwithstanding the provisions of subsection A, with respect to the coal mineral  
48 estate, unless expressly excepted by the instrument creating the mineral ownership or lease  
49 interest, the owner or, if leased, the lessee of the coal mineral estate or its successor, assign,  
50 sublessee, or affiliate retains the right to any coal remaining in place after the removal of  
51 surrounding coal, as well as the right to use the shell, container chamber, passage, space, or void  
52 opened underground that was created by the removal of the coal.

53           1. Any such shell, container chamber, passage, space, or void opened underground that  
54 is within the boundaries of a mine permit issued under ~~Title 45.1~~ [this title](#) may be used  
55 consistent with state and federal regulations for any activity related to removal of coal from any  
56 lands for which a permit to mine coal has been approved, and no injunction shall lie to prohibit  
57 such use.

58           2. Any such shell, container chamber, passage, space, or void opened underground that  
59 is located in a sealed mine for which a mining permit no longer exists may be used consistent  
60 with state and federal regulations for any activity related to removal of coal from any lands for  
61 which a permit to mine coal has been approved only with the consent of the owner of such shell,  
62 container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if  
63 the owner has been offered reasonable compensation for such use. In determining whether an  
64 offer of compensation is reasonable, a court shall be guided by the compensation set forth in  
65 other leases for the use of mine voids as is customary in the area.

66           C. The provisions of subdivisions B 1 and ~~B 2~~ (i) shall not affect any provision  
67 contained in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell,  
68 container chamber, passage, space, or void opened underground that was created by the removal  
69 of the coal; (ii) shall not alter any contract entered into prior to July 1, 2012, that provides for  
70 the payment of compensation from the lessee to the lessor expressly for the use of any shell,  
71 container chamber, passage, space, or void opened underground that was created by the removal  
72 of the coal; and (iii) shall have no bearing on or application to any determination of ownership  
73 rights in natural gas or coalbed methane.

74           **Drafting note: Technical changes.**

75           § ~~55-155~~ [45.1-161.311:11](#). Suits to extinguish certain claims.

76           The owner or owners of the land subject to such claim or right separately or jointly may  
77 bring a suit in equity praying for the extinguishment of such claim or right, to which suit shall  
78 be made party defendant the person by whom such claim by such writing was derived or

Sections to be Relocated to other  
Titles

8/7/2017 10:28 AM

Page 4 of 6

79 reserved, or his successors in title, by name so far as known, and as defendants unknown, so far  
80 as such successors in title are unknown. The venue for such a suit shall be as specified in  
81 subdivision 3 of § 8.01-261. The court shall allow a period of not less than six months from the  
82 time the cause is docketed and set for hearing to elapse within which time the defendant may  
83 explore and discover commercial minerals, coals, oils, ores, or subsurface substances, if any,  
84 and in the absence of satisfactory evidence to the contrary, it shall be presumed that there are no  
85 commercial minerals, coals, oils, ores, or subsurface substances in or on the land, and the court  
86 shall enter a decree declaring the claim or right to be a cloud on the title and releasing the land  
87 therefrom and extinguishing the same; but if the defendant or defendants shall thereupon prove  
88 that there are commercial minerals, coals, oils, ores, or subsurface substances in or on the land,  
89 the court shall require such minerals, coals, oils, ores, or subsurface substances to be charged  
90 with taxes according to law.

91 **Drafting note: Technical changes.**

92

93

94 **Relocation to Title 64.2:**

95

96 § ~~55-19.5~~ 64.2-108.2. Provision in certain trust void.

97 A. Except as provided in subsection B, a provision in any inter vivos trust created for the  
98 benefit of the grantor ~~which that~~ provides directly or indirectly for the suspension, termination,  
99 or diversion of the principal, income, or other beneficial interest of the grantor in the event that  
100 he should apply for medical assistance or require medical, hospital, or nursing care or long-term  
101 custodial, nursing, or medical care shall be against public policy and ineffective as against the  
102 Commonwealth. The assets of the trust, both principal and interest, shall be distributed as  
103 though no such application had been made. The provisions of this subsection shall apply without  
104 regard to the irrevocability of the trust or the purpose for which the trust was created.

105           B. Subsection A shall not apply to any trust with a corpus of \$25,000 or less. If the  
106 corpus of any such trust exceeds \$25,000, \$25,000 of the trust shall be exempt from the  
107 provisions of subsection A. However, if the grantor has created more than one trust as described  
108 in subsection A, the \$25,000 exemption shall be prorated among the trusts. Further, if the  
109 grantor made uncompensated transfers, as defined in § 20-88.02, within ~~thirty~~ 30 months of  
110 applying for Medicaid benefits and no payments were ordered pursuant to subsection D of § 20-  
111 88.02, the \$25,000 exemption under this subsection shall not apply.

112           C. The exemption provided by subsection B shall not apply to any trust created on or  
113 after August 11, 1993.

