

## TIME-SHARES

### Footnotes

For cooperatives and condominiums, see chapters 499A and 499B

#### **557A.1 Time-share Act.**

This chapter shall be known as the "*Iowa Time-share Act*".

85 Acts, ch 155, §1

#### **557A.2 Definitions.**

In this chapter, unless the context requires otherwise:

1. "*Association*" means all of the time-share interval owners of a time-share project acting as a group, either through a nonstock nonprofit corporation or an unincorporated association, in accordance with its bylaws governing administration of the project.
2. "*Commission*" means the real estate commission.
3. "*Common expense*" means all sums lawfully assessed against an owner of a time-share interval by an association for the expenses of operating and maintaining the time-share project and for other expenses designated by the project instruments.
4. "*Developer*" means a person who is in the business of creating or selling time-share intervals in a time-share program. This definition does not include a person acting solely as a sales agent.
5. "*Exchange agent*" means a person who negotiates and arranges the exchange of time-share intervals for their owners in an exchange program involving other time-share intervals.
6. "*Managing agent*" means a person who undertakes the duties and responsibilities of the management of a time-share project.
7. "*Project instrument*" means a recordable document applicable to an entire time-share project, containing restrictions or covenants regulating the use, occupancy, or disposition of the entire project and including amendments to the document.
8. "*Property report*" means a written statement provided to the initial purchaser of a time-share interval containing the information required in sections 557A.11 and 557A.12.
9. "*Purchaser*" means a person other than a developer or lender who acquires an interest in a time-share interval.
10. "*Time-share estate*" means an ownership or leasehold estate in property devoted to a time-share fee or a time-share lease.
11. "*Time-share instrument*" means a document by whatever name denominated creating or regulating time-share programs, but excluding any law, ordinance, or government regulation.
12. "*Time-share interval*" means a time-share estate or a time-share use.

13. *"Time-share program"* means an arrangement for time-share intervals in a time-share project in which the use, occupancy or possession of real property circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring over a period of time.

14. *"Time-share project"* means the entire real property that is subject to a time-share program.

15. *"Time-share use"* means a contractual right of exclusive occupancy which does not fall within the definition of a time-share estate including, but is not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond.

16. *"Unit"* means the real property or the real property improvement in a time-share project which is divided into time-share intervals.

85 Acts, ch 155, §2

### **557A.3 Applicability to time-share programs located out-of-state.**

1. Sections 557A.4 to 557A.10 apply only to time-share programs located in Iowa.

2. Sections 557A.1, 557A.2, and 557A.11 to 557A.20 apply to any time-share program, wherever located, which is marketed in Iowa.

85 Acts, ch 155, §3

### **557A.4 Action for partition.**

An action for partition of a unit shall not be maintained except as permitted by the time-share instrument.

85 Acts, ch 155, §4

### **557A.5 Status of time-share estates.**

1. A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or an estate for years if a leasehold, except as expressly modified by this chapter.

2. A document transferring or encumbering a time-share estate shall not be rejected for recordation because of the nature or duration of the estate.

3. For purposes of title, each time-share estate constitutes a separate estate or interest in property except for real property tax purposes.

85 Acts, ch 155, §5

### **557A.6 Creation of time-share estates.**

Project instruments and time-share instruments creating time-share estates shall contain the following:

1. The name of the county in which the property is situated.

2. The legal description, street address, or other description sufficient to identify the property.

3. Identification of units and time periods by letter, name, number, or a combination.

4. Identification of time-share estates and, when applicable, the method by which additional time-share estates may be created.
5. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, when applicable, to each unit that is not subject to the time-share program.
6. Any restrictions on the use, occupancy, alteration, or alienation of time-share intervals.
7. The dates and conditions under which a partition may occur.
8. The ownership interest, if any, of personal property and provisions for care and replacement of the personal property.
9. Any other matters the developer deems appropriate.

