Notre Dame Law Review

Volume 59 | Issue 1 Article 5

12-1-1983

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Ellen R. Peirce

Richard A. Mann

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*Ellen R. Peirce**
*Richard A. Mann***

I. Introduction

The most significant recent trend in real property ownership has been the dramatic increase in the number of condominiums[1] and cooperatives.[2] It has been estimated that one-half of the population of the United States will be living in condominiums by the year 2000.[3] In addition, a novel form of ownership has grown out of the condominium concept: time-sharing[4] ownership. Time-sharing generally involves the division of ownership of a condominium unit into a number of fixed time periods during which each purchaser has the exclusive right to use and to occupy that unit.[5] In essence the time-

* Ellen Rust Peirce, Assistant Professor, Legal Studies, School of Business Administration, University of North Carolina. B.A. Bryn Mawr College, 1971; J.D. Duke University Law School, 1976.

** Richard A. Mann, Professor, Legal Studies, School of Business Administration, University of North Carolina. B.S. University of North Carolina at Chapel Hill, 1968; J.D. Yale University Law School, 1973.

1 A property interest in a condominium is defined as a fee simple ownership in a unit of a multiple unit building and an undivided interest as tenant in common in the common areas of that building. Annot., 45 A.L.R.3d 1171 (1972).

2 In contrast to a condominium, property interest in a cooperative is defined as interest in the entity which owns the multiple unit dwelling coupled with a lease providing an individual the right to occupy a particular unit. *See generally* Annot., 77 A.L.R.3d 1290 & n.4 (1977).

3 U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, QUESTIONS ABOUT CONDOMINIUMS: WHAT TO ASK BEFORE YOU BUY (Dec. 1977). For a comprehensive analysis of condominium law, see generally, P. ROHAN & M. RESKIN, REAL ESTATE TRANSACTIONS: CONDOMINIUM LAW AND PRACTICE (1983); 4B R. POWELL & P. ROHAN, THE LAW OF REAL PROPERTY (rev. ed. 1981 & Supp. 1983). For a history of condominium growth in the United States, see Note, *Expanding Condominiums in Ohio*, 29 CASE. W. RES. L. REV. 228, 232 (1978).

4 The term "time-share ownership" is generally used to describe an interest in real estate pursuant to which several people have exclusive rights to use the property for a given time period. Eastman, *Time-Share Ownership: A Primer*, 57 N.D.L. REV. 151, (1981). The term time-sharing was appropriated from the computer industry. Gray, *Pioneering the Concept of Time-sharing Ownership*, 48 ST. JOHN'S L. REV. 1196, 1197 (1974). Time-sharing ownership of real property has been given many different names including interval ownership, fractional time period ownership (FTPO), and time-sharing ownership (TSO). Roodhouse, *Fractional Time Period Ownership of Recreational Condominiums*, 4 REAL EST. L.J. 35 (1975).

5 Note, *Time-Share Condominiums: Property's Fourth Dimension*, 32 ME. L. REV. 181 (1980).

share occupier of a unit owns it in terms of a fixed period of time, usually a number of weeks per year, and with the other time-share occupiers shares proportionally in the maintenance and operation costs of the property.[6] Typically, the minimum purchase requirement is one week per year.[7]

The application of time-sharing to real estate was first conceived in Europe in the early 1960's,[8] and the idea spread to the United States real estate market in the 1970's.[9] The number of time-share owners has mushroomed from 17,000 in 1975 to an estimated half million in 1980, while sales have increased from $50 million to $1 billion in the same period.[10]

The rapid increase in time-sharing, particularly as a form of vacation home ownership, can be attributed primarily to recent inflation and the attendant overall increase in costs associated with purchasing a second home.[11] Increased construction and financing costs have made it prohibitively expensive for many middle income families to consider purchasing a traditional vacation home or condominium. Demand, however, for recreational housing remains high,[12] and developers eventually[13] turned to the European model of time-sharing to provide a less costly solution to the problem. Fur-

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6 Conroy, *Valuing the Time-Share Property*, AM. INSTITUTE OF REAL ESTATE APPRAISERS 1 (1981).

7 *Id.*

8 Gunnar, *Regulation of Resort Time-Sharing*, 57 OR. L. REV. 31, 32 (1978).

9 *Id.*

10 Haller, *Tips on Time Sharing*, U.S. NEWS & WORLD REP., Mar. 16, 1981, at 78.

11 *See* Gunnar, *supra* note 8, at 31; Note, *New Ideas in the Vacation Home Market*, 48 ST. JOHN'S L. REV. 1203 (1974).

12 Note, *supra* note 5, at 182.

13 Initially, in response to the continued demand for vacation properties, developers promoted resort condominiums as investments by coupling them with rental programs. This form of investment, however, was viewed broadly by states, and the Securities and Exchange Commission issued Release No. 5347 which set the standard for treating condominiums as securities.

> [T]he offering of condominium units in conjunction with any one of the following will cause the offering to be viewed as an offering of securities in the form of investment contracts:
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> 1. The condominiums, with any rental arrangement or other similar service, are offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, from rental of the units.
> 2. The offering of participation in a rental pool arrangement; and
> 3. The offering of a rental or similar arrangement whereby the purchaser must hold his unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his occupancy or rental of his unit.

See generally, Note, *supra* note 5, at 182.

thermore, the buyer may often gain flexibility through exchange programs offered by some developers and by several independent exchange networks which allow him to trade occupancy periods with other time-sharers in different projects located in the same or other states or countries.[14]

With the growth in this new form of property ownership, the issue of the need for state or federal regulation of these interests has arisen.[15] The question of regulation has become critical as a result of major marketing and legal problems attendant upon the development and sale of time-share property. There has been considerable disagreement whether the programs should be regulated as real estate (by real estate commission and licensing laws)[16] or as securities (by the Securities and Exchange Commission and state blue sky laws).[17] Questions have also arisen whether all time-share forms should be regulated as either real estate or securities, or whether different forms should be regulated differently.

While numerous articles discussing time-sharing have been written in the last decade,[18] none has comprehensively analyzed state-level legislation specifically regulating time-sharing. This article traces the evolution of time-sharing, describes the various forms of time-share arrangements, identifies the problems associated with time-sharing, outlines the confused regulatory environment, analyzes the current state legislative approaches to time-sharing regulation, and makes recommendations regarding the preferred regulatory solution to time-sharing problems.