114           D. To the extent that any trust created between August 11, 1993, and July 1, 1994, would  
115 but for subsection C be entitled to the exemption provided by subsection B, the grantor may  
116 revoke such trust notwithstanding any irrevocability in the terms of such trust. Nothing  
117 contained in this subsection shall be construed to authorize the grantor to effect the vested rights  
118 of any beneficiary of such trust without the express written consent of such beneficiary.

119           E. The provisions of subsection A shall not apply to an irrevocable inter vivos trust to  
120 the extent that it is created for the purpose of paying the grantor's funeral and burial expenses  
121 and is funded in an amount and manner allowable as a resource in determining eligibility for  
122 medical assistance benefits. In the event that any amount remains in the trust upon payment of  
123 the funeral or burial arrangements provided to or on behalf of such individual, the  
124 Commonwealth shall receive all amounts remaining in such trust up to an amount equal to the  
125 total medical assistance paid on behalf of the individual.

126           F. For purposes of this section, medical assistance and medical assistance benefits shall  
127 mean benefits payable under the State Plan for Medical Assistance.

128           **Drafting note: Existing § 55-19.5, related to certain types of trusts and Medicaid**  
129 **planning, is proposed for logical relocation to Article 2 (§ 64.2-102 et seq.) of Chapter 1**

Sections to be Relocated to other  
Titles

8/7/2017 10:28 AM

Page 6 of 6

**130 (Definitions and General Provisions) of Title 64.2 (Wills, Trusts, and Fiduciaries).**

**131 Technical changes are made.**

**132 #**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CHAPTER ~~15~~ XX [4].

~~APPORTIONMENT OF MONEYS; MANAGEMENT OF INSTITUTIONAL FUNDS~~  
~~COMMUTATION AND VALUATION OF CERTAIN ESTATES AND INTERESTS.~~

**Drafting note: Existing Chapter 15, Apportionment of Moneys; Management of Institutional Funds, is retained as proposed Chapter XX [4]. The chapter title is renamed because the portions related to management of institutional funds were previously repealed. The title of existing Article 2, the content of which is retained, is used as the proposed chapter title.**

~~Article 1.~~

~~Uniform Principal and Income Act.~~

~~§§ 55-253 through 55-268.~~

**Drafting note: Repealed by Acts 1999, c. 975, effective January 1, 2000.**

~~Article 1.1.~~

~~Uniform Management of Institutional Funds Act.~~

~~§§ 55-268.1 through 55-268.10.~~

**Drafting note: Repealed by Acts 2008, c. 184, cl. 2.**

~~Article 1.2.~~

~~Uniform Prudent Management of Institutional Funds Act.~~

~~§§ 55-268.11 through 55-268.20.~~

**Drafting note: Repealed by Acts 2012, c. 614, cl. 11, effective October 1, 2012.**

~~Article 2.~~

~~Commutation and Valuation of Certain Estates and Interests; Tables.~~

**Drafting note: Existing Article 2, Commutation and Valuation of Certain Estates and Interests; Tables, is retained as proposed Chapter XX [4], with removal of the article designation; there is no longer a need for articles because the other articles in the existing chapter were previously repealed. The article title is retained as the proposed chapter title.**

27 | [§ 55-269. Repealed.](#)

28 | **Drafting note: Repealed by Acts 1973, c. 355.**

29 | [§ 55-269.1 55.1-xxx.](#) Annuity table.

30 | When a party as tenant for life is entitled to the annual interests on a sum of money, or is  
31 | entitled to the use of any estate, or a part thereof, and is willing to accept a gross sum in lieu  
32 | thereof, or the party liable for such interest, or affected by such claim, has the right to pay a  
33 | gross sum in lieu thereof, or if the court in any legal proceeding ~~decree~~ [decrees](#) a gross sum to  
34 | be paid in lieu thereof, the sum shall be estimated according to the then value of an annuity of  
35 | eight percent on the principal sum during the probable life of such person, according to the  
36 | following table, showing in Column I the present value, on the basis of eight percent interest, of  
37 | an annuity of ~~one dollar~~ [\\$1](#), payable at the end of every year that a person of a given age may be  
38 | living, for the ages therein stated:

39 | PRESENT VALUE

| a |                          | I           | II           |
|---|--------------------------|-------------|--------------|
| b | <u>Age last birthday</u> | <u>life</u> | <u>lives</u> |
| c | Less than one year       | 12.060      | 11.670       |
| d | 1                        | 12.291      | 12.124       |
| e | 2                        | 12.291      | 12.127       |
| f | 3                        | 12.286      | 12.120       |
| g | 4                        | 12.278      | 12.107       |
| h | 5                        | 12.267      | 12.091       |
| i | 6                        | 12.256      | 12.071       |
| j | 7                        | 12.242      | 12.049       |
| k | 8                        | 12.227      | 12.024       |
| l | 9                        | 12.211      | 11.996       |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 3 of 19

