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GRENADA

ACT NO. 3 OF 2016**I assent,**

CÉCILE E. F. LA GRENADE

22nd January, 2016.

Governor-General.

AN ACT to provide for the creation, regulation and management of time-share and vacation projects; to provide for the protection of purchasers of time-share and vacation plans; and to provide for related matters.

[29th January, 2016].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada, and by the authority of the same as follows—

PART I**PRELIMINARY**

1. This Act may be cited as the

TIME-SHARE AND VACATION PLAN ACT, 2016

Short title and
commencement.

and shall come into operation on a date to be fixed by the Minister by Notice published in the *Gazette*.

Interpretation.

2. In this Act, unless the context requires otherwise—

“accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any private or commercial structure that is real property and designed for over-night occupancy by one or more individuals, but does not include an incidental benefit;

“assessment lien” means a charge or lien created by this Act or the Condominium Act in favour of an owners’ association for unpaid assessments;

“Committee” means the Citizenship by Investment Committee established by section 3 of the Grenada Citizenship by Investment Act, 2013;

“common expenses” means—

(a) those expenses properly incurred for the maintenance, operation, repair, or replacement of the accommodations or facilities, or both, constituting the time-share plan;

(b) any other expenses designated as common expenses in a time-share instrument; and

(c) reserves therefor;

“completion” means the time when the conditions precedent to the purchaser’s right to use and enjoy the accommodations and facilities of a time-share project have been satisfied, which time may be simultaneous with or subsequent to the execution of the time-share contract;

“Condominium Act” means the Condominium Act, Cap. 60;

“Deeds and Land Registry Act” means the Deeds and Land Registry Act, Cap. 79;

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

“developing contractor” means a person who undertakes on behalf of a developing owner the duties, responsibilities and obligations of the construction and equipping, or the supervision of the construction or equipping, of a time-share project, but does not include its developing owner;

“developing owner” means, in the case of any given real property which is subject to a time-share plan, a person who holds title under the Deeds and Land Registry Act with respect to a time-share interest and who is in the business of creating or selling his or her own time-share interests in a time-share project, but does not include a developing contractor or a non-developing seller;

“escrow fund” means an escrow fund established and maintained under section 29;

“exchange company” means a person who owns or operates an exchange program;

“exchange program” means any method, arrangement or procedure for the voluntary exchange of the right to use accommodations and related facilities between a purchaser and another person, but does not include the assignment of a right to use and occupy accommodations and facilities to purchasers pursuant to a particular time-share plan’s reservation system; and any method, arrangement or procedure that falls within this definition, wherein the total purchaser’s contractual financial obligation exceeds five thousand dollars per any individual recurring time-share period shall be regulated as a time-share plan under this Act;

“facility” means any amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the time-share plan, which is made available to the purchasers of a time-share plan, but does not include an incidental benefit as defined in this section;

“incidental benefit” means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser prior to the expiration of the purchaser’s cancellation period pursuant to the First Schedule, which is not an exchange program, and which complies with the provisions of the Fourth Schedule, except that it does not include an offer of the use of the accommodations and facilities of the time-share plan on a free or discounted one-time basis;

“licence” means a developing owner’s licence granted to a person under section 4;

“managing agent” means a person who undertakes and oversees the duties, responsibilities and obligations of the management of a time-share project;

“marketing agent” means a marketing agent as defined in section 2 of the Grenada Citizenship by Investment Act, 2013;

“Minister” means the Minister with responsibility for Finance;

“mortgage lien” means a mortgage, charge or other security interest in a time-share interest created by an instrument encumbering the time-share interest;

“non-developing seller” means—

- (a) a vendor of a time-share interest;
- (b) a purchaser who acquires a time-share interest for the owner’s use and occupancy and later offers the interest for resale, or an agent of that person;
- (c) a managing agent (other than one who is also a developing owner) who sells, or engages another person to sell, on behalf of the owners’ association, time-share interests in the time-share project which the managing agent manages;

- (d) a person who owns more than seven time-share interests and who subsequently conveys, assigns, or transfers all those time-share interests to a single purchaser in a single transaction, which transaction may occur in stages; or
- (e) a person who acquires, or has a right to acquire, more than seven time-share interests from a developing owner or other interest holder in connection with a loan, securitization, conduit, or similar financing arrangement transaction, and who subsequently arranges for all or a portion of the time-share interests to be offered by one or more developing owners in the ordinary course of business on their own behalf or on behalf of that person,

but does not include a developing owner or a seller;

“obligor” means—

- (a) a mortgagor;
- (b) a person subject to an assessment lien; or
- (c) a registered owner of a time-share interest;

“off-site sale” means any sale and purchase of a time-share interest that is not an on-site sale;

“on-site sale” means a sale and purchase of a time-share interest where the documents for the purchase and sale are executed by the purchaser in Grenada;

“owners’ association” means a company or body corporate comprising purchasers of time-share interests or their designees in a time-share project or time-share plan, including a corporation formed under section 13 of the Condominium Act;

“public offering statement” means written materials which describe a time-share plan, including text and exhibits attached to the time-share plan as required by this Act, and which must be filed with the Committee under section 48;

“purchaser” means a person, other than a developing owner, who, by means of a non-compulsory transfer, acquires a legal equitable interest in a time-share plan, other than as security for an obligation;

“regulations” means regulations made under section 56;

“seller” means a developing owner or other person, or a marketing agent or employee thereof, who advertises, markets or offers time-share interests in the ordinary course of business, but does not include a non-developing seller;

“time-share contract” means an agreement between a seller or a non-developing seller and a purchaser for the purchase and sale of a time-share interest;

“time-share instrument” means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan;

“time-share interest” means the right to use and occupy a unit in a time-share project, which may include the right to use other facilities or other rights and privileges, pursuant to a time-share plan, together with an estate in land as provided by sections 18 and 52;

“time-share period” means the period or periods of time, whether pre-established at the time of completion or determined after the time of completion pursuant to a reservation system, when a purchaser is afforded the right to use and occupy the accommodations or facilities, or both, of a time-share project;

“time-share plan”–

(a) means any arrangement, plan, scheme or device, other than an exchange program, whereby a purchaser receives, directly or indirectly, a right to use and occupy accommodations and any related facilities in a time-share project for a period of time of less than six months on a recurring basis over a period of at least three years but not necessarily for consecutive years; and

(b) does not include an incidental benefit;

“time-share project”–

(a) means any premises or complex of premises, whether contiguous or not, and the grounds appurtenant to the premises or complex of premises that are subject to or included within a time-share plan; and

(b) does not include an incidental benefit;

“trust fund” means a trust fund established and maintained under section 30;

“unit” means that part of the accommodations of a time-share project intended for the habitation of a purchaser during his or her time-share period, and which is divided into time-share periods, notwithstanding any contrary definition in the Condominium Act;

“year” means any period of twelve consecutive months, but not necessarily all within the same calendar year.

PART II

LICENSING REGIME

3. The functions of the Committee under this Act shall include—

Functions of the
Committee.

- (a) reviewing applications received under the Act;
- (b) making recommendations to the Minister on the grant of a license under the Act;
- (c) facilitating the inspection of time-share project under the Act;
- (d) keeping the Minister up-to-date on matters relating to all licensed time-share projects;
- (e) making recommendations to the Minister for the efficient operation of the Act; and
- (f) advising the Minister on any matter that may be required from time to time.

Licence.

4.—(1) A person shall not—

- (a) For the purpose of a building being used in the operation of a time share project—
 - (i) construct a new building;
 - (ii) effect any improvement in repairs or alterations to an existing building;
 - (iii) use or change the use of an existing building; or
- (b) sell any form of interest, including but not limited to time-share interest,

in a time-share project, except under and in accordance with the terms of a licence granted by the Minister for that purpose.

(2) A person may apply to the Minister through the Committee in the prescribed form and upon payment of a prescribed application fee for a licence to develop a time-share project.

(3) A person applying under this section shall be required to satisfy the Minister—

- (a) of his or her financial ability to complete the development required for the time-share project;
- (b) that the real estate development to which the application relates—
 - (i) is an approved project under section 11 of the Citizenship by Investment Act No. 15 of 2013; or
 - (ii) is otherwise approved.

- (c) that the applicant has completed architectural plans for the proposed project from a licensed architect;
- (d) that the applicant has completed civil and structural engineering plans from a licensed engineer;
- (e) that the applicant has approved construction plans from the Planning and Development Control Authority;
- (f) that the purchaser of the time-share interest will have the right to occupy and use the accommodation and facilities for certain periods;
- (g) that the time-share contract to be executed by a purchaser of the rights to occupy and use the facilities of the time-share project has been submitted and approved by the Minister and that no material variation shall be made without the written approval of the Minister; and
- (h) of any other matter which the Minister deems relevant.

(4) The Minister may on the recommendation of the Committee approve, in principle or deny an application for a licence.

(5) A licence granted under this section shall be in the prescribed form and may be subject to such terms and conditions as the Minister may specify in the licence which may include—

- (a) the registration of the time-share project within a time specified by the Minister under the Condominium Act Cap. 60;

- (b) the periodic inspections of a time-share project as provided for under section 36; and
- (c) any other conditions that the Minister may deem appropriate.

(6) Where a licence is granted in accordance with subsection (2), the developing owner may appoint a developing contractor to perform, on his or her behalf, functions in relation to the time-share project under and in accordance with the terms of that licence.

Appeal.

5.—(1) A person aggrieved by the decision of the Minister may appeal the decision to the tribunal.

(2) There shall be a tribunal appointed by the Governor-General to review the decision of the Minister in refusing to—

- (a) grant an application for a licence under section 4; or
- (b) to suspend or revoke a licence under sections 13 and 47.

(3) In reviewing the decision of the Minister the tribunal may affirm, quash, substitute for all or part of the Minister's decision or add to the decision of the Minister.