85 Acts, ch 155, §6

#### **557A.7 Arrangements for management and operation of a time-share estate program.**

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the program and for the maintenance, repair, and furnishing of units, which shall include, but not be limited to, provisions for the following:

1. Creation of an association of time-share estate owners.
2. Adoption of bylaws for organizing and operating the association.
3. Payment of costs and expenses of operating the time-share program and owning and maintaining the units.
4. Employment and termination of employment of the managing agent.
5. Preparation and dissemination to time-share estate owners of an annual budget and of operating statements and other financial information concerning the time-share program.
6. Adoption of standards and rules of conduct for the use and occupancy of units by time-share estate owners.
7. Procedures for imposing and collecting assessments from time-share estate owners to defray the expenses of management of the time-share program and maintenance of the units.
8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share estate owners, their guests, and other users.
9. Methods for providing compensating use periods or monetary compensation to a time-share estate owner if a unit cannot be made available for the period to which the time-share estate owner is entitled by schedule or by confirmed reservation.
10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share program for failure of the owner to comply with the time-share instruments or the rules of the association with respect to the use of the units. The time-share estate owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the governing body or the association before a decision to impose discipline is rendered.
11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the

management of the time-share program and the units.

85 Acts, ch 155, §7

**557A.8 Developer control period.**

1. The time-share instruments for a time-share estate program may provide for a period of time, known as the developer control period, during which the developer or a managing agent selected by the developer shall manage the time-share program and the units in the time-share program.
2. If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall include, but not be limited to, provisions for the following:
  - a. Termination of the developer control period by action of the association.
  - b. Termination of contracts for goods and services for the time-share program entered into during the developer control periods.
  - c. Termination of contract for managing agent entered into during developer control period.
  - d. A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program.

85 Acts, ch 155, §8

**557A.9 Creation of time-share uses.**

Project instruments and time-share instruments creating time-share uses shall contain the following:

1. Identification by name of the time-share project and street address or other description sufficient to identify the property where the time-share project is situated. The address shall be the street address if available.
2. Identification of the time periods, type of units, and the units that are in the time-share program and the length of time that the units are committed to the time-share program.
3. In case of a time-share project, identification of which units are in the time-share program and the method by which any units may be added, deleted, or substituted.
4. Any other matters that the developer deems appropriate.

85 Acts, ch 155, §9

**557A.10 Arrangement for management and operation of a time-share use program.**

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the program and for the maintenance, repair, and furnishing of units which shall include, but not be limited to, provisions for the following:

1. Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of janitorial, cleaning, linen, and similar services to the units during use periods.
2. Adoption of standards and rules of conduct governing the use and occupancy of units by time-share use owners.

3. Payment of the costs and expenses of operating the time-share program.
4. Selection of a managing agent to act on behalf of the developer.
5. Preparation and dissemination to time-share use owners of an annual budget and operating statements and other financial information concerning the time-share program.
6. Procedures for establishing the rights of time-share use owners to the use of units by prearrangement or under a first-reserved, first-served priority system.
7. Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the advisory board.
8. Procedures for imposing and collecting assessment or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units.
9. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users.
10. Methods for providing compensating use periods or monetary compensation to a time-share use owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation.
11. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and privileges in the time-share program for failure of the owner to comply with the time-share instruments or the rules established by the developer with respect to the use of the units. The time-share use owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered.
12. Procedures for disclosure at cost to requesting time-share users of a list of the names and mailing addresses of all current time-share owners in the time-share program.