|    |    |        |        |
|----|----|--------|--------|
| m  | 10 | 12.192 | 11.965 |
| n  | 11 | 12.171 | 11.930 |
| o  | 12 | 12.149 | 11.892 |
| p  | 13 | 12.125 | 11.852 |
| q  | 14 | 12.102 | 11.812 |
| r  | 15 | 12.078 | 11.773 |
| s  | 16 | 12.055 | 11.736 |
| t  | 17 | 12.032 | 11.701 |
| u  | 18 | 12.010 | 11.666 |
| v  | 19 | 11.988 | 11.632 |
| w  | 20 | 11.964 | 11.596 |
| x  | 21 | 11.939 | 11.559 |
| y  | 22 | 11.913 | 11.521 |
| z  | 23 | 11.886 | 11.480 |
| aa | 24 | 11.857 | 11.437 |
| ab | 25 | 11.824 | 11.389 |
| ac | 26 | 11.789 | 11.336 |
| ad | 27 | 11.751 | 11.278 |
| ae | 28 | 11.709 | 11.215 |
| af | 29 | 11.664 | 11.148 |
| ag | 30 | 11.615 | 11.075 |
| ah | 31 | 11.564 | 10.998 |
| ai | 32 | 11.510 | 10.917 |

|    |    |        |        |
|----|----|--------|--------|
| aj | 33 | 11.452 | 10.831 |
| ak | 34 | 11.391 | 10.741 |
| al | 35 | 11.326 | 10.645 |
| am | 36 | 11.258 | 10.545 |
| an | 37 | 11.186 | 10.440 |
| ao | 38 | 11.110 | 10.331 |
| ap | 39 | 11.031 | 10.217 |
| aq | 40 | 10.948 | 10.098 |
| ar | 41 | 10.861 | 9.975  |
| as | 42 | 10.770 | 9.847  |
| at | 43 | 10.675 | 9.714  |
| au | 44 | 10.576 | 9.576  |
| av | 45 | 10.473 | 9.434  |
| aw | 46 | 10.365 | 9.288  |
| ax | 47 | 10.254 | 9.138  |
| ay | 48 | 10.138 | 8.983  |
| az | 49 | 10.018 | 8.824  |
| ba | 50 | 9.893  | 8.661  |
| bb | 51 | 9.764  | 8.493  |
| bc | 52 | 9.631  | 8.322  |
| bd | 53 | 9.493  | 8.147  |
| be | 54 | 9.352  | 7.970  |
| bf | 55 | 9.207  | 7.790  |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 5 of 19

|    |    |       |       |
|----|----|-------|-------|
| bg | 56 | 9.057 | 7.608 |
| bh | 57 | 8.904 | 7.423 |
| bi | 58 | 8.747 | 7.237 |
| bj | 59 | 8.586 | 7.048 |
| bk | 60 | 8.421 | 6.856 |
| bl | 61 | 8.252 | 6.662 |
| bm | 62 | 8.078 | 6.466 |
| bn | 63 | 7.900 | 6.267 |
| bo | 64 | 7.718 | 6.067 |
| bp | 65 | 7.532 | 5.865 |
| bq | 66 | 7.343 | 5.663 |
| br | 67 | 7.150 | 5.460 |
| bs | 68 | 6.954 | 5.256 |
| bt | 69 | 6.755 | 5.052 |
| bu | 70 | 6.552 | 4.847 |
| bv | 71 | 6.345 | 4.640 |
| bw | 72 | 6.134 | 4.431 |
| bx | 73 | 5.920 | 4.222 |
| by | 74 | 5.705 | 4.015 |
| bz | 75 | 5.491 | 3.812 |
| ca | 76 | 5.279 | 3.615 |
| cb | 77 | 5.069 | 3.424 |
| cc | 78 | 4.861 | 3.239 |

|    |     |       |       |
|----|-----|-------|-------|
| cd | 79  | 4.654 | 3.057 |
| ce | 80  | 4.448 | 2.879 |
| cf | 81  | 4.244 | 2.706 |
| cg | 82  | 4.044 | 2.538 |
| ch | 83  | 3.846 | 2.376 |
| ci | 84  | 3.652 | 2.217 |
| cj | 85  | 3.459 | 2.061 |
| ck | 86  | 3.272 | 1.911 |
| cl | 87  | 3.097 | 1.774 |
| cm | 88  | 2.934 | 1.651 |
| cn | 89  | 2.780 | 1.537 |
| co | 90  | 2.630 | 1.426 |
| cp | 91  | 2.485 | 1.319 |
| cq | 92  | 2.350 | 1.220 |
| cr | 96  | 2.227 | 1.131 |
| cs | 94  | 2.118 | 1.053 |
| ct | 95  | 2.024 | 0.986 |
| cu | 96  | 1.943 | 0.931 |
| cv | 97  | 1.873 | 0.885 |
| cw | 98  | 1.811 | 0.845 |
| cx | 99  | 1.754 | 0.810 |
| cy | 100 | 1.701 | 0.779 |
| cz | 101 | 1.651 | 0.751 |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 7 of 19

|    |     |       |       |
|----|-----|-------|-------|
| da | 102 | 1.602 | 0.726 |
| db | 103 | 1.550 | 0.703 |
| dc | 104 | 1.492 | 0.682 |
| dd | 105 | 1.420 | 0.661 |
| de | 106 | 1.322 | 0.637 |
| df | 107 | 1.178 | 0.602 |
| dg | 108 | 0.955 | 0.535 |
| dh | 109 | 0.595 | 0.383 |

**40 Drafting note: Technical changes.**

41 ~~§ 55-270~~ 55.1-xxx. Rule of calculation under § 55.1-xxx [§ 55-269.1].