(4) The tribunal shall comprise of—

- (a) a person nominated by the Grenada Bar Association who shall be an attorney-at-law in practice for a minimum of fifteen years, and who shall be the Chairperson;
- (b) the Chairperson of the Grenada Chamber of Industry and Commerce, or his or her representative;

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- (c) the Chairperson of the Grenada Hotel and Tourism Association, or his or her representative;
 - (d) the Chairperson of the Grenada Industrial Development Corporation, or his or her representative; and
 - (e) a representative from a registered non-governmental organisation.

(5) The tribunal shall regulate its own procedure.

(6) An appeal shall be in the prescribed form and shall be lodged with the Commission no later than fourteen days after the applicant or holder of the licence, as the case may be, receives notice of the decision of the Minister.

(7) The tribunal may request the applicant to appear in person before it.

(8) A party to proceedings before the Tribunal may within fourteen days of notice of the determination of the Tribunal, appeal the decision of the tribunal to the Court.

6. A developing owner may apply for exemption from the payment of certain taxes, duties or charges as may be provided for under the relevant enactments in force from time to time.

Exemption from certain taxes, duties and charges.

7. A licence shall come into force on the date specified in the licence, and shall remain in force throughout the life of the time-share project, unless sooner suspended, revoked or the developing owner voluntarily-divests himself or herself from the licence or in the case of a corporate entity, the corporation ceases to exist.

Duration of a licence.

8.—(1) Where a developing owner divests himself or herself of his or her licence or dies, the Minister may,

Transfer of a licence.

upon an application made by a person in the prescribed form claiming the right to succeed to the licence, and upon the payment of a prescribed fee transfer the licence to that person, subject to such terms and conditions as the Minister may see fit to impose.

(2) Before transferring a licence under subsection (1), the Minister may on the recommendation of the Committee where practicable, give the personal representatives of a developing owner who died a reasonable opportunity to make representations in relation to an application under this section.

Inspection of facilities of time-share project before transfer.

9.—(1) Before approving a transfer under section 8 the Minister on the recommendation of the Committee may request that the Physical Planning and Development Control Authority or any other relevant government agency to inspect the accommodations and facilities of the time-share project in respect of which an application for transfer is made.

(2) After carrying out an inspection under subsection (2), the Physical Planning and Development Control Authority or any other relevant Government agency shall furnish the Minister with a report containing its findings which shall be relevant in determining an application under section 8.

Conditions for transfer of licence.

10. A licence transferred under section 8 shall be subject to the certain conditions including—

- (a) that the applicant or the person responsible for the time-share project, if other than the applicant, including the developing owner, are financially able and are fit and proper persons to perform their respective functions under the time-share project;

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- (b) that the facilities of the time-share project have, where applicable, been inspected under section 9 and that the project complies with the prescribed requirements or, in the event that it fails to so comply, that an exemption may properly be granted under section 50;
 - (c) that the applicant has complied with all the requirements of this Act and regulations;
 - (d) that the applicant is not in breach of any other law relating to the carrying on of business by him or her in Grenada and which business is in the best interest of Grenada; and
 - (e) any other condition that the Minister deems relevant.

11.—(1) The Minister shall not vary the terms and conditions of a licence granted under section 4 except the variation is required to protect the health, safety or welfare of any person in or likely to use the facilities of the time-share project.

Variation
of terms of
licence.

(2) Where the circumstances under sub-section (1) are satisfied, and the Minister on the recommendation of the Committee proposes to vary a licence, the Minister shall first give notice to the developing owner in the prescribed form of not less than sixty days indicating his or her intention to make a variation.

(3) A developing owner who receives a notice under sub-section (2) shall respond to the Minister within fourteen days of the receipt of the notice, and the Minister shall take into account any representations made by or on behalf of the developing owner.

Endorsement
of transfer or
variation in
licence.

12. The Minister shall endorse on a licence the effective date of any transfer under section 8 and the effective date of any variation as the case may be under section 11.

Suspension or
revocation of
licence.

13.—(1) Without prejudice to any other provisions of this Act, where the Minister on the recommendation of the Committee is satisfied, that a developing owner is in breach of any condition or term of his or her licence or is in breach of any provision of this Act and any other relevant law the Minister may—

- (a) cause a notice in the prescribed form to be served upon the developing owner specifying the breach and requiring the developing owner to comply with the term or condition of the licence or provision of the law and to provide reasons within the period specified in the notice why the licence should not be suspended or revoked, if at the expiry of the specified period the developing owner fails to comply with the relevant law or satisfy the relevant condition or term, the Minister may suspend or revoke the licence; or
- (b) if the Minister is satisfied that the breach of any condition or term of a licence or the breach of any provision of this Act or any other relevant law is likely to endanger the health, safety or welfare of any person in or likely to use the facilities of the time-share project, the Minister may forthwith suspend or revoke the licence granted in respect of the project until such time as it is satisfied that the contravention has ceased.

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

(3) The Minister may also revoke a developing owner's licence if he or she is satisfied that the premises to which the licence relates have ceased to be operated as a time-share project.

14.—(1) Where a licence is revoked or suspended under section 13 the Minister shall cause to be served a notice in the prescribed form upon the developing owner notifying him or her of the revocation or suspension, as the case may be.

Surrender of revoked or suspended licence.

(2) The Minister shall cause the revocation or suspension of a licence as the case may be to be published in the *Gazette*.

(3) A developing owner whose licence was revoked or suspended under this section shall surrender the licence to the Committee within seven days of receipt of the notice.

(4) A developing owner who fails to comply with a notice given under subsection (1) commits an offence, and is liable, on summary conviction, to a fine of two thousand dollars or a term of imprisonment for three months or to both.

PART III

PURCHASER'S RIGHTS AND REGISTRATION

15. A time-share interest shall, for all purposes including the purpose of property tax, constitute real property and may be separately transferred, leased, or otherwise disposed of and may be inherited or devised by will.

Capacity of purchaser to acquire, dispose etc. of time-share interest.

Registration
of purchaser's
rights.

16. Except as provided by the Condominium Act or by this Act, the Deeds and Land Registry Act shall apply in respect of time-share interests, and the separate title of each time-share shall be registrable in the Deeds and Land Registry and each time-share interest may belong in common ownership to more than one person.

Particulars of
registration.

17. Declarations, descriptions, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered in the Condominium Register in accordance with the Condominium Act, except as is otherwise provided by the Condominium Act, and the Deeds and Land Registry Act shall apply in respect of property governed by this Act.

Purchaser's
contract.

18.—(1) A seller shall furnish each purchaser with, a completed and executed copy of a time-share contract which contract shall include the matters set out in the First Schedule.

(2) A seller or a non-developing seller who contravenes subsection (1) commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars or to a term of imprisonment for one year, or to both.

(3) A time-share contract shall contain a provision allowing the purchaser to cancel the contract at any time within one year after the date on which the contract is entered into if—

- (a) the developing owner does not hold a valid licence at the time the contract is entered into;
- (b) the developing owner does not include the information contained in the first schedule;

- (c) the contract is not signed by the developing owner or by the purchaser; or
- (d) the developing owner fails to provide a copy of the contract to the purchaser as required by sub-section (1).

19.—(1) Subject to subsection (2), notwithstanding any other law to the contrary—

Protection of purchaser from other estates and interests.

- (a) in no event shall the foreclosure, exercise of power of sale or pursuit of other right or remedy under a mortgage or other debt instrument covering all or any portion of a time-share project extinguish or impair a purchaser's time-share interest in that time-share project after an indenture of conveyance in favour of the purchaser has been registered in the Deeds and Land Registry in respect of the time-share interest, irrespective of whether the mortgage or other debt instrument is given or filed for registration prior to completion of the time-share interest; and
- (b) a trustee shall not, in any proceedings under legislation dealing with bankruptcy or insolvency in which a time-share project is included among the property of a bankrupt or insolvent debtor, be permitted to disclaim any time-share interest.

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

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- (a) a mortgage or other debt instrument covering a purchaser's time-share interest that was given at the time of completion of the time-share interest in order to secure all or any portion of the unpaid purchase price thereof, including any future advances made thereafter under the mortgage or other instrument between the same parties or their respective successors; or
 - (b) any charge or lien upon a time-share interest arising out of any law or by contract whereby the charge or lien arises or is given in order to secure payment of a purchaser's pro-rata share of operating, maintenance or similar expenses to which the purchaser is subject under a time-share plan, including specifically any charge or lien filed on behalf of the time-share owners' association.

Prohibition
against
overselling.

20.—(1) A seller, his or her agents or independent contractors shall not offer for sale or sell any number of time-share interests that would cause the total number of time-share interests offered or sold in a time-share plan to exceed a one-to-one purchaser to accommodation ratio.

(2) For the purposes of this section and the Fourth Schedule, "one-to-one purchaser to accommodation ratio" means the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the time-share plan during a given year does not exceed the total number of accommodations available for use in the time-share plan during the year.

(3) For the purposes of calculating the ratio referred to in subsection (2)—

- (a) a purchaser shall be counted at least once;
- (b) an individual time-share unit shall not be counted more than 365 times per year, or more than 366 times per leap year; and
- (c) the ratio may be determined on a rolling twelve-month period, as may be applicable.

(4) A person who contravenes sub-section (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to a term of imprisonment for three years or to both.

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

Purchaser
waiver invalid.

22. No action for partition of any time-share unit shall be available, unless it is provided for in the governing time-share instruments.

Action for
partition.

PART IV

MANAGEMENT

23.—(1) Notwithstanding anything to the contrary, it is the responsibility of a developing owner to supervise, manage and control all aspects of the offering of a time-share plan, including, but not limited to, promotion, advertising, contracting and closing.

Responsibility
of developing
owner.

(2) Where a person other than the developing owner carries out any activity referred to in subsection (1), the developing owner remains responsible for the acts or omissions of that person in carrying out the activity and is liable for the consequences of those actions, unless the

developing owner proves that the acts or omissions took place without the developing owner's knowledge or consent or that he or she exercised all due diligence to prevent those acts or omissions from taking place.

Appointment
of managing
agent.