85 Acts, ch 155, §10

#### **557A.11 Disclosure requirements.**

1. A developer or an agent of a developer of a time-share program shall provide a current property report to a purchaser not later than ten days after the purchaser signs a purchase agreement. Prior to any sale or solicitation for sale of a time-share interval, a copy of all disclosure materials required to be given to a purchaser by this section and section 557A.12 shall be filed with the commission. The property report shall contain the following:

*a.* A cover sheet of the same approximate size and shape as the majority of the disclosure materials required in this section, bearing the title "Property Report" and containing the name and location of the time-share project, the name and business address of the developer and the name and business address of the developer's agent. Following this information, on the front of the cover sheet, but set apart from it, there shall appear four statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

**(1) These are the legal documents covering your rights and responsibilities as a time-share interval owner. If you do not understand any provisions contained in them, you should obtain professional advice.**

**(2) These disclosure materials given to you as required by law may be relied upon as correct and binding. Oral statements may not be legally binding.**

**(3) You may at any time within ..... (developer or developer's agent shall insert a number, not less than five, designating the rescission period) business days following receipt of a current property report, cancel in writing the purchase agreement and receive a full refund of any deposits made.**

**(4) The filing of this document with the commission does not constitute approval of the sale or lease, or offer for sale or lease, by the state, commission, or any officer thereof, or indicate that the state, commission, or any officer thereof has in any way passed upon the merits of the offering.**

*b.* A general description of the units including, but not limited to, the developer's schedule of approximate commencement and completion of all buildings, units, and amenities; or if completed, a statement that they have been completed.

*c.* As to all units offered by the developer in the same time-share project:

(1) The types and number of units.

(2) Identification of units that are subject to time-share intervals.

(3) The estimated number of units that may become subject to time-share intervals.

*d.* A brief description of the time-share project.

*e.* If applicable, any current budget and a projected budget to be used for the time-share intervals for one year after the date of the first transfer to a purchaser. The budget shall include, but is not limited to:

(1) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(2) The projected liability for common expense, if any, by category of expenditures for the time-share intervals.

(3) A statement of any services not reflected in the budget that the developer provides, or expenses that the developer pays and which, upon completion of the project or the commencement of association control, would be payable by purchasers as part of their annual share of common expenses.

*f.* Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

*g.* A description of any liens, defects, or encumbrances on or affecting the title to the time-share intervals.

*h.* A description in general terms of any financing offered by the developer and a statement that documents showing specific terms and conditions of financing will be furnished upon request.

*i.* A statement of any pending lawsuits material to the time-share intervals of which a developer has actual knowledge.

*j.* Any restraints on alienation of any number or portion of any time-share intervals of which a developer has actual knowledge.

*k.* A description of the insurance coverage, or a statement that there is no insurance coverage, provided for

the benefit of time-share interval owners.

*l.* Any current or expected fees or charges to be paid by time-share interval owners for the use of any amenities or facilities related to the property.

*m.* The extent to which financial arrangements have been provided for completion of all promised improvements.

*n.* The extent to which a unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

2. If the time-share program has been registered under a law or rule of another state of the United States, which registration has a similar goal in the protection of prospective purchasers of time-share programs, the developer may substitute for the property report required by subsection 1 an abbreviated property report which consists of a first page to which have been attached the disclosure materials required by the other registering jurisdiction.

*a.* In addition to the information required to be included on the cover page under subsection 1, paragraph "a", the cover page of the abbreviated report shall contain the following conspicuously noted language: PROPERTY REPORT OF (Name of time-share program) IMPORTANT NOTE TO PROSPECTIVE PURCHASERS:

The attached information has been provided by (name of time-share program) under the laws of Iowa and (other registering jurisdiction). Read it carefully before you spend any money.

*b.* If the commission finds that some states do not have disclosure requirements adequate to protect prospective purchasers in this state, the commission may adopt rules identifying those states and requiring the amending of the language of the first page of the abbreviated property report or the abbreviated property report from those states to insure adequate disclosure.

3. The developer shall pay a filing fee in an amount set by rule by the commission when filing the property report required in subsection 1 or 2.

4. At the same time as the developer files the property report or abbreviated property report, the developer shall provide the commission with a list of the names, addresses and phone numbers of all persons authorized to sell time-share intervals on the developer's behalf in Iowa. This list shall be periodically updated as the commission may by rule require.