42 A. Calculate the interest at eight percent upon the sum to the income of which, or upon  
43 the value of the property to the use of which, the person is entitled. Multiply this interest by the  
44 present value of an annuity of ~~one dollar~~ \$1, as set opposite the person's age in the table, and the  
45 product is the gross value of the life estate of such person ~~therein~~.

46 ~~§ 55-271. Example.~~

47 B. Example: Suppose a person whose age is 42 is a tenant for life in the whole of an  
48 estate worth \$10,500. The annual interest on that sum at ~~8~~ eight percent is \$840. The present  
49 value of an annuity of \$1 at the age of 42, as ~~appears shown~~ by the table, is \$10.77, which,  
50 multiplied by \$840, gives \$9,046.80 as the gross value of such life estate in the premises, or the  
51 proceeds ~~thereof of such life estate~~.

52 **Drafting note: Existing §§ 55-270 and 55-271 are combined and the catchline is**  
53 **amended for consistency with existing § 55-273. Technical changes are made.**

54 ~~§ 55-272. Repealed.~~

55 **Drafting note: Repealed by Acts 1973, c. 355.**

56 ~~§ 55-272.1~~ 55.1-xxx. Table of uniform seniority.

57 | When any two parties, as joint tenants for life, are entitled to the annual interest on a sum  
 58 | of money, or are entitled to the use of any estate or a part thereof, and are willing to accept a  
 59 | gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the  
 60 | right to pay a gross sum in lieu thereof, or if the court in any legal proceeding ~~deeree~~ decrees a  
 61 | gross sum to be paid in lieu thereof, the sum shall be estimated according to the then value of an  
 62 | annuity of eight ~~per centum~~ percent on the principal sum during the probable joint lives of such  
 63 | persons (which probable joint lives shall be computed from the table in this section for  
 64 | computing uniform seniority) as set forth in Column II in the table in § ~~55-269.1~~ 55.1-xxx,  
 65 | showing the present value, on the basis of eight ~~per centum~~ percent interest, of an annuity of ~~one~~  
 66 | ~~dollar~~ \$1 payable at the end of every year that two persons of given ages may both be living for  
 67 | the ages therein stated:

68 | TABLE OF UNIFORM SENIORITY

| a     | Difference | Addition    |
|-------|------------|-------------|
| b     | of         | to          |
| c     | age        | younger age |
| <hr/> |            |             |
| d     | 1          | 1           |
| e     | 2          | 1           |
| f     | 3          | 2           |
| g     | 4          | 2           |
| h     | 5          | 3           |
| i     | 6          | 4           |
| j     | 7          | 4           |
| k     | 8          | 5           |
| l     | 9          | 6           |
| m     | 10         | 7           |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 9 of 19

|    |    |    |
|----|----|----|
| n  | 11 | 7  |
| o  | 12 | 8  |
| p  | 13 | 9  |
| q  | 14 | 10 |
| r  | 15 | 11 |
| s  | 16 | 12 |
| t  | 17 | 13 |
| u  | 18 | 14 |
| v  | 19 | 14 |
| w  | 20 | 15 |
| x  | 21 | 16 |
| y  | 22 | 17 |
| z  | 23 | 18 |
| aa | 24 | 19 |
| ab | 25 | 20 |
| ac | 26 | 21 |
| ad | 27 | 22 |
| ae | 28 | 23 |
| af | 29 | 24 |
| ag | 30 | 25 |
| ah | 31 | 26 |
| ai | 32 | 27 |
| aj | 33 | 28 |

|    |    |    |
|----|----|----|
| ak | 34 | 29 |
| al | 35 | 30 |
| am | 36 | 31 |
| an | 37 | 32 |
| ao | 38 | 33 |
| ap | 39 | 34 |
| aq | 40 | 35 |
| ar | 41 | 36 |
| as | 42 | 37 |
| at | 43 | 38 |
| au | 44 | 39 |
| av | 45 | 40 |
| aw | 46 | 41 |
| ax | 47 | 42 |
| ay | 48 | 43 |
| az | 49 | 44 |
| ba | 50 | 45 |
| bb | 51 | 46 |
| bc | 52 | 47 |
| bd | 53 | 48 |
| be | 54 | 49 |
| bf | 55 | 50 |
| bg | 56 | 51 |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 11 of 19

|    |    |    |
|----|----|----|
| bh | 57 | 52 |
| bi | 58 | 53 |
| bj | 59 | 54 |
| bk | 60 | 55 |
| bl | 61 | 56 |
| bm | 62 | 57 |
| bn | 63 | 58 |
| bo | 64 | 59 |
| bp | 65 | 60 |
| bq | 66 | 61 |
| br | 67 | 62 |
| bs | 68 | 63 |
| bt | 69 | 64 |
| bu | 70 | 65 |
| bv | 71 | 66 |
| bw | 72 | 67 |
| bx | 73 | 68 |
| by | 74 | 69 |
| bz | 75 | 70 |