24.—(1) Before the initial sale of a time-share interest within a time-share project, the developing owner shall designate a person to be the managing agent.

(2) A managing agent may be the developing owner, a separate manager or management firm, the board of administration of an owners' association, or some combination thereof.

(3) A developing owner shall be considered the managing agent of the time-share plan until another person is designated to serve as the managing agent.

(4) A designation as marketing agent is not valid until the person designated acknowledges in writing acceptance of the duties and obligations as managing agent.

(5) Where a managing agent resigns or otherwise ceases to perform the duties of managing agent, the developing owner, or the board of administration of the owners' association if controlled by purchasers, shall again be considered the managing agent until the developing owner arranges for a new managing agent pursuant to this subsection.

(6) A developing owner is not liable for the obligations of the managing agent of the owners' association for the time-share project, if any, is controlled by the purchasers, and not the developing owner or its agent, as provided in the time-share instrument, and instead the owners' association or managing agent shall be responsible for the obligations of the managing agent.

25. The managing agent shall owe a fiduciary duty to the owners' association. Fiduciary relationship.

26.—(1) The duties of a managing agent shall be contained in the agreement between the managing agent and the owners' association, and may include— Managing agent.

- (a) management and maintenance of all accommodations and facilities constituting the time-share project;
- (b) collection of all assessments for common expenses;
- (c) maintenance of all books and records concerning the time-share plan and the time-share project so that all the books and records are reasonably available for inspection by any purchaser or the authorized agent of such purchaser and—
 - (i) all books and financial records of the time-share plan and of the time-share project are maintained in accordance with International Accounting Standards; and
 - (ii) all purchasers are notified of the location of the books and records and the name and address of the custodian;
- (d) scheduling occupancy of the time-share units, when purchasers are not already entitled to use specific time-share periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the time-share plan with respect to the time share interest which they have purchased;

- (e) performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities of the time-share project as provided for in the time-share plan; and
- (f) maintaining among its records, and providing to the Committee upon request, a complete list of the names and addresses of all purchasers, provided that such information may be used solely for the administration of the owners' association.

(2) Notwithstanding subsection (1) (f), no purchaser or authorized agent of the purchaser shall be allowed to have access to the list of purchasers, except as required for the administration of the owners' association.

Denial of
use for
delinquency.

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

(2) If any mortgage lien provides that the holder of the mortgage lien, or its designee, may deny the use of the accommodations and facilities of the time-share plan to a purchaser who is in breach of the mortgage lien, and such holder of the lien, or its designee, provides the managing agent of the time-share plan with certification that—

- (a) the mortgage lien includes the provision;
- (b) the purchaser is in breach under the mortgage lien; and
- (c) the holder of the lien is entitled to exercise the remedy,

the managing agent may thereafter deny use of the accommodations and facilities of the time-share plan to the purchaser, except that any denial of the use shall not be effective to bar use by any exchange program member whose exchange into the accommodation was confirmed prior to receipt of notice by the exchange company of any denial of use.

(3) Denial of use of the accommodations and facilities under this section shall extend to those parties claiming under a delinquent purchaser and no exchange company shall be liable to any of its members or third parties on account of the denial of exchange privileges.

(4) Unless a later date is specified in the time-share instrument, for the purpose of denying use of accommodations and facilities of the time-share plan under this section, a purchaser shall be considered delinquent in the payment of a given assessment only upon the expiration of sixty days after the later of—

- (a) the date the assessment is billed to the purchaser; and
- (b) the date the instrument is declared to be due.

(5) The managing agent and exchange company shall—

- (a) be entitled to rely on a certification from the holder of a mortgage lien or its designee as provided in subsections (1) and (2); and
- (b) in the absence of actual knowledge to the contrary as to the accuracy of the certification, shall not be liable to any purchaser or any third party on account of any denial of use of the accommodations and facilities of the time-share plan in reliance on such certification.

PART V**INSURANCE, FUNDS, TAX AND RECORDS**

Owners' association to provide insurance.

28.—(1) An owners' association, at its expense, shall provide and maintain or cause to be maintained, for the benefit of all purchasers as members of the owners' association, public liability insurance for the areas of the time-share project owned by the owners' association, and that insurance shall be in an amount of not less than one million dollars, or such greater amount as the Committee may see fit to impose from time to time.

(2) An owners' association, at its expense, shall keep all the property of the time-share project insured against loss or damage in an amount of not less than the replacement cost of the property.

(3) An owners' association may delegate or assign to a managing agent responsibility for compliance with subsections (1) and (2).

Escrow fund.

29.—(1) Subject to section 31, a developing owner may on the commencement of a time-share project to which his or her licence relates and prior to entering into any time-share contracts, establish and maintain an escrow fund with a financial institution (in this section referred to as the "escrow agent") doing business in Grenada as approved by the Minister by notice published in the *Gazette*.

(2) The proceeds of all on-site sales of time-share interest may be paid into the escrow fund upon receipt of the proceeds and may be kept there until disbursed as provided in this section.

(3) The escrow agent shall disburse the funds held in an escrow account to the relevant persons when the escrow

agent receives from the developing owner a sworn affidavit stating that the circumstances described in the relevant paragraph applies—

- (a) to the purchaser, on the cancellation of his or her time-share contract within the cancellation period allowed in the contract, the total amount of all payments made by the purchaser less any contract benefits received by the purchaser;
- (b) to the developing owner, on the cancellation of a purchaser's time-share contract within the cancellation period allowed in the contract, the proportion of any contract benefits the purchaser has actually received under the time-share contract prior to the date of cancellation of the contract;
- (c) to the marketing agent, pursuant to a written contract between the developing owner and the marketing agent and upon the closing of a purchase of time-share interest from the developing owner, an amount as provided in the contract but that amount should not exceed thirty-five per centum of the proceeds of the on-site sale of the time share interest; and
- (d) to the developing owner, where he or she is also the marketing agent, upon the closing of a purchase of a time-share interest from the developing owner, an amount not to exceed thirty-five per centum of the proceeds of the on-site sale of the time share interest.

(4) Subject to sub-section 5, the escrow agent shall, after making the disbursements authorized under subsection (3), transfer to the trust fund established under section 30 the balance of the amount in the escrow fund.

(5) A developing owner may request an escrow agent to transfer to the developing owner the balance of the funds in the escrow fund, but shall provide the escrow agent with a sworn affidavit stating that—

- (a) construction of the time-share project is complete and a certificate of occupancy with respect thereto has been issued pursuant to the Physical Planning and Development Control Act, Chapter 241A; and
- (b) the payment is in respect of a purchaser's acquisition of his or her time-share interest that has been completed and the purchaser's name and the time-share interest is duly registered in the Deeds and Land Registry;
- (c) the payment represents a specific amount required for the construction of the development and the said payment is supported by a notarized disbursement notice signed by a licensed civil engineer or architect associated with the development.

(6) A developing owner who contravenes subsection (3)(d), or who makes a false affidavit under subsection (3) or (5), or an escrow agent who contravenes subsection (3) or (4) commits an offence, and is liable, on summary conviction, to a fine of twenty thousand dollars or to a term of imprisonment for two years, or to both.

30.—(1) Subject to section 31, a developing owner shall establish and maintain with a financial institution a trust fund into which shall be paid any amount transferred from the escrow fund under section 29(4). Trust fund.

(2) A financial institution with whom a developing owner establishes and maintains a trust fund shall be the trustee for the purposes of this section.

(3) Disbursements from the trust fund shall be made by a trustee in the following circumstances—

- (a) to the developing owner, the balance of the proceeds of sale of the time-share interest in relation to the accommodations and facilities of the time-share project in respect of which a certificate of occupancy was issued as provided in this Act; and
- (b) to a purchaser, in respect of any sum payable under a judgment obtained by the purchaser in a court in Grenada for breach of contract in connection with his or her purchase of a time share interest,

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

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

(5) Notwithstanding anything contained in this section, where a developing owner has his or her licence in respect of a time-share project revoked as a result of—

- (a) failure by the developing owner to complete the time-share project in accordance with the terms and conditions of his or her licence; or
- (b) the developing owner being adjudged bankrupt or insolvent by a court of competent jurisdiction,

any interested person may make an application to the High Court for an order to enable that person to complete the time-share project using the funds in the trust fund, if any, or for the disbursement of such funds to purchasers of time-share plans in the time share project on a pro-rata basis.

(6) Where an order is made by the High Court under subsection (5), moneys standing to the credit of the trust fund shall, notwithstanding anything to the contrary in any other law, be first applied for the purposes specified in that order.

(7) Subject to subsections (5) and (6), any interest accruing on sums held in the trust fund shall be for the account of the developing owner.

(8) A developing owner who contravenes subsection (1) or (4) or a trustee who contravenes subsection (3) commits an offence, and is liable, on summary conviction, to fine of ten thousand dollars or to a term of imprisonment of one year, or to both.

Alternative
assurances.

31.—(1) Notwithstanding section 29 or 30, upon application by a developing owner in the prescribed form,

the Minister may on the recommendation of the Committee consider and accept an alternative assurance in such an amount and in such form as is deemed appropriate including—

- (a) a surety bond;
- (b) a letter of credit; or
- (c) a company guarantee issued by the developing owner, or its parent company,

provided the Committee is satisfied that the developing owner, or its parent company, has a net worth in excess of twenty million dollars and is otherwise financially sound.

(2) The provisions of section 29 or 30, shall apply to this section, with such modifications as may be necessary.

32. The managing agent, or developing owner as the case may be, shall keep such books and records showing the number of purchasers of time-share interests in the time-share project.

Books and records.

33. The Minister on the recommendation of the Committee shall cause upon giving reasonable notice to the managing agent, or to the developing owner as the case may be, enter at a reasonable time the premises of a time-share project, to inspect and to make copies of entries in any books, records or other documents on those premises for the purpose of ascertaining whether section 34 is being or has been contravened.

Inspection of books and records.