II. Forms of Time-Share Offerings

Time-share offerings can be classified as either fee interests which transfer an ownership interest in the real estate, or as non-fee interests which transfer only the right to use the property for certain time periods. Although the actual proportion of fee and non-fee sales

14 Davis, *Time-Sharing Exchange Networks*, 8 REAL EST. REV. 42 (Fall 1978).

15 *See generally* Byrne, *Securities Regulation of Time-Sharing Resort Condominiums*, 7 REAL EST. L.J. 3 (1978).

16 *Id.*

17 *Id.*

18 *See, e.g.*, Byrne, *supra* note 15; Davis, *Time-Sharing Ownership - Legal and Practical Problems*, 48 ST. JOHNS L. REV. 1183 (1974); Gray, *Pioneering the Concept of Time-Sharing Ownership*, 48 ST. JOHN'S L. REV. 1196 (1974); Gunnar, *supra* note 8; Pollack, *Time-Sharing, or Time is Money but Will It Sell?* 10 REAL EST. L.J. 281 (1982); Varner, *Time-Shared Ownership*, 12 GA. ST. B.J. 75 (1976); Note, *supra* note 11; Comment, *Legal Challenges to Timesharing Ownership*, 45 MO. L. REV. 423 (1980).

is not known, it has been estimated to be close to fifty-fifty.[19]

A. *Fee Interests*

Fee time-sharing conveys an interest in real property which includes all of the rights inherent in the ownership of real property, such as the right to sell, lease, devise, or bequeath the interest. Fee interests in the property can be established in any of three ways: by tenancy in common or time-span estate, by interval ownership, or by fee simple.

1. Time-Span Estate

The time-span estate form of ownership is defined as:

> [A] combination of (i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time span estate, coupled with (ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.[20]

A primary function of the time-share declaration is to establish periods of possession for each of the co-owners of the property. Without the provisions of the declaration each owner, as a tenant in common, would have an equal right to possession of the property at all times.[21] The declaration further sets forth the rights and duties of each individual tenant in common, and more importantly contains an enforceable waiver of each co-tenant's right to seek judicial partition.[22] Another important function of the declaration is to facilitate financing of each co-tenant's interest.[23] Because each co-tenant has separately established his period of possession in the declaration, he may finance his interest without encumbering that of the other co-tenants.[24] The provisions of the declaration when filed with the deed to

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19 AMERICAN LAND DEV. ASSOC., RESORT TIMESHARING FACT SHEET, Oct. 1981.

20 Uniform Condominium Act § 4-103, *reprinted in* 1A P. ROHAN & M. RESKIN, *supra* note 3, App. B-6, *quoted in* Comment, *supra* note 18, at 426.

21 *See* R. POWELL & P. ROHAN, POWELL ON REAL PROPERTY § 633.2 (abr. ed. 1968). *See also* Note, *supra* note 5, at 186.

22 Davis, *supra* note 18, at 1186. *See, e.g.*, 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.02[1] (Supplement Declaration § 7). A co-tenant's right to seek judicial partition of property held by tenancy in common has been granted by statute to co-tenants in every state. 4A R. POWELL & P. ROHAN, *supra* note 3, §§ 609, 613.

23 *See* Gray, *supra* note 4, at 1199. *See also* Note, *supra* note 5, at 191.

24 A critical feature of the time span estate is that each owner signs a note covering only his percentage interest of the unit's mortgage debt. Therefore, he is not liable for the balance of the mortgage. 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.01A.

the real property may be enforceable either as convenants running with the land or as equitable servitudes.[25]

Use of the time-span estate form of ownership, initially the most popular form, is waning[26] because of three particular problems: the possibility of judicial partition;[27] the possibility of common liability in the event of a federal tax lien;[28] and the uncertain status of a right to use which arises not as a direct result of the conveyance, but rather from the language in the declaration.[29]

The statutory right to partition is fundamental to the right of co-tenants to free themselves from the irritants of a co-ownership of property which is no longer satisfactory.[30] Partition will be effected by the court upon the request of any co-tenant.[31] It is of critical importance in time-sharing arrangements that the right to partition be restrained. Without such a bar, a disgruntled co-owner could force a partition, which could practicably be effected by only a sale of the unit and distribution of the proceeds. The time-share scheme, as a result, would be totally dissolved. Although consensual limitations on the right of partition have been held enforceable,[32] courts will only enforce the negative convenant if it is limited to a reasonable period of time.[33] The rule against perpetuities[34] is generally used by the courts to determine whether the restraint is reasonable.[35]

Virtually all current time-sharing documents contain express convenants limiting the time-sharer's right to partition.[36] Typically, however, they limit the life of the convenant to the useful life of the

25 Note, *supra* note 11, at 1216. For a detailed discussion of the enforceability of the declaration, see Note, *supra* note 5, at 191-202.

26 Eastman, *supra* note 4, at 153.

27 *See* Comment, *supra* note 18, at 432-35.

28 *Id.* at 428-31.

29 Davis, *Time Sharing Ownership: Possibilities and Pitfalls*, 5 REAL EST. REV. 49, 50 (Winter 1976).

30 4A R. POWELL & P. ROHAN, *supra* note 3, § 609.

31 *See generally* 68 C.J.S. *Partition* § 48 (1950).

32 *See* 4A R. POWELL & P. ROHAN, *supra* note 3, § 612-613.

33 "A restraint in the power of a co-tenant to compel partition, created to last for a reasonable period of time only, is valid." RESTATEMENT OF PROPERTY § 412 (1944). *See also* Annot., 37 A.L.R.3d 962, 978 (1971), and cases cited therein.

34 The rule against perpetuities provides that a restraint on the alienation of property which lasts beyond a life in being plus twenty-one years is void. *See* RESTATEMENT OF PROPERTY § 173 comment (c) (1936).