**69 Drafting note: Technical changes.****70** §~~55-273~~ 55.1-xxx. Rules of calculation under §~~55-272.1~~ 55.1-xxx.**71** ~~(a)~~ A. Calculate the interest at eight ~~per centum~~ percent upon the sum to the income of**72** which, or upon the value of the property to the use of which, the joint life tenants are entitled.**73** Multiply this interest by the present value of an annuity of ~~one dollar~~ \$1, as shown in Column II

74 of § ~~55-269.1~~ 55.1-xxx, for the joint equal age of such joint life tenants; ~~the~~ The joint equal age  
75 of such tenants shall be obtained as follows: Take the difference in age in years between such  
76 tenants and refer to the table in § ~~55-272.1~~ 55.1-xxx and add to the younger age the value  
77 opposite such difference, and the sum is the joint equal age; take this joint equal age and refer to  
78 the table in § ~~55-269.1~~ 55.1-xxx and find in Column II the value of an annuity of ~~one dollar~~ \$1 a  
79 year payable for life during such joint equal age. The product of the interest and the value of an  
80 annuity for a given joint equal age is the gross value of the joint life estate of such person  
81 therein.

82 ~~(b)~~ B. Example: Doe, age 30, and Roe, age 40, are joint tenants for life in the whole of  
83 an estate worth \$10,500: The difference in ages is ~~ten~~ 10 and, ~~referring to as shown by~~ the table  
84 in § ~~55-272.1~~ 55.1-xxx, the value opposite age difference ~~ten~~ 10 is seven. Seven added to 30,  
85 Doe's age, gives 37; ~~referring to as shown by~~ the table in § ~~55-269.1~~ 55.1-xxx, the value in  
86 Column II for an annuity of \$1 for ~~2~~ two joint lives at joint equal age 37 is \$10.44 and no mills,  
87 and this, multiplied by \$840 (the interest at ~~8%~~ eight percent on \$10,000), gives \$8,769.60 as  
88 the gross value of the joint life estate of such persons ~~therein~~.

89 **Drafting note: Technical changes.**

90 § ~~55-274~~ 55.1-xxx. Makehamized mortality table.

91 When more than two parties as joint tenants for life, or three or more parties as tenants in  
92 successive estates, are entitled to the annual interest on a sum of money, or are entitled to the  
93 use of any estate, or a part thereof, and are willing to accept a gross sum in lieu thereof, or the  
94 party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu  
95 thereof, or if the court in any legal proceeding decree a gross sum to be paid in lieu thereof, the  
96 sum shall be estimated according to the then value of an annuity of eight percent on the  
97 principal sum during the probable lives of such persons ~~which probable~~ Probable lives shall be  
98 computed from the Makehamized mortality table for total population in the United States, 1969-  
99 1971, published by the Bureau of the Census of the Department of Commerce.

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 13 of 19

| a | X  | Ax     | Axx    | Axxx   | Axxxx  | Cx     |
|---|----|--------|--------|--------|--------|--------|
| b | 0  | 12.060 | 11.670 | 11.305 | 10.958 | 1.000  |
| c | 1  | 12.291 | 12.124 | 11.973 | 11.832 | 1.147  |
| d | 2  | 12.291 | 12.127 | 11.979 | 11.843 | 1.315  |
| e | 3  | 12.286 | 12.120 | 11.971 | 11.834 | 1.508  |
| f | 4  | 12.278 | 12.107 | 11.956 | 11.816 | 1.730  |
| g | 5  | 12.267 | 12.091 | 11.934 | 11.791 | 1.984  |
| h | 6  | 12.256 | 12.071 | 11.909 | 11.760 | 2.275  |
| i | 7  | 12.242 | 12.049 | 11.879 | 11.724 | 2.609  |
| j | 8  | 12.227 | 12.024 | 11.846 | 11.684 | 2.992  |
| k | 9  | 12.211 | 11.996 | 11.809 | 11.638 | 3.431  |
| l | 10 | 12.192 | 11.965 | 11.766 | 11.587 | 3.935  |
| m | 11 | 12.171 | 11.930 | 11.720 | 11.529 | 4.512  |
| n | 12 | 12.149 | 11.892 | 11.668 | 11.466 | 5.175  |
| o | 13 | 12.125 | 11.852 | 11.615 | 11.401 | 5.935  |
| p | 14 | 12.102 | 11.812 | 11.562 | 11.336 | 6.806  |
| q | 15 | 12.078 | 11.773 | 11.510 | 11.274 | 7.805  |
| r | 16 | 12.055 | 11.736 | 11.462 | 11.215 | 8.951  |
| s | 17 | 12.032 | 11.701 | 11.416 | 11.162 | 10.265 |
| t | 18 | 12.010 | 11.666 | 11.373 | 11.111 | 11.772 |
| u | 19 | 11.988 | 11.632 | 11.330 | 11.062 | 13.501 |
| v | 20 | 11.964 | 11.596 | 11.286 | 11.011 | 15.483 |
| w | 21 | 11.939 | 11.559 | 11.240 | 10.959 | 17.756 |