34.—(1) There shall be paid by each occupant of a time-share project (other than a purchaser, a guest of a purchaser

Occupancy tax.

or an exchange program user) an occupancy tax, payable to the Accountant-General, for each period during which the occupant is provided with sleeping accommodations at the time-share project.

(2) Subject to subsection (3), the occupancy tax shall, in respect of each occupant, be six per centum of his or her total room rate for the period during which the occupant is provided with sleeping accommodation.

(3) The Minister may, by Order published in the *Gazette*, increase or reduce the rate of the occupancy tax from a date specified in the Order.

Payment of
stamp duty.

35.—(1) The stamp duty payable upon the registration of a time-share interest shall be calculated by allocating, fifty percent of the purchase price of the time-share interest and fifty percent of the amount of any mortgage on a time-share interest as the real property portion of the time-share interest.

(2) If a purchaser of a time-share interest purchases another time-share of greater value and re-conveys the first time-share interest to the seller or non-developing seller of the time-share interest, the stamp duty payable on the purchase of the time-share of greater value, shall be the difference in value of the time-share interests calculated in accordance with subsection (1).

(3) Where a purchaser re-conveys the first time-share interest as provided in subsection (2), there shall be no stamp duty payable on the re-conveyed time-share interest, provided that the stamp duty payable on the purchase of that time-share was paid to the Accountant-General.

PART VI
INSPECTION

36. The Minister on the recommendations of the Committee shall make or cause to be made periodic inspections of a time-share project with such scope and frequency as is required—

Inspection of time-share projects.

- (a) where it is determined that the provisions of this Act or any other enactment is being contravened or is likely to be contravened; or
- (b) for the purpose of investigating any complaint made by a purchaser regarding the application of this Act in relation to any particular time-share project.

37.—(1) Without prejudice to any law, but subject to subsection (2), a suitably qualified public officer from the Ministry of Health, the Planning and Development Authority, the Royal Grenada Police Force, the fire services or any other relevant government agency may enter, upon the premises of the time-share project for the purposes of an inspection.

Power of entry and inspection.

(2) Where an inspection of a time-share project is required under section 36, the Minister shall cause to be served on the managing agent, his or her agent or employee, a notice of an intention to inspect in the prescribed form setting out the reasons for the inspection, and the managing agent, his or her agent or employee shall be given the opportunity to be present during the inspection.

(3) Where during an inspection under this section an authorized public officer reasonably believes that the provisions of this Act or any other enactment is being contravened and that the contravention is likely to cause a danger to the safety or health of persons on the premises of the time-share project, then the authorized public officer may give any such directions to the person for the time being in charge of the premises.

(4) A person to whom an authorized officer gives a direction under this section shall comply with those directions.

(5) A direction given under this section may require such persons or classes of persons, to vacate the premises or such part of the premises as may be specified until the danger is, in the opinion of the authorized officer, remedied or minimized and may, if such directions are not complied with, obtain the assistance of such persons as may be necessary for the purpose of ensuring compliance with the directions as may be necessary.

(6) An authorized officer who gives a direction under this section, shall promptly prepare and submit a detailed report to the Minister through the Committee.

Power of
magistrate to
issue warrant
to enter
premises.

38. Where a project which is not licensed as a time-share project is being operated as such, a magistrate may issue a warrant to a police officer of or above the rank of sergeant authorizing the officer, with or without assistance, to enter upon and inspect the premises and to conduct such enquiries in the premises for the purpose of determining whether there is a contravention of this Act.

PART VII**PROHIBITIONS AND PENALTIES**

39.—(1) For the purposes of this Act, the following transactions are prohibited— Prohibited transactions.

- (a) the sale of a time-share interest where such interest was previously sold, and not otherwise re-acquired, by the seller;
- (b) the advertising, marketing or sale of any time-share interests in or from any place in Grenada, other than a place approved by the Minister or the place where the time-share project is located;
- (c) the advertising, marketing or sale of any time-share interests otherwise in contravention of the provisions of this Act; and
- (d) the charging or collection of any advance fee in connection with the listing of any time-share interest for re-sale.

(2) A person who carries out a prohibited transaction commits an offence, and is liable, on summary conviction, to a fine of twenty thousand dollars or to a term of imprisonment of two years, or to both.

40.—(1) A person who, in an application for a developing owner's licence, makes a statement which he or she knows is false in any material particular commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars or to a term of imprisonment for one year, or to both. Penalty for false statement.

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

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

commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars or to a term of imprisonment for one year, or to both.

(3) For the purposes of subsection (2)–

- (a) anything, whether or not a statement as to any of the matters specified in subsection (2), likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; and
- (b) a statement made without reasonable knowledge and investigation as to whether it is true or false shall be deemed to have been made recklessly, whether or not the person to whom the statement is made might suspect that the statement is false.

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

41. A person who knowingly makes a false declaration for the purpose of obtaining a benefit pursuant to the provisions of this Act commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars, or to a term of imprisonment for one year, or to both.

Penalty
for false
declaration.

42.—(1) A person who applies any materials in respect of which certain taxes, duties or charges which were exempted under section (6) for any purpose other than the purposes of the time share project application specified in the application, commits an offence and is liable, on summary conviction, to a fine of sixty thousand dollars, or to a term of imprisonment for one year, or to both.

Penalty for
wrongful
application of
materials.

(2) Where a developing owner or the director of a company that is the developing owner is convicted of an offence under this section, and all customs duties from which the developing owner or the director of a company that is the developing owner was exempted shall immediately become due and payable to the government and may be recovered from the developing owner.

Penalty for irregular operation of project.

43.—(1) A person who sells interests in a time-share project without a licence commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars and, an additional fine of one thousand dollars for each day the offence continues, or to a term of imprisonment for one year, or to both.

(2) A developing owner who sells interests in a time-share project otherwise than in accordance with the terms and conditions of a licence is liable, on summary conviction, to a fine of twenty thousand dollars and, an additional one thousand dollars for each day during which the offence continues or to a term of imprisonment for one year, or to both.

(3) A person who, having been granted a licence, who subsequently makes any material variation in a time-share contract without the written approval of the Minister, commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars for each time-share contract so varied and executed by a purchaser.

Penalty for obstructing officers.

44. A person who obstructs an authorized officer of the Ministry of Health, the Planning and Development Authority, the Royal Grenada Police Force or the Fire Services in the exercise of any power conferred, or the performance of any

duty imposed, on any such officer by this Act commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars or to a term of imprisonment for one year, or to both.

45.—(1) Proceedings in respect of an offence under this Act shall not be instituted by any person without the written consent of the Director of Public Prosecutions. Institutions of proceedings.

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

46. The provisions of section 44 shall not be construed to prohibit or impair the right of any purchaser or any other person to enforce in any civil proceedings any right or remedy conferred upon such person under this Act or under any time-share contract. Non-application of section 44 to civil proceedings.

PART VIII

MISCELLANEOUS PROVISIONS

47.—(1) A developing owner or a managing agent of a time-share project shall, whenever required to do so by the Minister, satisfy the Minister that the time-share project in relation to which the developing owner has been granted a licence, or which the managing agent manages, has made provision for the matters set out in the Second Schedule. Information to be supplied to Minister.

(2) Failure by a developing owner or a managing agent of a time-share project to satisfy the Minister with respect to any of the matters set out in the Second Schedule shall be deemed to be a breach of the conditions of the licence and the Minister may, if he or she considers the breach to be of a substantial nature, subject to subsection (3), suspend or revoke the developing owner's licence.

(3) Before suspending or revoking a licence under subsection (2), the Minister shall serve on the developing owner a notice specifying the alleged contravention and requiring the developing owner to comply or ensure compliance with the notice to the satisfaction of the Minister within such period as the Minister may specify in the notice, being not less than seven days from the date of delivery of the notice, and if at the expiry of that period the developing owner fails to comply or ensure compliance to the satisfaction of the Minister, the Minister may suspend or revoke the licence.

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

Public offering
statement.

48.—(1) A developing owner shall, unless exempted by the Minister on recommendation of the committee file with the Minister a form of public offering statement, which shall conform with the requirements set out in the Third Schedule, and the Minister shall, upon receiving a public offering statement from a developing owner, deliver by courier service or personal delivery, or by facsimile or e-mail with a copy by mail, to the developing owner an acknowledgement of receipt.

(2) The public offering statement shall be delivered by the developing owner to each on-site purchaser before executing the time-share contract, and the public offering statement may be provided in written or electronic form.

(3) A developing owner who contravenes this section commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars or to a term of imprisonment for one year, or to both.

49.—(1) A developing owner shall, unless exempted by the Minister, file with the Minister, prior to use of the time-share facility, an acknowledgement and disclosure statement with respect to all incidental benefits, which shall be in conformity with the requirements outlined in the Fourth Schedule.

Incidental
benefits.

(2) The acknowledgement and disclosure statement shall be delivered to the on-site purchaser by the developing owner before executing his or her time-share contract.

(3) A developing owner who contravenes this section commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars or to a term of imprisonment for one year, or to both.

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

Power to grant
exemption.

(2) An exemption may be granted for such period as may be specified and may be extended from time to time.

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

(4) Subject to subsection (5), an exemption may be revoked in whole or in part at any time by the Minister and such revocation shall be endorsed on the licence.

(5) The Minister shall, before effecting a revocation under subsection (4), give the developing owner, by delivery to the time-share project site, written notice of his or her intention to revoke the exemption unless the developing owner shows good cause to the satisfaction of the Minister, within seven days from the date of delivery of the notice, why the revocation should not be made, and the Minister shall thereafter take into account any representations made by or on behalf of the developing owner.

Exemption
for foreign
project or
offerings.

51. Without prejudice to section 50, with respect to any time-share project that is located outside Grenada but which is advertised, marketed or sold in Grenada, the Minister shall, upon application by the developing owner or managing agent of that time-share project, grant the developing owner or managing agent of the time-share project an exemption from the requirements of this Act if the Minister—

- (a) determines that the foreign jurisdiction in which the time-share project is located makes adequate protection for purchasers of time-share interests in the project and that such protection is, by statute, contract or otherwise, in fact extended to the purchasers who purchase time-share interest as a result of the advertising, marketing or sale activity in Grenada;
- (b) is satisfied that the person making the application is financially sound; and
- (c) is presented with evidence that the person making the application is the holder of a valid developing owner's licence under this Act.