35 *Id.*

36 See 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.02[1], for examples of time-sharing ownership forms. Some courts have found an implied covenant not to partition if the sole purpose of the contract would be destroyed without it. *See* Annot., 37 A.L.R.3d 962, 976 (1971), *also cited in* Comment, *supra* note 18, at 434 n.52.

building, often fifty-five or sixty years.[37] In light of limits placed by the rule against perpetuities on restraints to alienation of property, including covenants restricting the right to partition, it is not certain that such a limitation would be lawful.[38] To date, no case has been brought to test the validity of these convenants.[39] Although states with condominium acts have restricted co-owners' rights to partition for as long as the property remains a statutory condominium,[40] these restrictions do not extend to units owned pursuant to a time-sharing scheme.[41] Moreover, even though a number of states[42] have adopted statutes expressly regulating time-share ownership and addressing the problem of partition, the majority have not. In these latter states, the risk of judicial partition can be a major concern to time-share owners.[43]

A second problem with the tenancy in common or time-span estate form of time-sharing is the possibility that the federal government will take the unit for non-payment of taxes[44] by one of the tenants in common.[45] The Internal Revenue Code authorizes the attorney general or his delegate to bring an action in federal court "to enforce the [tax] lien . . . or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability."[46] Pursuant to this sec-

37 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.02[1].

38 Although the rule against perpetuities does not apply directly to restraints upon partitions, it has been applied to them by analogy. *See* 6 R. POWELL & P. ROHAN, *supra* note 3, § 846 at 30.

39 Most courts have taken a liberal attitude toward the reasonableness of the duration of partition agreements in contexts other than time-sharing. For examples of decisions upholding agreements not to partition, see Comment, *supra* note 18, at 434 n.54.

40 *See* Note, *supra* note 5, at 190.

41 Typically, state condominium statutes prohibit partition of "common elements" of which a unit, by definition, is not one. *Id.* at 190 n.57.

42 To date, Florida, Hawaii, Nebraska, South Carolina, Tennessee, and Virginia have enacted specific legislation dealing with time sharing. See notes 226-468 *infra* and accompanying text for a detailed discussion of these statutes.

43 For a discussion of the enforcement against successors and assigns of a covenant not to partition, see Comment, *supra* note 5, at 191-201; *see also* Comment, *supra* note 18, at 435.

44 Section 6321 of the Internal Revenue Code provides: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a . . . lien in favor of the United States upon all the property and rights to property, whether real or personal, belonging to such person." I.R.C. § 6321 (1976).

45 This problem arises only in connection with time-share estate ownership and not with interval estate ownership. In the latter form of ownership, each user is an owner in severalty only for his particular term of ownership and holds no ownership interest during the rest of the year. Hence, his interest is not subject to sale for the tax delinquency of a co-tenant. *See* Comment, *supra* note 18, at 428 n.21.

46 I.R.C. § 7403(a) (1976). If the federal district court orders a sale pursuant to this

tion, the government may have the right to sell the interests of all the co-tenants in the unit to satisfy the tax liability of one of them.[47] Not only are the non-delinquent co-tenants subjected to a forced sale of their interests in the time-share condominium, but they are also subjected as necessary parties to the nuisance of a court appearance.[48]

The courts of appeals disagree as to whether section 7403 authorizes the government to sell the entire property held jointly with others in which the delinquent taxpayer has an interest or only the delinquent taxpayer's interest. The Court of Appeals for the Fifth Circuit was the first to address this issue. In a 1962 decision, *Folsum v. United States*,[49] the court held that the government did not have the right to force the sale of other joint owners' property.[50] While the Tenth Circuit shares this view,[51] the majority of the courts of appeals which have addressed this issue hold to the contrary.[52] The leading decision in this area is *United States v. Trilling*,[53] in which the court held, after examining the congressional intent of section 7403, that "[t]he express language of the statute negates any design or intent on the part of Congress to limit the reach of the statute to the 'interest' of the taxpayer as distinguished from the 'property' in which he has such 'interest.' "[54]

While the majority of these circuit courts held that section 7403 allows the government to sell the entire property to satisfy one co-tenant's tax delinquency, each decision to date has involved owner-

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section, the proceeds will be distributed "according to the findings of the court in respect to the interests of the parties and of the United States." *Id.* § 7403(c).

47 *Id.*

48 I.R.C. § 7403(b) (1976) provides that "[a]ll persons having . . . or claiming any interest in the property involved in such action [to enforce the tax lien] shall be made parties thereto."

49 306 F.2d 361 (5th Cir. 1962).

50 The court stated in its decision that while the United States could "obtain the last vestige of title and every right which such taxpayer owns . . ., [t]he law does not authorize . . . [i]t to force a sale of the property of other joint owners, deny them the right to seek a partition in kind, and to tax them with the costs incurred by the Government in pursuing the delinquent taxpayer." *Id.* at 367.

51 United States v. Hershberger, 475 F.2d 677 (10th Cir. 1973) (A wife's interest in a homestead should not be sold in its entirety to pay a federal tax lien.).

52 *See, e.g.*, United States v. Kocher, 468 F.2d 503 (2d Cir. 1972) (sale of tenancy in common property to satisfy one tenant's tax lien); United States v. Overman, 424 F.2d 1142 (9th Cir. 1970) (sale of community property to satisfy husband's tax lien); Washington v. United States, 402 F.2d 3 (4th Cir. 1968) (sale of wife's inchoate dower interest to satisfy lien of husband); United States v. Trilling, 338 F.2d 699 (7th Cir. 1964) (sale of jointly held real estate to satisfy lien of husband).

53 328 F.2d 699 (7th Cir. 1964).

54 *Id.* at 703.

ship by a husband and wife.[55] Typically the owners of time-sharing interests in a condominium would not involve such a relationship. One author speculates that a court might, in considering the equities involved, decide to authorize the sale of only the delinquent taxpayer's interest and not the entire property.[56] This speculation is not entirely without foundation. A 1974 decision of the Tenth Circuit, *United States v. Eaves*,[57] held that while section 7403 does authorize the sale of property jointly held in order to satisfy a tax lien of one of the co-tenants, the statute does not make "foreclosure an 'all or nothing' proposition."[58] Thus the Tenth Circuit at least suggests that equitable considerations may apply in appropriate situations and prevent a sale of the entire property. Several other decisions, although none recently, have applied equitable considerations in addressing the issue of the sale of property to satisfy tax liens.[59]

Although the possibility of a federal tax foreclosure sale is real, such an occurrence is unlikely as the majority of cases do not progress to that stage.[60] Similarly, while a state could theoretically attach a lien to a time-share unit and effect the sale of the entire property to satisfy the debt of one of the co-tenants, this too is unlikely.[61]

A third problem of time-span ownership interests is a practical one: how to insure that each owner will obtain occupancy and use of his interest in the unit during his appointed time period.[62] This problem arises because the right is not created directly by the conveyance, but instead derives from the language in the declaration. Thus a title policy that insures the ownership of the undivided interest may not automatically insure the right to use. Because the right to use is of greater practical importance to the owner than the underlying ownership interest, it is essential that he obtain a provision concerning the right to use in the title insurance policy issued with the property.[63]

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55 *See* note 52 *supra*.