|    |    |        |        |        |        |         |
|----|----|--------|--------|--------|--------|---------|
| x  | 22 | 11.913 | 11.521 | 11.193 | 10.905 | 20.362  |
| y  | 23 | 11.886 | 11.480 | 11.144 | 10.850 | 23.352  |
| z  | 24 | 11.857 | 11.437 | 11.091 | 10.789 | 26.780  |
| aa | 25 | 11.824 | 11.389 | 11.032 | 10.723 | 30.712  |
| ab | 26 | 11.789 | 11.336 | 10.968 | 10.649 | 35.221  |
| ac | 27 | 11.751 | 11.278 | 10.896 | 10.567 | 40.392  |
| ad | 28 | 11.709 | 11.215 | 10.818 | 10.478 | 46.321  |
| ae | 29 | 11.664 | 11.148 | 10.734 | 10.382 | 53.122  |
| af | 30 | 11.615 | 11.075 | 10.645 | 10.279 | 60.921  |
| ag | 31 | 11.564 | 10.998 | 10.550 | 10.171 | 69.865  |
| ah | 32 | 11.510 | 10.917 | 10.450 | 10.056 | 80.122  |
| ai | 33 | 11.452 | 10.831 | 10.344 | 9.936  | 91.885  |
| aj | 34 | 11.391 | 10.741 | 10.233 | 9.809  | 105.375 |
| ak | 35 | 11.326 | 10.645 | 10.117 | 9.677  | 120.845 |
| al | 36 | 11.258 | 10.545 | 9.995  | 9.539  | 138.586 |
| am | 37 | 11.186 | 10.440 | 9.868  | 9.396  | 158.932 |
| an | 38 | 11.110 | 10.331 | 9.735  | 9.247  | 182.266 |
| ao | 39 | 11.031 | 10.217 | 9.599  | 9.094  | 209.024 |
| ap | 40 | 10.948 | 10.098 | 9.457  | 8.936  | 239.712 |
| aq | 41 | 10.861 | 9.975  | 9.311  | 8.773  | 274.904 |
| ar | 42 | 10.770 | 9.847  | 9.159  | 8.605  | 315.263 |
| as | 43 | 10.675 | 9.714  | 9.002  | 8.432  | 361.548 |
| at | 44 | 10.576 | 9.576  | 8.841  | 8.256  | 414.627 |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 15 of 19

|    |    |        |       |       |       |          |
|----|----|--------|-------|-------|-------|----------|
| au | 45 | 10.473 | 9.434 | 8.677 | 8.076 | 475.500  |
| av | 46 | 10.365 | 9.288 | 8.508 | 7.893 | 545.309  |
| aw | 47 | 10.254 | 9.138 | 8.336 | 7.707 | 625.367  |
| ax | 48 | 10.138 | 8.983 | 8.160 | 7.517 | 717.178  |
| ay | 49 | 10.018 | 8.824 | 7.979 | 7.234 | 822.468  |
| az | 50 | 9.893  | 8.661 | 7.796 | 7.129 | 943.217  |
| ba | 51 | 9.764  | 8.493 | 7.608 | 6.930 | 1081.692 |
| bb | 52 | 9.631  | 8.322 | 7.418 | 6.730 | 1240.497 |
| bc | 53 | 9.493  | 8.147 | 7.226 | 6.529 | 1422.617 |
| bd | 54 | 9.352  | 7.970 | 7.033 | 6.328 | 1631.475 |
| be | 55 | 9.207  | 7.790 | 6.838 | 6.127 | 1870.995 |
| bf | 56 | 9.057  | 7.608 | 6.643 | 5.927 | 2145.679 |
| bg | 57 | 8.904  | 7.423 | 6.447 | 5.727 | 2460.691 |
| bh | 58 | 8.747  | 7.237 | 6.250 | 5.529 | 2821.950 |
| bi | 59 | 8.586  | 7.048 | 6.053 | 5.331 | 3236.246 |
| bj | 60 | 8.421  | 6.856 | 5.855 | 5.133 | 3711.365 |
| bk | 61 | 8.252  | 6.662 | 5.656 | 4.936 | 4256.238 |
| bl | 62 | 8.078  | 6.466 | 5.457 | 4.740 | 4881.105 |
| bm | 63 | 7.900  | 6.267 | 5.257 | 4.544 | 5597.710 |
| bn | 64 | 7.718  | 6.067 | 5.056 | 4.349 | 6419.521 |
| bo | 65 | 7.532  | 5.865 | 4.857 | 4.157 | 7361.984 |
| bp | 66 | 7.343  | 5.663 | 4.659 | 3.967 | 8442.811 |
| bq | 67 | 7.150  | 5.460 | 4.462 | 3.780 | 9682.318 |