52.—(1) Notwithstanding the provisions of sections 3(1) and 3 (2) of the Condominium Act, property which is subject to a time-share plan and is conveyed or transferred as time-share interests may be described in a declaration and description under the Condominium Act, and upon registration shall be governed by the Condominium Act.

Application
of the
Condominium
Act.

(2) Notwithstanding section 4(2) of the Condominium Act, each unit of a condominium property which is subject to a time-share plan and conveyed or transferred as time-share interests shall be deemed to be divided into the same number of separate interests in the unit as there are time-share interests relative to such unit as provided in the time-share instruments.

(3) Notwithstanding section 7(1) of the Condominium Act, with respect to property which is subject to a time-share plan, the declaration may be amended with the consent of the holders of a majority of the time-share interests in the time-share project, the developing owner, and all persons having registered encumbrances against the units and common property, except as otherwise provided in the time-share instruments.

(4) Notwithstanding section 23(1) of the Condominium Act, with respect to property which is subject to a time-share plan, the owners' association may, by a vote of members who own a majority, (or such greater percentage as is specified in the declaration under the Condominium Act in respect of the property), of the time-share interests in the time-share project, amend the by-laws.

(5) Notwithstanding section 25(1) of the Condominium Act, with respect to property which is subject to a time-share plan, the owners' association may, by a vote of members who own a majority, (or such greater percentage as is specified in the declaration under the Condominium Act in respect of the property), of the time-share interests in the time-share project, make any substantial addition, alteration or improvement to or renovation of the common property or may make any substantial change in the assets of the owners' association.

(6) Declarations, descriptions, by-laws and other instruments respecting property which is subject to a time-share plan and governed by the Condominium Act shall be registered and recorded in accordance with the Condominium Act and regulations made under that Act.

(7) The term "owner" as defined in the Condominium Act shall include the owners of time-share interests in a unit of a condominium.

(8) Notwithstanding anything contained in the Condominium Act to the contrary, the Minister may accept other assurances, including a surety bond issued by a company authorized and licensed to do business in Grenada as surety or an irrevocable letter of credit, instead of any requirement that completion of construction of one or more accommodations or facilities of a time-share plan be accomplished prior to closing of a purchase of a time-share interest therein.

(9) Any notices required to be provided to purchasers under the Condominium Act or this Act may be delivered via electronic mail, provided that the purchaser has indicated a willingness to receive notices via electronic mail.

(10) A time-share project which is included in any time-share plan that is fully in compliance with this Act may be registered as a condominium under the Condominium Act, and shall be exempt from sections 8(1)(a), (b) and (c), 24(6), 39, 40, 41 and 42 of the Condominium Act.

(11) Sections 28, 29 and 30 of the Condominium Act shall not apply to any time-share project which is included in a time-share plan governed by this Act, provided that the time-share instruments in respect of the project contain alternative provisions regarding the matters referred to in those sections.

(12) Notwithstanding anything contained in section 7(4) or section 8 of the Condominium Act, a developing owner who wishes to build a condominium property subject to a time-share plan in phases, may amend the original declaration to address additional phases if—

- (a) he or she states in the original declaration that he or she intends to develop the condominium property;
- (b) he or she states, in the amending declaration, the share of the common expenses that is to be paid by the owner of each time-share interest after the addition of the new condominium property; and
- (c) he or she files in the Condominium Register with the amending declaration—
 - (i) a legal description of any unimproved property to be added to the existing

condominium property together with such structural and other plans in relation to the units to be constructed thereon as the Minister with responsibility for Planning may require; and

- (ii) a legal description of any improved land to be added to the existing condominium property together with the building plans of the existing buildings.

(13) A developing owner may, at any time, make any amendments, variations or modifications to any existing buildings (except to parts of a building comprising units in which time-share interests have been sold or agreed to be sold), or to any structural or plans referred to in subsection (12), which do not, in the opinion of the Minister with responsibility for Tourism, materially and adversely affect the time-share interests of existing owners in the time-share plan.

(14) A developing owner shall make an application for the approval of the Minister, and the approval of the Minister shall not be unnecessarily withheld.

(15) To the extent that any provision of the Condominium Act conflicts with any provision of this Act, the provisions of this Act shall prevail.

Aliens (Land Holding Regulation) Act not to apply.

53. The provisions of the Aliens (Land Holding Regulation) Act, Cap. 13 shall not apply to the acquisition, mortgage, transfer or otherwise of time-share interests.

54.—(1) For the purposes of this section, “trustee” means a person appointed under subsection (2) who must be either—

Power of sale
by trustee.

- (a) an attorney-at-law, practising in Grenada;
- (b) a chartered accountant or a certified accountant practising in Grenada; or
- (c) such other person as may be deemed a fit and proper person by the Minister.

(2) A holder of a lien, including, but not limited to a developing owner or an owners’ association, may exercise the remedy of a power of sale to collect mortgage liens and assessment liens by the appointment of a trustee for that purpose (hereinafter referred to as a “trustee’s power of sale”) except that the exercise of that remedy shall be in substitution for any and all other remedies available to a holder of a lien under the law or contract, including, without limitation, the right of action against an obligor for a deficiency judgment if funds received from the sale of the time-share interest are less than the unpaid balance of any mortgage or other loan relating to the time-share interest in favour of the holder of a lien.

(3) The trustee’s power of sale shall be conducted by public auction or private contract by the trustee appointed by the holder of the lien, and the trustee’s appointment may be terminated by the holder of the lien at any time by delivering to the trustee a notice of termination of his or her appointment.

(4) A trustee appointed to exercise a power of sale shall have a duty to the owner of the time-share interest to obtain a fair price having regard to the special circumstances of the sale of the time-share interests in the secondary market, and the trustee may sell a time-share interest to the holder of the lien, or any of its affiliates, on such time-share interest, in which case the holder of the lien may set off the unpaid debt of the owner against the sales price of the time-share interest.

(5) For the purposes of subsection (4), a price shall be deemed to be a fair price where the price equates to the debts due to the holders of all mortgage liens registered on the time-share interest, except that where there is only one mortgage lien registered on the time-share interest and the purchaser of the time-share interest is the holder of that mortgage lien, any price obtained by the trustee in his or her absolute discretion shall be deemed to be a fair price.

(6) The trustee shall, before selling any time-share interest pursuant to this section, ensure that the conditions set out in the Fifth Schedule have been fully complied with.

(7) For the purposes of subsection (5), each obligor shall inform the holder of a mortgage lien on the subject time-share interest and the managing agent of any change in address and, if a service agent is appointed, the obligor shall also inform the service agent of any changes in address.

(8) The failure of the trustee to comply with the conditions set out in the Fifth Schedule shall not entitle an obligor or an aggrieved party to annul or avoid the sale, except that the obligor or the aggrieved party shall have his or her remedy in an action for damages against the trustee.

(9) Except as otherwise provided in a time-share instrument, any unpaid assessment due from the owner of a time-share interest in favour of the owner's association together with interest on the unpaid assessment at such rate as may be prescribed by the time-share instrument, shall constitute a charge on the time-share interest with effect from the date on which the assessment became payable, and the charge shall rank prior to all other encumbrances on the time-share interest except a lien or mortgage covering the owner's time-share interest that was given in order to secure all or any portion of the unpaid purchase price of the time-share interest, or any charge under the Property Tax Act Cap. 257B.

(10) The charge referred to in subsection (9) shall not become effective until a notice, in writing under the common seal of the owners' association, is filed for registration in the Deeds and Land Registry, which notice shall contain the following information—

- (a) the name of the owners' association and the address of the time-share project or time-share plan;
- (b) the volume and page of the registration of the relevant time-share instrument;
- (c) the name of the owner of the time-share interest and the time-share interest description; and
- (d) the amount due and the date on which it was payable.

(11) The charge referred to in subsection (9) shall continue in force—

- (a) until all sums secured thereby with interest on such sums have been fully paid;
- (b) until the holder of the lien has exercised the power of sale as provided in this section; or
- (c) until the expiration of six years from the date on which the assessment was levied or from the date on which the last payment, if any, on account of such contribution was made,

whichever of (a), (b) or (c) occurs first.

(12) When the owner of the time-share interest pays the charge referred to in subsection (9), he or she shall be entitled, on demand to the owners' association, to a certificate under the owners' association common seal that the amount due has been paid and, upon lodging the certificate for registration at the registry and the payment of the registration fee, the charge shall thereupon be satisfied.

(13) The proceeds of sale obtained by a trustee on the exercise of a trustee's power of sale shall be applied in the following order of priority—

- (a) all fees reasonably incurred by the trustee in exercising the trustee's power of sale, including but not limited to legal fees;
- (b) the amount owing to the holders of liens, mortgages and encumbrances in order of their respective priorities including all accrued interest to the date of payment; and
- (c) the balance, if any, to the owner or owners of the time-share interest.

(14) Notwithstanding any provision of the Stamp Act, Cap. 309 to the contrary, on a sale of a time-share interest by a trustee appointed under subsection (1) the stamp duty payable on such sale shall be 2.5 % of the price paid, and the stamp duty shall be payable by the purchaser only.

55.—(1) Without prejudice to section 54, the holder of a lien, including a mortgagee or an owners' association, may, instead of taking steps to enforce the lien, whether under this Act or any other enactment, or of exercising the remedy of power of sale pursuant to section 54, accept a transfer of the time-share interest or time-share interests over which the holder has the lien.

Transfer
instead of
mortgage sale.

(2) A transfer made pursuant to subsection (1) shall be signed by the owner of the time-share interest and the holder of the lien and shall contain a declaration that the transfer is made instead of any proceedings that may be taken by the holder of a lien to enforce the lien against the time-share interest.