56 *See* Comment, *supra* note 18, at 431.

57 499 F.2d 869 (10th Cir. 1974).

58 *Id.* at 871.

59 *See, e.g.*, United States v. Boyd, 246 F.2d 477 (5th Cir. 1957) (court not required to use tax lien foreclosure as a remedy); United States v. Overman, 424 F.2d 1142 (9th Cir. 1970) (court to act in a flexible manner); United States v. Hershberger, 475 F.2d 677 (10th Cir. 1973) (application of equitable considerations). *Also cited in* Comment, *supra* note 18, at 431 n.38.

60 *See* W. PLUMB, FEDERAL TAX LIENS 3 (3d ed. 1972).

61 For a brief discussion of the problem of foreclosure sales pursuant to a state tax lien, see Comment, *supra* note 18, at 428 n.22.

62 *See* Davis, *supra* note 29, at 50.

63 *Id.*

2. Interval Ownership

The second kind of fee interest in a time-sharing unit is that created by interval ownership. In contrast to the time-span estate,[64] the interval estate is defined as:

> [A] combination of (i) an estate for years in a unit, during the term of which title to a unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with (ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.[65]

This form of time-share ownership is structured as an estate for years,[66] typically consisting of a two week period,[67] which recurs annually for a set number of years.[68] At the same time that the purchaser is granted the estate for years, he also acquires a remainder[69] in fee simple as a tenant in common with the other purchasers, to take effect at the termination of the estate for years. This concept differs from the time-span ownership in that title and the right to occupancy are created simultaneously by the same deed.[70] No separate declaration, lease, or contract is necessary to establish the right to occupancy. The interval purchaser receives exclusive fee title for the period he is entitled to possession,[71] in contrast to the time-span purchaser whose right of possession arises only pursuant to a convenant.

Although this type of fee interest also has potential problems,[72] it does eliminate some of the problems associated with time-span in-

64 *See* note 20 *supra* and accompanying text.

65 Uniform Condominium Act § 4-103, *reprinted in* 1A P. ROHAN & M. RESKIN, *supra* note 3, App. B-6.

66 An estate for years is one whose duration is defined in units of a year or any fraction or multiple thereof. RESTATEMENT OF PROPERTY § 19 (1936).

67 Note, *supra* note 5, at 201. The developer may choose any time period; however, periods of less than two weeks are not considered practical because of operational costs. *Id.* at n.134.

68 The specified number of years usually corresponds to the estimated useful life of the building. Comment, *supra* note 18, at 427.

69 For a full discussion of the remainder interest and its implications, see Note, *supra* note 5, at 204 nn.151-62. The vested remainder interest was added to the estate for years in order to avoid any possible violation of the rule against perpetuities. *See* Davis, *supra* note 14, at 51.

70 Davis, *supra* note 18, at 1187. The deed creates the recurring estate for years and then conveys the remainder over as tenants in common at a specified future date.

71 1 P. ROHAN & M. RESKIN, *supra* note 3, § 17C.01A, *cited in* Note, *supra* note 5, at 202.

72 *See* notes 79-94 *infra* and accompanying text.

terests. In interval ownership time-share plans, the tax lien[73] and partition[74] issues connected with time-span ownership do not arise during the initial period of tenancy for years. Each of the grantees of the interval time periods has a divided direct interest in his time slot, and his right to use is established simultaneously with and as a part of the conveyance.[75] This arrangement alleviates the necessity not only for title insurance[76] to protect a purchaser's time-span ownership and use rights, but also for a convenant against partition.

At the end of the estate for years, however, the same concerns that exist with time-span ownership arise when the owners become tenants in common. Threats of partition or the forced sale of the property for federal tax purposes, though, are substantially mitigated by the fact that the price paid for the individual time period has already been amortized over the useful life of the building.[77] Indeed, one author has suggested that "these attributes of tenancy in common that come into being after the expected period of use very likely are an advantage to the interval method of conveyance."[78]

Nonetheless, this method of conveying a time-share estate is not free from potential drawbacks. First, the owner's interest in the estate for years may be looked upon as a lease between the developer and the time-share purchasers.[79] Second, a merger may occur where the estate for years, the lesser estate, merges with the greater estate, the fee simple absolute.[80] Third, a partition may take place, although the ramifications of partition in an interval estate are not as severe as in a time-span estate.[81]

The first drawback, that of treating an interval estate as a lease, potentially arises because of the mutuality between the estate for

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73 *See* notes 44-61 *supra* and accompanying text.

74 *See* notes 30-43 *supra* and accompanying text.

75 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.01A, *also cited in* Davis, *supra* note 18, at 51.

76 *See* text accompanying note 63 *supra*.

77 Davis, *supra* note 18, at 1185-87.

78 *Id.* The right to force a sale of the property is a critical one. Once the vacation condominium building surpasses its useful life, each owner's proportional interest in the property will, individually, have very little value and may be difficult to sell. In contrast, the property as a whole will have acquired more value. By forcing the sale of the building, the individual owner will enjoy a greater profit from his individual interest than he would if he had tried to sell it separately.

79 *See* Varner, *supra* note 18, at 76-77; Note, *supra* note 5, at 202-07.

80 *See* Note, *supra* note 5, at 207-10.

81 *See* note 94 *infra* and accompanying text.

years and the landlord-tenant relationship.[82] The estate for years has specifically been defined as a lease for a finite period of time[83] and has been regarded as "presenting the typical case of the relation of landlord and tenant."[84] Although it has been argued that the estate for years does not establish a landlord-tenant relationship,[85] an interval estate so considered would be subject to landlord-tenant law.[86] The possibility of such an interpretation, however, may be reduced where the developer conveys a fee simple remainder to interval purchasers.[87] Furthermore, the developer's conveyance of the remainder relieves him from the liability entailed by ownership of the cleaning periods.