|    |    |       |       |       |       |            |
|----|----|-------|-------|-------|-------|------------|
| br | 68 | 6.954 | 5.256 | 4.266 | 3.596 | 11103.798  |
| bs | 69 | 6.755 | 5.052 | 4.072 | 3.414 | 12733.969  |
| bt | 70 | 6.552 | 4.847 | 3.879 | 3.234 | 14603.468  |
| bu | 71 | 6.345 | 4.640 | 3.685 | 3.055 | 16747.432  |
| bv | 72 | 6.134 | 4.431 | 3.490 | 2.875 | 19206.157  |
| bw | 73 | 5.920 | 4.222 | 3.296 | 2.697 | 22025.851  |
| bx | 74 | 5.705 | 4.015 | 3.106 | 2.523 | 25259.510  |
| by | 75 | 5.491 | 3.812 | 2.922 | 2.356 | 28967.909  |
| ba | 76 | 5.279 | 3.615 | 2.745 | 2.197 | 33220.746  |
| ca | 77 | 5.069 | 3.424 | 2.577 | 2.047 | 38097.950  |
| cb | 78 | 4.861 | 3.239 | 2.415 | 1.905 | 43691.186  |
| cc | 79 | 4.654 | 3.057 | 2.258 | 1.768 | 50105.577  |
| cd | 80 | 4.448 | 2.879 | 2.106 | 1.636 | 57461.677  |
| ce | 81 | 4.244 | 2.706 | 1.959 | 1.509 | 65897.740  |
| cf | 82 | 4.044 | 2.538 | 1.818 | 1.389 | 75572.319  |
| cg | 83 | 3.846 | 2.376 | 1.684 | 1.276 | 86667.243  |
| ch | 84 | 3.652 | 2.217 | 1.554 | 1.166 | 99391.034  |
| ci | 85 | 3.459 | 2.061 | 1.425 | 1.058 | 113982.830 |
| cj | 86 | 3.272 | 1.911 | 1.302 | 0.955 | 130716.878 |
| ck | 87 | 3.097 | 1.774 | 1.192 | 0.863 | 149907.684 |
| cl | 88 | 2.934 | 1.651 | 1.095 | 0.784 | 171915.931 |
| cm | 89 | 2.780 | 1.537 | 1.007 | 0.713 | 197155.252 |
| cn | 90 | 2.630 | 1.426 | 0.922 | 0.645 | 226100.009 |

XX: Commutation and Valuation of  
Certain Estates and Interests

8/1/2017 11:20 AM

Page 17 of 19

|    |     |       |       |       |       |             |
|----|-----|-------|-------|-------|-------|-------------|
| co | 91  | 2.485 | 1.319 | 0.839 | 0.579 | 259294.204  |
| cp | 92  | 2.350 | 1.220 | 0.763 | 0.519 | 297361.704  |
| cq | 93  | 2.227 | 1.131 | 0.695 | 0.465 | 341017.971  |
| cr | 94  | 2.118 | 1.053 | 0.636 | 0.419 | 391083.501  |
| cs | 95  | 2.024 | 0.986 | 0.586 | 0.380 | 448499.252  |
| ct | 96  | 1.943 | 0.931 | 0.546 | 0.349 | 514344.324  |
| cu | 97  | 1.873 | 0.885 | 0.512 | 0.324 | 589856.243  |
| cv | 98  | 1.811 | 0.845 | 0.484 | 0.302 | 676454.218  |
| cw | 99  | 1.754 | 0.810 | 0.459 | 0.284 | 775765.815  |
| cx | 100 | 1.701 | 0.779 | 0.437 | 0.268 | 889657.545  |
| cy | 101 | 1.651 | 0.751 | 0.417 | 0.254 | 1020269.949 |
| cz | 102 | 1.602 | 0.726 | 0.400 | 0.241 | 1170057.821 |
| da | 103 | 1.550 | 0.703 | 0.385 | 0.230 | 1341836.349 |
| db | 104 | 1.492 | 0.682 | 0.372 | 0.221 | 1538834.028 |
| dc | 105 | 1.420 | 0.661 | 0.359 | 0.212 | 1764753.329 |
| dd | 106 | 1.322 | 0.637 | 0.348 | 0.205 | 2023840.295 |
| de | 107 | 1.178 | 0.602 | 0.335 | 0.197 | 2320964.336 |
| df | 108 | 0.955 | 0.535 | 0.312 | 0.188 | 2661709.752 |
| dg | 109 | 0.595 | 0.383 | 0.246 | 0.158 | 3052480.684 |

**100** Example: Three persons ~~age, ages~~ 30, 40, and 45, are joint tenants for life in the whole  
**101** of an estate worth \$10,500: the equivalent equal age,  $w$ , of these ~~3~~ three persons is given by the  
**102** following formula:

$$C^w = \frac{C^{30} + C^{40} + C^{45}}{3} = 258.711 \text{ where}$$

103  $C^{30}$ ,  $C^{40}$ , and  $C^{45}$  are found in column 6 of the above table.

104 A linear interpolation between  $x = 40$  and  $x = 41$  in the above table would yield the  
105 value of  $x = 40.540$ , which would be the equivalent equal age of the persons involved.

106 Finally, a linear interpolation between  $x = 40$  and  $x = 41$  would yield the value of  $A =$   
107  $9.378 \cdot 40.540 : 40.540 : 40.540$ .