(3) Upon acceptance of a transfer made by the owner of a time-share interest pursuant to subsection (1) the debt secured by the lien shall be extinguished.

(4) Notwithstanding any provisions of the Stamp Act, Cap. 309 to the contrary, the stamp duty payable on a transfer made pursuant to this section shall be 2.5 % of the debt extinguished pursuant to subsection (3), and the stamp duty shall be payable by the holder of the lien only.

56.—The Minister may make regulations to give effect to the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, the Minister may make regulations—

Regulations.

- (a) governing the development, management, advertising, marketing, and sale of time-share projects in such a manner that it will enhance the growth of tourism through fair and honest business practices by creating safe hygienic and sanitary facilities which are equal to the generally accepted standards of licensed hotels in Grenada;
- (b) regulating the number of persons who may be accommodated in the units and facilities of a time-share project;
- (c) prescribing precautions to be taken against the outbreak or spread of fire in time-share projects and for the protection of persons therefrom;
- (d) prescribing the manner in which any application may be made to the Minister;
- (e) providing for the keeping of registers and log-books by developing owners in relation to the operation of time-share projects;
- (f) providing for the making of reports to the Minister, the Ministry of Health, the Planning and Development Authority or the authority responsible for the fire services upon any matters connected with the observance of the regulations;
- (g) requiring that the licence and regulations, or any part or extract from either, be displayed in any prescribed place;

- (h) providing for the proof of any matter in proceedings under the provisions of this Act;
- (i) identifying and investigating the operators of time-share projects;
- (j) regulating generally the functions and the operations of marketing agents in advertising, promoting and selling the time-share projects;
- (k) prescribing the financial requirements to be fulfilled by an applicant for a licence before the licence may be granted;
- (l) requiring the developing owner, to furnish the Minister with a payment and performance bond or other bond executed by one or more sufficient sureties in such amount, for such periods and on such terms, to cover maintenance obligations as well as latent and other defects and repairs likely to be necessary as a result of materials used in the construction of the roof or other components of the premises of the time-share projects;
- (m) for the imposition and payment of such fees as are prescribed in relation to the occupancy of time-share projects;
- (n) providing for anything that is required or authorized to be prescribed under this Act.

Savings and
transitional
provisions.

57.—(1) Nothing in this Act shall derogate from the provisions of any other law but, in the event of any conflict between this Act and any other law, the provisions of this Act, in so far as it relates to the development, management, advertising, marketing or sale of a time-share interest, shall prevail.

(2) Any person who, immediately before the coming into force of this Act, was developing, marketing or managing a time-share project whether in the capacity of a developing owner, marketing agent, managing agent or otherwise, may continue to develop, market or manage such time-share project for a period of six months, during which period an application shall be made for the grant of a licence under section 4.

FIRST SCHEDULE

(Section 18)

Matters to be included in purchaser's contract

1. Each seller shall utilize and furnish each purchaser with a completed and executed copy of a time-share contract relating to the sale, which copy shall include the following information—
 - (a) the actual date the contract is executed by each party;
 - (b) the names and addresses of the developing owner and seller (if different from the developing owner), any holder of a mortgage or other security instrument encumbering all or a portion of the time-share project (excluding those mortgages or other security instruments described in section 18(2)), and any owner or lessor of any underlying estate in freehold or leasehold;
 - (c) the total financial obligation of the purchaser, including the initial purchase price plus information describing any additional charges to which the purchaser may be subject, such as financing, reservation, maintenance, management and recreation charges;

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- (d) the estimated date of completion of construction of each accommodation or facility of the time-share project which is not completed at the time the time-share contract is executed and which is the subject of the time-share contract;
 - (e) immediately prior to the space reserved in the time-share contract for the signature of the purchaser, in conspicuous type, substantially the following statement—

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

- (f) (i) a statement that, in the event the purchaser cancels the time-share contract during the seven day cancellation period, the seller will refund to the purchaser the total amount of all payments made by the purchaser under the time-share contract, deducting any contract benefits (such as an overnight stay at the time-share project) that the purchaser may have received under the time-share contract prior to the effective date of the cancellation;
- (ii) the statement shall further provide that the refund will be made within twenty days after receipt of the notice of cancellation or within five days after receipt of funds from the purchaser’s cleared cheque, whichever is later; and that a seller and a purchaser shall agree in writing on the value for each contract benefit received by the purchaser for purposes of this paragraph; and the term “contract benefit” shall not include public offering statements or other documentation or materials that must be furnished to a purchaser under any law.

2. Notwithstanding paragraph 1, each non-developing seller may use a resale time-share contract which shall contain all of the following—

- (a) the name and address of the time-share plan and of the managing agent of the time-share plan;
- (b) the following statements in substantially the same form in conspicuous type located immediately prior to the disclosure required by paragraph 2(c)—

“THE CURRENT YEAR’S ASSESSMENT FOR COMMON EXPENSES ALLOCATED TO THE TIME-SHARE INTEREST YOU ARE PURCHASING IS THIS ASSESSMENT, MAY BE INCREASED FROM TIME TO TIME BY THE MANAGING AGENT OF THE TIME-SHARE PLAN, AND IS PAYABLE IN FULL EACH YEAR ON OR BEFORE THIS ASSESSMENT (INCLUDES/ DOES NOT INCLUDE) YEARLY REAL ESTATE TAXES, WHICH (ARE/ARE NOT) BILLED AND COLLECTED SEPARATELY;

(if real property taxes are not included in the current year’s assessment for common expenses, the following statement must be included:

THE MOST RECENT ANNUAL ASSESSMENT FOR REAL ESTATE TAXES FOR THE TIME-SHARE INTEREST YOU ARE PURCHASING IS.....);

(if there are any delinquent assessments for common expenses or outstanding taxes with respect to the time-share interest in question, the following statement must be included:

A DELINQUENCY IN THE AMOUNT OF, FOR UNPAID ASSESSMENTS FOR COMMON EXPENSES OR TAXES CURRENTLY EXISTS WITH RESPECT TO THE TIME-SHARE INTEREST YOU ARE PURCHASING, TOGETHER WITH A PER DIEM CHARGE OF FOR INTEREST AND LATE CHARGES. EACH OWNER IS PERSONALLY LIABLE FOR THE PAYMENT OF SUCH OWNER’S ASSESSMENTS, AND FAILURE TO PAY THE ASSESSMENTS ON TIME MAY RESULT IN RESTRICTION OR LOSS OF YOUR USE AND/OR OWNERSHIP RIGHTS);

THERE ARE MANY IMPORTANT DOCUMENTS RELATING TO THE TIME-SHARE PLAN WHICH YOU SHOULD REVIEW PRIOR TO PURCHASING A TIME-SHARE INTEREST, INCLUDING THE DECLARATION OF CONDOMINIUM OR COVENANTS AND RESTRICTIONS; THE ASSOCIATION ARTICLES AND BY-LAWS OR MEMORANDUM OF ASSOCIATION (IF APPLICABLE); THE CURRENT YEAR'S OPERATING AND RESERVE BUDGETS; AND ANY RULES AND REGULATIONS AFFECTING THE USE OF TIME-SHARE PLAN ACCOMMODATIONS AND FACILITIES.”;

- (c) the following statement in substantially the same form in conspicuous type located immediately prior to the space in the resale time-share contract reserved for the signature of the purchaser—

“YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN SEVEN DAYS AFTER THE DATE YOU SIGN THIS CONTRACT. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE NON-DEVELOPING SELLER IDENTIFIED IN THIS CONTRACT IN WRITING OF YOUR INTENT TO CANCEL THE CONTRACT. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE ON THE DATE SENT TO THE NON-DEVELOPING SELLER AT (ADDRESS). ANY ATTEMPT TO OBTAIN A WAIVER OF YOUR CANCELLATION RIGHT IS UNLAWFUL. WHILE YOU MAY EXECUTE ALL COMPLETION DOCUMENTS IN ADVANCE, THE COMPLETION AS EVIDENCED BY DELIVERY OF YOUR OWNERSHIP CERTIFICATE OR OTHER DOCUMENT, BEFORE EXPIRATION OF YOUR SEVEN DAYS CANCELLATION PERIOD, IS PROHIBITED.”; and

- (d) the year in which the purchaser will first be entitled to occupancy of a time-share period associated with the time-share interest that is the subject of the resale time-share contract.
3. If a resale time-share contract used by a non-developing seller does not comply with the provisions of paragraph 2 of this Schedule, the contract shall be voidable at the option of the purchaser up to a period of one year after the date of completion.