85 Acts, ch 155, § 11; 86 Acts, ch 1237, § 36

#### **557A.12 Additional disclosure requirements relating to exchange programs.**

1. When the owners of time-share intervals are to be permitted or required to become members of or participate in any program for the exchange of occupancy rights among themselves or with the owners of time-share intervals of other time-share projects or both, the developer or an agent of a developer of a time-share program, in addition to the property report required by section 557A.11 and within the same time limitation, shall provide the following disclosure materials to a purchaser:

*a.* The name, address and telephone number of the exchange agent and a statement as to whether that person is an affiliate of the developer.

*b.* Whether membership or participation, or both, in the exchange program are voluntary or mandatory.

c. The expenses, or ranges of expenses, charged to the time-share interval owners for membership in the exchange program including the expenses, if any, of exchanging as of a date not more than one year before the property report is delivered to the purchaser, and the name of the person to whom those expenses are payable.

d. Whether and how any of the expenses specified in paragraph "c" may be altered and, if any of them are to be fixed on a case-by-case basis, the manner in which they are to be fixed in each case.

2. Subsection 1 shall not apply if information on all exchange programs has been included pursuant to law or rule of the other registering jurisdiction in an abbreviated property report prepared pursuant to section 557A.11, subsection 2.

85 Acts, ch 155, §12

### **557A.13 Exemptions from disclosure requirements.**

A person shall not be required to provide disclosure documents, as required in sections 557A.11 and 557A.12, in the following cases:

1. A transfer of a time-share interval by a time-share interval owner other than a developer or a developer's agent.
2. A disposition of units in a time-share project pursuant to a court order.
3. A disposition of units in a time-share project by a government or governmental agency.
4. A disposition of units in a time-share project by a foreclosure or deed in lieu of foreclosure.
5. A disposition to a person acquiring the time-share interval for other than personal use.
6. A disposition of a time-share interval in a time-share project situated wholly outside this state if all solicitations, negotiations, and contracts took place wholly outside this state and the contract was executed wholly outside this state.
7. A gratuitous transfer of a time-share interval.

85 Acts, ch 155, §13

### **557A.14 Purchaser's and developer's rights relating to property report.**

1. A purchaser may at any time within five business days following the receipt of all information required in sections 557A.11 and 557A.12 rescind in writing a contract of sale without stating any reason and without any liability on the purchaser's part. All payments made by the purchaser before rescission shall be refunded within thirty days after receipt of the notice of rescission as provided in subsection 3.
2. The developer may cancel the contract of purchase without penalty to either person at any time within five business days after the receipt by the purchaser of the disclosure materials required in sections 557A.11 and 557A.12. The developer shall return all payments made and the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If the materials are not returned, the developer may deduct their cost and return the balance to the purchaser.
3. If either person elects to cancel a contract pursuant to subsection 1 or 2, the person may do so by hand delivery or personal service, or electronic or prepaid United States mail to the other person or to the person's

agent for service of process.

4. Material furnished under sections 557A.11 and 557A.12 may not be changed or amended following delivery to a purchaser without the prior approval of the purchaser, if the change or amendment would materially affect the rights of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

5. A developer who makes a false or misleading statement of fact that reasonably could affect the purchaser's decision to enter into the contract of sale, or omits to include a fact, in the information required to be disclosed under sections 557A.11 and 557A.12 shall be liable to the purchaser for damages, and, at the election of the purchaser, the misrepresentation shall be sufficient to void the contract for sale.

6. Rights of purchasers under this section shall not be waived in the contract of sale and an attempt to waive is void.

85 Acts, ch 155, §14

#### **557A.15 Release from liens.**

1. Unless the purchaser expressly agrees, prior to the transfer other than by deed in lieu of foreclosure of a time-share interval, to take subject to or assume a lien, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interval, or shall provide a surety bond or insurance against the lien.