108 This figure multiplied by \$840 (the interest at ~~8%~~ eight percent on \$10,500) gives  
109 \$7,877.52 as the gross value of the joint life estate of such persons ~~therein~~.

110 **Drafting note: Technical changes.**

111 ~~§ 55-275. Repealed.~~

112 **Drafting note: Repealed by Acts 1990, c. 831.**

113 ~~§ 55-276.55.1-xxx.~~ Commutation in case of persons under disability.

114 In any case in which, under the laws of ~~this the~~ Commonwealth, a provision is made for  
115 commutation in money of a life estate when all the parties interested are under no disability,  
116 such provision shall also apply when any of the parties interested are under disability, ~~and in any~~  
117 ~~such latter case.~~ Where any of the parties interested are under disability, the court, may, upon  
118 application of the guardian, conservator, committee, or trustee, if any, and, if not, by a guardian  
119 ad litem appointed by the clerk or judge of said court, of any such person, on behalf of his ward,  
120 and upon hearing evidence satisfactory to such court or judge, enter an order authorizing such  
121 guardian, conservator, committee, trustee, or guardian ad litem, to consent on behalf of such  
122 person under disability to such commutation. Such consent ~~when so given~~ shall be as valid and  
123 effective as if the person on whose behalf it was given were sui juris and had given such  
124 consent. All judicial orders and decrees entered prior to July 1, 1960, authorizing any such  
125 commutation where persons under disability were interested, are hereby validated and  
126 confirmed; ~~providing,~~ provided that nothing in this section ~~contained~~ shall be construed as  
127 intended to impair any vested right.

128 **Drafting note: Technical changes.**



FOLLOW UP FROM JUNE 26 CODE COMMISSION MEETING  
OBSOLESCENCE OF VIRGINIA CODE § 60.2-114.1

**Issue:** At the June 26 meeting, Frank Munyan, Senior Attorney, Division of Legislative Services, presented the issue of Virginia Code § 60.2-114.1, which requires an employer, at the time of initial hiring, to request that an employee disclose the existence of an income withholding order pursuant to § 20-79.1 or § 63.2-1924 of the Code of Virginia.

The issue was brought to the attention of the Code Commission by Dawn Flora of the City of Virginia Beach's Finance Payroll Division. Ms. Flora requested that the Code Commission review § 60.2-114.1 and make a determination as to whether it is obsolete or needs revision. Ms. Flora stated:

With the enactment of Virginia Code § 63.2-1946 and per the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 U.S.C. § 653A, employers are now mandated to report all newly hired and re-hired employees to a state directory within 20 days of their hire date. Prior to the passing of mandatory new hire reporting, Virginia employers were required to complete a child support reporting form and forward the information to the appropriate agencies if the individual declared he or she had a child support withholding order. The Virginia New Hire Reporting Center, the Virginia Division of Child Support Enforcement, and the Virginia Unemployment Commission no longer require a wage withholding order survey form to be completed. The new hire reporting process supersedes the use of the wage withholding order survey form; however the applicable state code has never been revised or updated to reflect these changes. This leads to duplication of an employer's efforts and wasted resources.

**Section 60.2-114.1:**

**§ 60.2-114.1. Notification of withholding order.** When an individual is hired for employment, the employer shall, at the time of the initial hiring, request that the employee disclose whether he has an income withholding order pursuant to § 20-79.1 or § 63.2-1924. When an employee discloses that he owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order. Information disclosed under this section shall not be divulged except to the extent necessary for the administration of the child support enforcement program or when otherwise authorized by law. (1993, c. 165)

**Summary of staff findings:** Mr. Munyan's research of this section included reviewing the drafting file, searching for formal Attorney General opinions and reported circuit court or appellate court decisions, and consulting with the Virginia Employment Commission (VEC) and the Director of Legal Operations at the Department of Social Services' Division of Child Support Enforcement.

Mr. Munyan stated that his research shows that § 63.2-1946 reflects the current treatment of these matters and appears to supersede § 60.2-114.1.

**Summary of discussion at June meeting:** Senator Edwards inquired if the provision should be retained and relocated to Title 63.2 of the Code. Judge Lilley stated that the section appears to be outdated and has been replaced by § 63.2-1946. Kathy Weaver, Acting Chief of Benefits at VEC, spoke to the issue and advised that states report new hires on a nationwide system, that the process is fully automated, and that paper forms are obsolete. In response to a question, Ms. Weaver advised that VEC submitted an agency legislative proposal to the administration requesting that the section be repealed; however, the recommendation was not approved as part of VEC's legislative package. Mr. Hopkins reported that the Governor's Office has no objection to the Commission proceeding with legislation to repeal § 60.2-114.1.

Mr. Oksman will follow up with the Attorney General's Office to determine whether there are any concerns regarding the repeal of this section, and a vote on the matter was deferred until the August meeting.

**Office of Attorney General's response:** By email to Senator Edwards dated June 26, 2017, Mr. Oksman stated that the Office of the Attorney General does not object to a possible repeal of § 60.2-114.1