SECOND SCHEDULE

(Section 47)

Matters as to which developing owner or managing agent of a time-share project must satisfy the Minister

1. Every developing owner, marketing agent or managing agent shall, whenever required to do so by the Minister, satisfy the Minister that the time-sharing project in relation to which he or she has been granted a licence or which he or she manages, has—
 - (a) made provision for the inclusion of a non-disturbance clause in all debt instruments, where there is recourse against the time-share project, for the protection of the interests of all purchasers;
 - (b) made provision for the purchasers to directly or indirectly cancel and terminate, on commercially reasonable terms, the contract of any managing agent for reasons other than breach after the sellout of seventy-five per centum of all time-share interests in the project, through the creation of an advisory membership body or owner's association as selected by the developing owner for each time-share project; and such body or association shall have the right to the names and addresses of all purchasers in the project; and the managing agent shall co-operate with such structure or association in all ways feasible; and the Minister shall periodically review comments received from any such body or association and take any suggestions into consideration as part of the periodic inspection under section 35;
 - (c) provided to the Minister, prior to their use, copies of all contracts and other legally binding documents being used by the parties in connection with the time-share project, including all rules, regulations, conditions or limitations on and charges for use of the accommodations or facilities as may be in force from time to time;
 - (d) provided for the keeping of proper and detailed records concerning all aspects of the development, management, advertising, marketing and sale of the time-share project; and such records shall include a copy of the time-share contract of each on-site sale under the time-share project and records detailing the disposition of all funds realized from such sales;

- (e) provided to the Minister, prior to their use or implementation, as the case may be, and to every purchaser, prior to the execution of the time-share contract by such purchaser—
 - (i) a copy of the time-share contract transferring the time-share interest and the public offering statement, if required;
 - (ii) full information concerning the terms and conditions of any financing offered, and a detailed statement of all annual or periodic charges that defines the basis for such charges and assessments and the means by which all periodic charges and assessments, if any, will be made and the amounts thereof; and
 - (iii) a copy of all rules, regulations, conditions or limitations on the use of the accommodation or facilities of the project;
- (f) afforded every on-site purchaser a cancellation period of not less than seven days from the date of the execution of the time-share contract or until seven days after the receipt of the public offering statement, whichever is the later, during which time such purchaser shall be entitled to cancel the contract;
- (g) made satisfactory, financial arrangements for the refund to the purchaser of the total amount of all payments made by the purchaser, reduced by the proportion of any contract benefit received by any purchaser within the time prescribed by this Act;
- (h) made provision that if the titles, rights, obligations and responsibilities of a developing owner or managing agent are transferred to a third party, such third party agrees, in writing, to honour fully the rights of the purchasers under the time-share project;
- (i) made provision for inclusion of a clause in all time-share contracts to the effect that such time-share contracts shall, in so far as they relate to the purchase or transfer of a time-share interest, be interpreted and construed according to the laws of Grenada, and if not so provided, then the laws of the place of the situs of the time-share contract's execution shall govern;
- (j) made provision whereby a compensating use period, similar alternative accommodation or monetary compensation may be granted to a purchaser where the facilities of the time-share project that he or she is entitled to use and occupy are not available for the period or any part thereof during which the purchaser is entitled to occupy and use the facilities due to any gross negligence on the part of the managing agent;

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- (k) provided a policy and procedure for disciplining a purchaser for failure to comply with any provision of the rules and regulations of the time-share project or this Act, including the late payment of any annual, periodic, or special assessment, and such procedure shall include the imposition of monetary penalties, the suspension of a purchaser's right to use the facilities of the time-share project and ultimately the forfeiture of a purchaser's time-share interest in the time-share project for violations including the failure of the purchaser to vacate promptly a unit in accordance with the terms and conditions of purchase, and any disturbance affecting the use and enjoyment of the facilities of the time-share project by other purchasers; and further made provision for giving a purchaser proper notice and a reasonable opportunity to be heard before any penalty is imposed or rights and privileges of such purchaser are suspended or forfeited;
- (l) made provision whereby a special assessment, that is to say, any assessment in respect of any cost in connection with the time-share project payable by a purchaser, other than annual or periodic charges and assessment, shall be submitted to the Minister together with a detailed statement thereof for its approval before any demand is made on the said purchaser for payment;
- (m) provided a plan of payment by purchasers, either individually or through a body contemplated in subparagraph (b), to the managing agent or interim managing agent for the costs of operating and maintaining the time-share project and such plan shall provide, *inter alia*—
- (i) for the payment of reserves for deferred maintenance and reserves for capital expenditures; and all reserves for any accommodations and facilities of the time-share project located in Grenada calculated by a formula which is based on the estimated life and replacement cost of each reserve item; and reserves for the deferred maintenance for the accommodations and facilities shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of time-share unit furnishings and equipment, and any other component, the useful life of which is less than the useful life of the overall structure;
 - (ii) for the owners' association, from time to time, to reallocate reserves for deferred maintenance and capital expenditures required under this subparagraph from any deferred maintenance or capital expenditure reserve account to any other deferred maintenance or

capital expenditure reserve account or accounts in its discretion without the consent of the purchasers; and funds in any deferred maintenance or capital expenditure reserve account may not be transferred to any operating account without the consent of the majority of the purchasers; and the owners' association may, from time to time, transfer excess funds in any operating account to any deferred maintenance or capital expenditure reserve account without the vote or approval of purchasers; and the owners' association shall not co-mingle operating funds with reserve funds; however, the owners' association may maintain operating and reserve funds within a single account for not exceeding thirty days after the date on which the owner's association receives payment of the funds; and

- (iii) for the submission of the managing agent or interim managing agent to the Minister of an annual audited statement of accounts; and
- (n) made provision not to encumber all or a portion of any interest underlying a time-share project in which time-share interests are to be offered with a mortgage or other similar instrument, subsequent to the sale of any time-share interest in the project without the written consent of not less than fifty-one per centum of the then existing purchasers (other than the developing owner or managing agent, as the case may be).

THIRD SCHEDULE

(Section 48)

Matters which developing owner must include in the public offering statement

1. Every developing owner shall, unless exempted by the Minister, include in his or her public offering statement the following information, where applicable, to his or her time-share project—
 - (a) the name of the developing owner and the principal address of such developing owner, the project and its primary and the time-share interest being offered for sale;

- (b) a complete description of the time-share project including the facilities and amenities of the time-share project that will be made available to purchasers, including any provisions that have been made for public utilities including water, electricity, telephone and sewerage facilities and the developing owner's good faith estimated schedule of commencement and completion of the time-share project, its facilities and amenities or, if completed, a statement of the date of such completion;
- (c) the description contemplated in subparagraph (b) shall include a description of any recreational and other commonly used facilities which shall not be used exclusively by purchasers of time-share interests in the project and which require the payment of any portion of the maintenance and expenses of such facilities either directly or indirectly, by the purchasers, and such description shall include, the following—
 - (i) each building or facility committed to be built;
 - (ii) facilities not committed to be built, except under certain conditions, and a statement of those conditions or contingencies;
 - (iii) as to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions of subparagraph (c)(ii), a statement whether it will be owned by the purchasers having the use thereof or by an association or other entity which will be controlled by the purchasers, or by other persons, and the location in the exhibits of the lease or other document providing for use of those facilities;
 - (iv) the year in which each facility will be available for use by the purchasers or, in the alternative, the maximum number of purchasers in the time-share project at the time each of the facilities is committed to be completed; and
 - (v) if there are leases, descriptions thereof, including the length of their terms, the rents payable, and descriptions of any options to purchase;
- (d) if it is mandatory that the purchasers pay fees, rent, dues or other amount under a recreational facilities lease or club membership for the use of any facilities of the time-share project as referred to in subparagraph (c), the following statement must be made in conspicuous type—

“MEMBERSHIP IN THE RECREATIONAL FACILITIES IS MANDATORY FOR PURCHASERS.

PURCHASERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE.

PURCHASERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT AND FEES UNDER THE RECREATIONAL FACILITIES LEASE OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES; OR SIMILAR STATEMENTS OF THE NATURE OF THE ORGANIZATION OR THE MANNER IN WHICH THE USE RIGHTS ARE CREATED, AND THAT PURCHASERS ARE REQUIRED TO PAY.”;

- (e) a description (including the amount) of all amounts due from the purchaser at completion, together with a description of the purpose and method of calculating such amounts;
- (f) an explanation of the status of the title to the real property underlying the time-share plan, including a statement of the existence of any lien, defect, judgment, mortgage or other encumbrance affecting the title to the property, and how such lien, defect, judgment, mortgage or other encumbrance will be removed or satisfied prior to completion;
- (g) a general description of any financing offered to the time-share purchaser by the developing owner;
- (h) a statement of any pending suits against the development owner which may materially and adversely impact the offering of the time-share interests and of which such developing owner has actual knowledge;
- (i) a description of the insurance coverage provided for the benefit of purchasers;
- (j) the name and address of the managing agent, a statement whether the development owner may change the managing agent or its control and, if so, the manner by which the developing owner may change the management agent, a statement of the arrangements for management, maintenance and operation of the accommodations and facilities of the time-share project and other property (other than an incidental benefit) that will serve the purchasers; and a description of the management arrangement and any and all contracts for those purposes having a term in excess of one year, including the names of the contracting parties, the term of the contract, the nature of the services included, and the compensation, stated for a month and for a year, and provisions for increases in the compensation; and copies of all described contracts shall be attached as exhibits;

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- (k) any current or expected fees or charges to be paid by purchasers for the use and enjoyment of any facilities of the time-share project which are not already disclosed under subparagraph (d);
 - (l) the extent to which financial arrangements, if any, have been provided for completion of any part of the time-share project;
 - (m) the extent to which a purchaser in a time-share project can exchange his or her time-share interest in that project with that of another purchaser, in another project, and the procedures and costs necessary to do it;
 - (n) a brief narrative description of the significant features of the time-share instrument and any document referred to therein, any contract or lease to be signed by the purchaser at closing, and any contract or lease that will or may be subject to cancellation by the purchasers;
 - (o) any services which the developing owner provides or expense he or she pays and which he or she expects may become at any subsequent time a time-share expense of the purchasers;
 - (p) a description of the restrictions, if any, to be imposed on time-share interests concerning the use of any of the accommodations or facilities of the time-share project, including statements whether there are restrictions upon children and pets, and references to the volumes and pages of the time-share plan document where such restrictions are found, or, if such restrictions are contained elsewhere, then a copy of the document containing the restrictions shall be attached as an exhibit; and if there are no restrictions, there shall be a statement of such fact;
 - (q) an estimated operating budget for the time-share project and a schedule of the purchaser's expense shall be attached as an exhibit and shall contain the following information—
 - (i) the estimated annual expenses of the time-share collectible from purchasers by assessments; the estimated payments by the purchaser for assessments shall also be stated in the estimated amount for the times when they will be due; expenses shall also be shown for the shortest time-share period (or smallest time-share interest, as the case may be) offered for sale by the developing owner; if the time-share plan provides for the offer and sale of units to be used on a non time-share basis, the estimated monthly and annual expenses shall be set forth in a separate schedule; and