One commentator[88] has suggested that the interval estate may be subject to the common law principle of merger.[89] The estate for years is deemed to represent a lesser interest in property than the fee simple absolute, which the interval owners hold as tenants in common. Where the lesser and greater estates are held by the same parties, the lesser estate is by law extinguished.[90] Thus the estate for years would be extinguished by the fee simple absolute. Because the estate for years is the vehicle which establishes the interval owners' right to possession, if it were merged in the fee simple, the time-sharing aspect of the interval estate would disappear.[91] However, a majority of courts today no longer apply the legal doctrine of merger, but instead apply equitable principles under which they "will not

82 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 76 (3d ed. 1939); 1 AMERICAN LAW OF PROPERTY §§ 3.2, 3.13 (A.J. Casner, ed. 1952 & Supp. 1977).

83 3 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 1017 (repl. 1980).

84 1 H. TIFFANY, *supra* note 82.

85 *See* Note, *supra* note 5, at 202-03 & n.142.

86 *Id.* at 203.

87 Prior to enactment of the statute of uses, an estate for years could not support a remainder interest because the estate for years was not considered a freehold estate. With the passage of the statute of uses, the importance of seisin waned, and a fee simple interest subject to an estate for years became known as a remainder. However, the remainder attendant to an estate for years is not the same at that following a freehold estate. *See* Note, *supra* note 5, at 206-07. *See also* 1 AMERICAN LAW OF PROPERTY, *supra* note 82, § 4.31; T. BERGIN & P. HASKELL, PREFACE TO ESTATES IN LAND AND FUTURE INTERESTS 108 (1966); L. SIMES & A. SMITH, THE LAW OF FUTURE INTERESTS § 116 (1956).

88 *See* Note, *supra* note 5, at 207-10.

89 The common law principle of merger is defined as follows: "Whenever a greater estate and a less coincide and meet in one and the same person without any intermediate estate, the less is immediately annihilated; or in the law phrase, is said to be *merged*, that is sunk or drowned in the greater." Note, *supra* note 5, at 207, citing 2 W. BLACKSTONE COMMENTARIES 177 (Wendell, ed.); *accord* 9 G. THOMPSON, *supra* note 83, § 4798.

90 *See* 1 H. TIFFANY, *supra* note 82, § 151.

91 *See* Note, *supra* note 5, at 207-08.

compel a merger of estates where the party in whom the two interests are vested does not intend such a merger to take place."[92] A suggested solution to the possibility of unwanted merger of the two estates is to create both the estate for years and the remainder in the same instrument[93] and to specify in the conveyance documents the parties' intent that no merger take place.

The specter of partition also arises with the interval estate, although the consequences are not as severe as with the time-span estate. Unless the two have already been merged, a partition of the fee simple estate does not have any effect on the estate for years,[94] which gives the interval owner his possessory interest. Nevertheless, it is prudent that the time-sharing declaration contain a waiver of the right of partition.

3. Fee Simple

A third method of creating a fee interest in a time-sharing unit, the conveyance of a fee simple estate to each purchaser, has been proposed by two authors.[95] But this method has had little, if any, practical application, probably because it defies conventional property law concepts. Traditionally, a conveyance in fee simple gives to the purchaser all conceivable interests in the property.[96] However, conveying a fee simple interest in time-share property adds a novel conveyable dimension to the property, that of time.[97] Thus the fee simple approach would require a revision of conventional property law concepts which look at a property interest as containing only three dimensions—breadth, depth, and height.[98]

The principle behind the conveyance of a fee simple time-share interest is fundamentally different from the time-span and interval ownership conveyances in that the purchaser is not a joint owner of the property conveyed, but rather the sole owner. Because his property is temporally defined, "his possessory right exists only during the times conveyed and by definition does not exist at any other time."[99] No separate instrument or declaration is needed to create the time-

92 *See* Note, *supra* note 5, at 208 n.173 and cases cited therein.

93 *Id.* at 209.

94 *Id.* at 210.

95 Outen, *Latter Day Time-Sharing*, LAW TITLE NEWS, July-Aug. 1974; Roodhouse, *Fractional Time Period Ownership of Recreational Condominiums*, 4 REAL EST. L.J. 35 (1975).

96 1 H. TIFFANY, *supra* note 82, § 27. *See also* 4 G. THOMPSON, *supra* note 83, § 1847.

97 Roodhouse, *supra* note 95, at 48-49.

98 *Id.* at 49; 1 H. TIFFANY, *supra* note 82, § 27. *See also* Note, *supra* note 5, at 211 n.189.

99 Note, *supra* note 5, 213 n.203.

share interest. A declaration, however, is still necessary to establish the rights and duties of the owners among themselves.[100]

This method of ownership has several advantages. Because this type of conveyance passes a fee simple interest entirely distinct from the interests of the units' other fee simple owners, individual financing is facilitated.[101] Furthermore, each time-share purchaser is the owner of his property as it is temporally defined and receives all the benefits of fee ownership.[102] Moreover, this type of conveyance minimizes the possibility of joint tort liability among the unit owners, a concern which arises in time-span and interval forms of ownership.[103]

On the other hand, there are also distinct disadvantages to fee simple time-share ownership. A major shortcoming is that the right to partition or judicial sale at the end of the project's useful life[104] is unavailable in this form of ownership. Thus property purchased in this fashion may decrease in value and be difficult to sell as the unit nears the end of its useful life.[105] A second problem is that posed by ownership of the cleaning periods.[106] If these periods are retained by the developer, he is exposed to potential tort and tax liabilities associated with ownership of the property. If they are conveyed to the purchasers as tenants in common, one of the benefits of the fee simple purchase will be thwarted, as all owners may be held jointly liable for such obligations. One author suggests that an effective way to circumvent this problem is for the developer to convey an equal number of cleaning days in fee simple to each of the purchasers.[107] This conveyance could be tied to a lease allowing the management to enter the premises for maintenance during the cleaning days. Such an arrangement would serve the interests of both developer and purchasers, allowing the developer to avoid liability from ownership of

100 However, this document would differ from that used for the two other approaches in that it would not set forth the possessory rights of the purchasers. The declaration would typically cover issues of the responsibility of each owner for common expenses, tort liabilities to person and property, and other issues generally dealt with in the declarations in the time span and interval arrangements. *See, e.g.*, 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.02[1].