2. If a lien, other than an underlying mortgage or deed of trust, becomes effective against more than one time-share interval in a time-share project, a time-share interval owner is entitled to a release of the owner's time-share interval from the lien upon payment of the amount of the lien attributable to the owner's time-share interval. The amount of the payment shall be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering the time-share interval. After payment, the managing entity shall not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien. The time-share interval owner and the lienholder may enter into an alternative arrangement.

85 Acts, ch 155, §15

#### **557A.16 Enforcement and cause of action.**

1. Violations of this chapter, unfair methods of competition, and deceptive or unfair acts or practices, in the offer or sale of a time-share are unlawful. Enforcement shall be as provided in section 714.16. The terms "*unfair methods of competition*" and "*deceptive or unfair acts or practices*" include, but are not limited to, the following acts:

- a. Misrepresenting or failing to disclose any material fact concerning a time-share.
- b. Failing to honor and comply with all provisions of a time-share instrument entered into with a purchaser.
- c. Including any time-share instrument provisions purporting to waive any right or benefit provided for purchasers under this chapter.
- d. Receiving from a prospective purchaser any money or other valuable consideration before the purchaser signs a time-share instrument.

- e. Misrepresenting the amount of time or period of time the time-share unit will be available to a purchaser.
- f. Misrepresenting the location of the offered time-share unit.
- g. Misrepresenting the size, nature, extent, qualities, or characteristics of the offered time-share unit.
- h. Misrepresenting the nature or extent of any services incident to the time-share unit.
- i. Misrepresenting the conditions under which a purchaser may exchange occupancy rights to a time-share unit in one location for occupancy rights to a time-share unit in another location.

2. If a developer or any other person subject to this chapter violates any provision of this chapter or any provision of the project or time-share instruments, any person or class of persons damaged or otherwise adversely affected by the violation shall have a claim for appropriate relief, which shall be brought in the county in which the time-share project is located or was offered or sold, in which the time-share offeror or time-share salesperson resides or is doing business upon tender of the time-share interest sold, or in which the contract was made. The court may order the developer or other person subject to this chapter to refund the purchaser the full amount paid by the purchaser, with prejudgment interest, less a portion of the amount paid representing the portion of any benefit the purchaser actually received or had the right to receive during the time preceding the tender. In all cases, the court may provide equitable relief it considers necessary or proper. The court may also award the person or class of persons reasonable attorney's fees. This action does not limit any other remedy of the purchaser.

85 Acts, ch 155, §16

#### **557A.17 Blanket mortgage or other liens affecting a time-share interval at time of first conveyance.**

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder written assurances that the lienholder will not foreclose on nondefaulting purchasers. These written assurances may be in the form of a nondisturbance clause, subordination agreement, or partial release of the lien as the time-share intervals are sold, or the developer may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the non-defaulting purchasers by entering into a financing plan or escrow agreement sufficient to protect the lienholder's interest.

85 Acts, ch 155, §17

#### **557A.18 Financing of time-share programs.**

In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance. Any transfer of the developer's interest in the time-share program to a person other than purchaser of a unit shall be subject to the obligations of the developer.

85 Acts, ch 155, §18

#### **557A.19 Lienholder's rights.**

Any purchaser who fails to object and specify the invalidity or defect contained in the time-share instrument within sixty days after receipt of written notice that the developer has assigned the receivables to the lienholder may not claim that the time-share instrument is invalid, void, or voidable in any subsequent action for enforcement of the collection of the receivables by the lienholder. The notice shall be by certified mail or

personal delivery and state that the developer has assigned the receivables to the lienholder and that the purchaser has sixty days within which to object and specify the invalidity or defect contained within such instrument. Any objection shall be written and delivered by certified mail or personal delivery to the lienholder.

85 Acts, ch 155, §19

**557A.20 Selling time-share estates license required.**

A person engaged in the business or occupation of selling time-share estates for a fee or a commission shall obtain a real estate license pursuant to chapter 543B.

85 Acts, ch 155, §20