- (ii) the estimated weekly, monthly, and annual expenses, if any, of the purchaser of each time-share interest, other than assessments payable to the managing agent as contemplated in subparagraph (q)(i); expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from the estimate;
- (r) if the developing owner intends to subsidize or guarantee the level of assessments, such subsidy or guarantee must be based on a good faith estimate of the revenues and expenses of the time-share plan; and the subsidy or guarantee must include a description of the following—
 - (i) the specific time period measured in one or more calendar or fiscal years during which the subsidy or guarantee will be in effect; and
 - (ii) the level, expressed in total dollars, at which the developing owner subsidizes or guarantees the budget, as well as the developing owner's good faith estimate of the fiscal impact upon the annual budget immediately after the expiration of the subsidy or guarantee, and

no owner of a time-share interest may be excused from the payment of the owner's share of the common expenses unless all owners are likewise excused from payments, except that the developing owner may be excused from the payment of the developing owner's share of the common expenses which would have been assessed against the developing owner's time-share interests during a stated period of time during which the developing owner guaranteed to each purchaser in the time-share instrument, or by agreement between the developing owner and a majority of the owners of time-share interests (other than the developing owner) that the assessment for common expenses imposed on the owners would not increase over a stated dollar amount; and in the event of such a guarantee, the developing owner is obliged to pay all common expenses incurred during the guarantee period in excess of the total revenues of the time-share plan;

- (s) all other circumstances or features affecting the time-share project determined by the developing owner in good faith to be unusual and material to such project;
- (t) a statement or provision on the face of the public offering statement in bold face type and separated from the other text as follows—

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

- (u) copies of the following documents and plans, to the extent they are applicable, shall be filed with the Minister and included as exhibits, except as otherwise provided in this Schedule—
- (i) if the time-share project is part of a condominium, the declaration of condominium, or the proposed declaration if the declaration has not been registered;
 - (ii) any declaration of covenants and restrictions, or proposed declarations if the declaration has not been registered;
 - (iii) if the owner’s association is established as a body corporate, the articles of incorporation creating the association;
 - (iv) the bye-laws or memorandum of association of the owner’s association;
 - (v) the ground lease or other underlying lease of the real property on which the time-share project is situated;
 - (vi) the management agreement and all maintenance and other contracts regarding the management and operation of the time-share property which have terms in excess of one year;
 - (vii) the estimated operating budget for the time-share project and the required schedule of purchaser’s expenses;
 - (viii) the floor plan of each type of unit and the plot plan showing the location of all accommodations and facilities of the time-shared project;

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- (ix) any lease of recreational facilities and other facilities of the time-share project which will be used only by purchasers of the time-share plan;
 - (x) any lease of facilities of the time-share project used by purchaser and others;
 - (xi) the form of time-share contract or lease of the time-share interests;
 - (xii) the documents containing any restrictions on use of the property described in paragraph (p);
 - (xiii) any other documents of instruments creating a time-share plan; and
 - (xiv) any other contract or lease to be signed by the purchaser;
2. The public offering statement provided to purchasers shall only be required to include copies of the exhibits that are required to be filed with the Minister under paragraph 1(u)(i), (ii), (iii), (iv), (viii) and (xiii) of this Schedule, provided that the purchasers are also given a receipt for time-share plan documents and a list describing any exhibit required to be filed with the Committee which is not delivered to the purchaser.

FOURTH SCHEDULE

(Section 49)

Requirements with respect to incidental benefits

1. Accommodations, products, services, discounts, or other benefits which satisfy the requirements of this paragraph shall be subject to the provisions of this paragraph and exempt from the other provisions of this Act which, would otherwise apply to such accommodations or facilities if—
- (a) the use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation;
 - (b) no costs of acquisition, operation, maintenance, or repair of the incidental benefit are passed on to purchasers of the time-share plan as common expenses of the time-share plan;

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- (c) the continued availability of the incidental benefit is not necessary in order for any accommodation or facility of the time-share project to be available for use by purchasers in a manner consistent in all material respect with the manner portrayed by any promotional material, advertising or the acknowledgment and disclosure statement delivered to the purchasers;
 - (d) the continued availability to purchasers of time-share plan accommodations on a one-to-one purchaser to accommodation ratio is not dependent upon continued availability of the incidental benefit;
 - (e) the incidental benefit will continue to be available in the manner represented to prospective purchasers for three years or less after the first date that the time-share plan is available for use by the purchaser, and nothing herein shall prevent the renewal or extension of the availability of an incidental benefit; and
 - (f) the aggregate represented value of all incidental benefits offered by a developing owner to a purchaser may not exceed 30% of the purchase price paid by the purchaser for his or her time-share interest.
2. Each purchaser shall execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, if any, which shall be offered only as provided in this Schedule, and the acknowledgment and disclosure statement shall include—
- (a) A fair description of the incidental benefit, including all user fees or costs associated therewith and any restrictions on use or availability;
 - (b) a statement that use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and that payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation;
 - (c) if applicable, a statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser; and
 - (d) the following disclosure in conspicuous type in the acknowledgment and disclosure statement—

“THE INCIDENTAL BENEFIT(S) DESCRIBED IN THIS DOCUMENT IS (ARE) OFFERED TO PROSPECTIVE PURCHASERS OF THE TIME-SHARE PLAN. THIS (THESE) BENEFIT(S) IS (ARE) AVAILABLE FOR YOUR USE FOR (STATE PERIOD 3 YEARS OR LESS). THE

AVAILABILITY OF THE INCIDENTAL BENEFIT(S) MAY OR MAY NOT BE RENEWED OR EXTENDED. YOU SHOULD NOT PURCHASE AN INTEREST IN THE TIME-SHARE PLAN IN RELIANCE ON THE CONTINUED AVAILABILITY OR RENEWAL OR EXTENSION OF THIS (THESE) BENEFIT(S).”.

FIFTH SCHEDULE

(Section 54)

Matters to be complied with prior to a trustee exercising a power of sale under a mortgage instrument

1. A trustee may exercise the power of sale provided that the following notice has been complied with—
 - (a) the trustee has sent a written notice of default and intent to sell the time-share interest to the obligor and a copy to any subsequent encumbrancer of which the trustee has actual notice at the respective address for notices of the obligor and subsequent encumbrancer with a statement in conspicuous type in substantially the following form—

“IF YOU FAIL TO CURE THE DEFAULT WITH REGARD TO THIS MATTER WITHIN SIXTY CALENDAR DAYS AFTER THE DATE OF THIS NOTICE, YOU WILL RISK LOSING YOUR INTEREST IN THIS TIME-SHARE PROJECT THROUGH A NON-JUDICIAL TRUSTEE’S POWER OF SALE PROCEDURE. HOWEVER, UNDER THIS NON-JUDICIAL PROCEDURE YOU WILL NOT BE SUBJECT TO A DEFICIENCY JUDGMENT OR PERSONAL LIABILITY, EVEN IF THE SALE OF YOUR TIME-SHARE INTEREST RESULTING FROM THE NON-JUDICIAL SALE IS INSUFFICIENT TO SATISFY THE AMOUNT IN WHICH YOU ARE IN DEBT. YOU HAVE THE RIGHT TO CURE YOUR DEFAULT AT ANY TIME BEFORE THE SALE OF YOUR TIME-SHARE INTEREST BY PAYMENT OF ALL PAST DUE LOAN PAYMENTS, FEES OR ASSESSMENTS; ACCRUED INTEREST; LATE FEES, TAXES; AND ALL FEES AND COSTS INCURRED BY THE LIEN HOLDER AND TRUSTEE, INCLUDING ATTORNEY’S FEES AND COSTS IN CONNECTION WITH THE DEFAULT.”;

- (b) A period of at least sixty calendar days has elapsed since the sending of the notice of default and intent to sell by the trustee without receipt by the trustee of all past due loan payments, fees or assessments; accrued interest; late fees, taxes; and all fees and costs in connection with the default;
- (c) The notice of default and intent to sell shall set forth—
 - (i) the names and notice addresses of the obligor, including the registered owner of the time-share interest if different, and the subsequent encumbrancer;
 - (ii) the name, address and telephone number of the trustee, and a statement that the trustee has been appointed by the lien holder under this Act;
 - (iii) a description of the existence of a default under the mortgage, the time-share instrument, or applicable law;
 - (iv) the official registry book and page numbers where the mortgage lien or assessment lien is registered, if available;
 - (v) the description of the time-share interest or account number assigned by the lien holder to identify the time-share interest;
 - (vi) the amount secured by the mortgage or the assessment lien; accrued interest and late charges as of the date of notice of sale and including a *per diem* amount to account for further accrual of interest and late charges; advances for the payment of taxes, insurance, and maintenance of the time-share interest; and costs of the sale, including a title search fee and reasonable trustee's and attorney's fees and costs;
 - (vii) a statement of the trustee's intention to sell the time-share interest to satisfy the obligation by public auction or private contract; and
 - (viii) the right of the obligor to cure the default up to the date of the sale and the right of the subsequent encumbrancer to redeem its interest up to the date of the sale; and
- (d) the trustee shall send a copy of the notice of default and intent to sell to the obligor to his or her address for notice by registered mail return receipt requested or courier service, and the notice shall be deemed effective on such delivery; and a person at the obligor's notice address may acknowledge receipt or any correspondence received in connection with such procedure.

2. For the purposes of this Schedule, “notice address”–

(a) with respect to an assessment lien, means the address of–

- (i) the current owner of a time-share interest as reflected by the books and records of the owners’ association or the managing agent; or
- (ii) a service agent of the current owner with an address and physical presence in Grenada; and

(b) with respect to a mortgage lien, means–

- (i) the address of the mortgagor as set out in the mortgage, amendment to the mortgage, promissory note, or a separate document executed by the mortgagor and received by the mortgagee;
- (ii) the most current address of the mortgagor according to the records of the mortgagee; or
- (iii) the address of a service agent of the mortgagor duly appointed by the mortgagor with an address and physical presence in Grenada.

Passed by the House of Representatives this 18th day of December, 2015.

WILLAN A. THOMPSON
Clerk to the House of Representatives.

Passed by the Senate this 23rd day of December, 2015.

WILLAN A. THOMPSON
Clerk to the Senate.

GRENADA