101 *See* Note, *supra* note 5, at 214.

102 *Id.* at 213-14.

103 *Id.* at 214.

104 Even though time span and interval owners have waived their right to such a partition, this waiver only extends for a reasonable time, usually the expected useful life of the building. Thus these time-share owners may compel a partition sale of the entire building at the expiration of the given time period. *See* notes 36-43 and 94 *supra* and accompanying text.

105 *See* note 78 *supra*.

106 Note, *supra* note 5, at 216.

107 *Id.*

the property and the time-share purchasers to avoid joint liability.[108]

Despite their differences, all three of the fee time-share ownership arrangements share certain advantages. First, the time-share owner will benefit from any appreciation in the value of his interest.[109] Second, because the time-share interest is a real estate interest, federal income tax deductions may be taken for the pro rata real estate tax expense included in the annual maintenance fee, as well as for interest paid in connection with financing the time-share purchase.

4. Tort Liability

At the same time, fee ownership involves certain common disadvantages. Tort liability is problematic with all three forms of fee ownership of time-share estates. Fee time-share owners may be exposed to three areas of tort liability: for injury or damage due to negligent maintenance of the common areas, for damage to the unit which an owner causes while he is in possession,[110] and to third parties injured on the co-owned premises while another co-owner is in possession.[111]

Fee ownership of a time share estate encompasses two different kinds of property: the individual unit, which is owned severally by the time share estate owners; and the common areas of the building, which are owned in turn by all the time-share estate owners. Generally, the common areas are maintained by a condominium association to which all owners belong. Membership in this association creates possible liability for the time-share owners for injuries sustained in the common areas. Several authors[112] have suggested incorporation of the association or liability insurance as solutions. These measures should reduce, if not eliminate, the owners' exposure to liability for torts occuring in the common areas.

108 The time-share purchaser is still liable for debts in connection with ownership of those cleaning days when he is not in possession. This potential liability, however, is evenly distributed among all the purchasers and can be taken care of by liability insurance. *Id.*

109 Conroy, *supra* note 6, at 8.

110 Comment, *supra* note 18, at 436.

111 *Id.* This type of liability is not possible among interval owners because each has a defeasible fee in his unit during his occupancy to the exclusion of all other interval owners, who likewise obtain exclusive title when they occupy the unit. Thus, the negligence of one owner may not be imputed to another. *Id.* at 437.

112 *See* Jackson, *Why You Should Incorporate a Homeowners Association*, 3 REAL EST. L.J. 311 (1975); Knight, *Incorporation of Condominium Common Areas? An Alternative*, 50 N.C.L. REV. 1 (1971); Note, *Condominium Casualty and Liability Insurance*, 48 ST. JOHN'S L. REV. 1112 (1974); Note, *Condominiums: Incorporation of the Common Element—A Proposal*, 23 VAND. L. REV. 321 (1970).

The second possible area for tort liability of time-share owners is unique to this form of property ownership. Because there are many time-share owners of each unit, they have a shared responsibility for its upkeep. If a unit is damaged, it would seem appropriate to assess the time-share owner who actually did the damage rather than all of them. However, it may be difficult to determine which owner was responsible because of the quick turnover of occupancy. Many time-share resorts today resolve this issue by allowing the managing agent to decide who is liable for the repairs.[113] The rationale for this is that he oversees the clean-up between occupancies and therefore can most readily ascertain which owner was responsible for the damage. As one author has noted, this solution is not without problems:

> In essence, an owner's consent to a determination of this type constitutes a waiver of the common law right to a jury trial on the issue. Such a system would be acceptable only in cases exclusively involving property damage and not personal injury. In addition, it is essential that the managing agent's cursory determination not possess evidentiary value in an ancillary tort action by one claiming injury as a result of the owner's conduct. Finally, the scope of determination of negligence should be limited to the sole issue of who is to pay for repair of the damaged unit. This is, after all, the only issue which is of importance to all co-owners.[114]

The third possible area of liability applies in particular to time-span estate owners. They run the risk of joint liability for injury to a third party occurring not in the common area, but rather in the unit itself, as a result of one co-owner's negligence.[115]

B. *Non-Fee Interests*

In contrast to fee time-sharing, non-fee time-sharing arrangements convey no legal title to the property but only those rights specifically granted by the developer. Typically, these are the rights to use a time-share unit and the related premises.[116] The three principal non-fee forms of time-sharing are the vacation license, vacation lease, and club membership.[117]

1. Vacation License

The vacation license, the oldest form of time-sharing in the

113 1 P. ROHAN & M. RESKIN, *supra* note 3, pt. 3, § 17C.02[1].
114 Comment, *supra* note 18, at 439.
115 *See* note 111 *supra*.
116 Conroy, *supra* note 6, at 9.
117 Pollack, *supra* note 18, at 285; Davis, *supra* note 29, at 52.

United States,[118] is a right to use.[119] It establishes the purchaser's right to use a given unit during a specified period of time each year for either a term of years or the useful life of the building.[120] The fee interest remains with the developer or sales firm.[121] The license was developed primarily as a mechanism to avoid real estate regulatory agencies and the necessity of using licensed real estate salesmen.[122] The vacation license is created by a simple agreement between the purchaser and the developer[123] and may obviate the need to comply with federal, state, or local land sales rules.[124] Since the vacation license is generally not considered an interest in real estate,[125] its sale is not subject to the same requirements as the time span, interval, or fee estate, which all involve the sale of an interest in real property.

All of the putative advantages of the vacation license time-share arrangement rest on the premise that the interest purchased is not an interest in real property. As one author has pointed out, this becomes a question of "substance over form."[126] Another author has suggested that the real issue is the intent of the parties, and if the offeror

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118 Davis, *supra* note 29, at 52.

119 Powell defines a license as "a privilege in A to use land possessed by B, so long as B fails to cancel the privilege. . . . [I]ts duration is at the will of the servient owner." R. POWELL & P. ROHAN, *supra* note 21, § 428. The Uniform Real Estate Time-Share Act defines a time-share license as a "right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, not coupled with a freehold estate or an estate for years." UNIFORM REAL ESTATE TIME-SHARE ACT § 1-102(18), 7A U.L.A. 259, 263 (1979 & Supp. 1983).

120 COUNCIL OF THE LAND DEVELOPMENT ASSOCIATION, RESORT TIMESHARING: A CONSUMER GUIDE 5 (1977).

121 Davis, *supra* note 18, at 1184.

122 *Id.*

123 In most states the license is not considered a real property interest: "the courts have regarded a license as carrying with it no property interest . . . which the law will recognize and protect." Walsh, *License and Finances for Years*, 19 N.Y.U.L. REV. 333, 340 (1942). However, an authority on real estate has defined the license as an interest in land, if not a substantial one:

> Such a revocable privilege is an "interest in land" as that term has been defined in Section 5 of the Restatement of Property. . . .This does not mean. . .that the revocable privilege should be treated as a *substantial* interest in land. . . .The evanescent, fleeting, revocable character of the interest justifies a denial of treatments accorded to more substantial interests in land but does not justify a denial of its character as an interest in land, while it lasts. So long as it continues, a license derogates from the completeness of the servient owner's ownership and this requires its recognition as an "interest in land."

R. POWELL & P. ROHAN, *supra* note 21, § 428, *also cited in* Davis, *supra* note 18, at 1184.

124 Davis, *supra* note 29, at 51. For a discussion of the details in a vacation license, see Note, *supra* note 11, at 1212.

125 Davis, *supra* note 18, at 1184.

126 *Id.* at 1185.

has characterized the plan as a license then such a declaration in the instrument should be sufficient to avoid creating a real estate interest.[127]

A potential drawback of the vacation license is that it may be deemed a security, necessitating registration with the Securities and Exchange Commission (SEC).[128] In an attempt to preclude this possibility, some developers place restrictions on resale at a profit in their licenses.[129] Some developers further limit a licensee's right to alienate his interest by stipulating that he may not rent his time period to a third party[130] or enter into sublicense agreements.[131] The license form of time-share arrangement, however, is less likely to be deemed a security than the other forms of time-share interests since the vacation licensee does not participate in profits earned by the developer.[132]

Another disadvantage is the licensee's lack of control over the developer's actions because he does not own the underlying fee. Moreover, the developer may encumber the property and thereby subject it to liens placed by his creditors.[133]

2. Vacation Lease

The primary distinction between the vacation license and the vacation lease is that, in the latter case, the developer is selling an interest in real property.

> The lease is exactly what it seems. The purchaser acquires a lease of a particular piece of real property for a given period each year. The lease extends for a specified time period. The instrument is entered into between the developer as landlord and the purchaser as tenant. All of the rights and obligations of both parties are set forth within the instrument itself.[134]

One method of establishing a time-share lease is to provide for transfer to the purchaser of an undivided leasehold interest in an identi-

127 Note, *supra* note 11, at 1214.

128 For a full discussion of the regulation of time share interests as a security, see notes 169-96 *infra* and accompanying text.

129 Davis, *supra* note 18, at 1185.

130 A licensee may, however, transfer his interest by gift or bequest. Note, *supra* note 11, at 1213.

131 *Id.*

132 See notes 175-88 *infra* and accompanying text for the definition of a security.

133 One author notes, however, that a title company would look upon the license as a cloud upon the title, thereby rendering the property potentially unmarketable. *See* Davis, *supra* note 18, at 1185.

134 *See* Davis, *supra* note 29, at 52.

fied unit for a designated two week period to last forever.[135] Pursuant to the scheme, each lessee is obligated to pay both an annual fee to a party designated by the developer to manage the project and a pro rata share of the expenses.[136] This arrangement again raises the possibility of SEC regulation. However, the SEC has issued at least one no action letter concerning this type of time-share arrangement because the purchaser did not participate in income-producing aspects of the arrangement.[137]

In a variation on the vacation lease, multiple buyers may purchase a unit, each receiving a fee title to a particular time period, and each then executing a leaseback agreement whereby the developer agrees to pay a fixed annual amount in addition to supervising the unit's operation.[138] The purchaser receives the right to use the unit and the obligation to pay his share of the common expenses. Although the SEC has issued a no-action letter for one such time-share arrangement,[139] a similar transaction with a slight modification was deemed a security by the SEC.[140]

The vacation lease has two distinct advantages for the purchaser over the vacation license. He may record it under state recording statutes, and may obtain title insurance for the lease.[141]

3. Club Membership

Club membership is the least important of the three forms of non-fee interests in time-sharing. Generally, one purchases a membership for a specified number of years in a club or association which owns, leases, or operates the time-share premises.[142] Alternatively, the club membership undertaking may consist of a non-profit corpo-

135 Whether this arrangement in fact creates a leasehold interest is subject to debate since the duration of the leasehold interest is uncertain. 2 R. POWELL & P. ROHAN, *supra* note 21, § 222.3.

136 Note, *supra* note 11, at 1214.

137 *See* Kona Billfisher, Sec. Reg. Guide (P-H) § 1100.150, at 1098.31 (1974).

138 Note, *supra* note 11, at 1214.

139 *See* Sale of Spanish Rental Units Can Proceed Without '33 Act Registration [July-Dec.] Sec. Reg & L. Rep. (BNA) No. 211, at C-3 (July 18, 1973).

140 The SEC issued a no action letter to a developer of a sale-leaseback arrangement, noting in particular that rental services were not involved in the scheme and that there were no representations that the purchaser might gain economic benefits by subleasing. In contrast, the SEC held that an arrangement which included a rental brokerage service both to cover maintenance costs and to reduce the principal of the mortgage debt was a security. *See* Edward S. Jaffry, [1971-1972 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 78.395, at 80,881 (1971).

141 *See* Davis, *supra* note 29, at 52.

142 *See* Conroy, *supra* note 6, at 9.

ration specifically established for the purpose of providing time-shares to its members.[143] One advantage to the club membership form is that the time-share interest purchased may be for a number of resorts. The rights and obligations of the developer and the member are set forth in the associaton's articles and by-laws and in the membership agreement between the developer (on behalf of the association) and the member. The condominium units may be owned either by the association or by the developer, in which case they are leased to the association.[144]

C. *Summary*

Very distinct benefits and consequences derive from the two fundamental forms of time-share ownership—fee and non-fee. An obvious advantage of non-fee time ownership is the right to use without the underlying responsibility of ownership. Since the time period of the right to use is typically equal to or less than the economic life of the building, non-fee time-share purchasers need not bear the burden of final disposition or rehabilitation of the property as it nears the end of its economic life.[145] Non-fee time-share owners may deduct interest paid on the financed portion of the purchase price from their federal income tax,[146] but clearly pay no property tax on the property. Another advantage to non-fee owners is that the developer who has retained ownership in the premises has a strong incentive to maintain the property in peak condition. However, there are some decided drawbacks to this form of time-share ownership.[147] Without the ownership of the underlying fee, an owner cannot take deductions for real estate and personal property taxes.[148] Typically, in order to have a non-fee time-share offering avoid the appearance of a security offering, there must be restrictions in the sales contract upon the purchaser's right of resale.[149] Such restrictions forbid purchasers from reselling their interest at a profit.[150] Furthermore, the owner is not usually allowed to rent out his time-share to anyone else.[151]

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143 *See* Davis, *supra* note 29, at 53.

144 *Id.*

145 *See* Conroy, *supra* note 6, at 10.

146 *Id.* Of course, this advantage is also enjoyed by fee owners.

147 *Id.*

148 *See* Pollack, *supra* note 18, at 286.

149 *See* Conroy, *supra* note 6, at 10. This drawback also applies to fee time-share interests. *See* Eastman, *supra* note 4, at 158.

150 *See* Conroy, *supra* note 6, at 10.

151 However, subleasing is generally permissible with a vacation lease. *See* Pollack, *supra* note 18, at 286.

On the other hand, there are several benefits associated with fee ownership of a time-share interest that are not enjoyed by non-fee owners. Primary among these is the free right of alienation. A fee owner is entitled to sell, devise, donate, or rent his interest as he chooses. In addition, fee ownership entails the right to mortgage the property interest,[152] deduct the interest on income tax returns, and take deductions for real estate and personal property taxes. At the same time, there are certain burdens associated with fee ownership. Although the fee simple conveyance reduces the risk of joint tort liability among unit owners, such liability is a real concern for both time-span and interval owners.[153] Other burdens[154] include responsibility for ever increasing property taxes; assumption of a share of the operating, maintenance, and refurbishing costs;[155] and the ultimate burden of disposing of the property at the end of its economic life.[156] Finally, sales of fee interests, like their counterpart non-fee interests, unless properly structured, may be deemed securities offerings.[157]

It is virtually impossible for a prospective time-share purchaser to be aware, or even to apprise himself, of the myriad of forms of ownership interests that are available. Yet knowledge of the ownership formats and their advantages and disadvantages is critical in making a sound time-share investment. Because of the various options open to a prospective purchaser, the ensuing potential liabilities, and the great difficulty in obtaining full information in order to make an educated purchase, it is critical that time share interests be appropriately regulated.[158]

III. The Current Regulatory Environment

Purchasers of time-share interests in a condominium are thrust into complex and easily misunderstood property relationships. They become involved in a novel interdependence with the developer and other time-share owners.[159] As a result, there is a great potential for

152 *See* Note, *supra* note 5, at 214.

153 *Id.*

154 A burden which one author notes in particular is that a conveyance of a time-share interest as a fee requires a revision of conventional property law concepts. *See* Note, *supra* note 5, at 211.

155 *See* Conroy, *supra* note 6, at 6-10.

156 *Id.* at 8.

157 *See* Eastman, *supra* note 5, at 158.

158 For a further discussion of time share regulation, see Gunnar, *Resort Time-Sharing: Current Regulation . . . and the Alternatives*, CORNELL H.R.A. Q., Nov. 1978, at 28.

159 Jones, *State Regulation of Condominiums* (Prepared for the Department of Research, The Council of State Governments) (1976).

consumer dissatisfaction as well as fraud on the part of developers.[160]

A major concern for purchasers is obtaining full and complete disclosure. The federal government and several states have attempted to address these problems by regulating the relationship between developer and time-share purchasers.[161] However, because of confusion in defining time-share offerings arising from the multitude of programs made available by developers, a corresponding confusion in regulation has resulted. Defining time-shares as real estate interests would place them under the auspices of the Department of Housing and Urban Development (HUD) and state real estate commissions.[162] If deemed securities, time-shares would fall under the jurisdiction of the SEC and state securities commissions.[163] Finally, if classified simply as prepaid vacations, they would most probably be governed by consumer protection laws, the Federal Trade Commission (FTC), and correlative state agencies.[164] Such a plethora of conflicting regulation, however, results in all developers—both responsible and irresponsible—being caught in the uncertain web of compliance. Ostensibly, developers seek a realistic regulatory scheme which does not subject the offer, sale, and operation of time share programs to artificial, unnecessary, or confusing restrictions.[165]

Currently, however, developers are subject to a confusing duplication and cross-current of regulation[166] resulting largely from an attempt by most regulators to fit time-share interests into existing federal and state statutes rather than to create distinct legislation for this novel form of real estate ownership.[167] This procrustean approach has been effected only by distorting existing concepts and statutes. The result has been "duplicate and triplicate regulation and the imposition of artificial requirements which do not contribute to public protection."[168]

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160 The possible magnitude of such fraud was recently brought to light by a case prosecuted by the Federal Trade Commission involving the sale of thousands of time-share interests in Hawaii. *See* FTC v. Paradise Palms Vacation Club, No. C811160V (W.D. Wash. Sept. 30, 1981), and notes 206-13 *infra* and accompanying text.

161 Time-share interests in one form or another have been subject to SEC, FTC, and HUD scrutiny. *See* notes 206-13 *infra* and accompanying text. To date, Florida, Hawaii, Nebraska, South Carolina, Tennessee, and Virginia have enacted specific legislation dealing with time-sharing. *See* notes 226-468 *infra* and accompanying text.

162 *See* notes 197-203 *infra* and accompanying text.

163 *See* notes 170-95 *infra* and accompanying text.

164 *See* notes 204-17 *infra* and accompanying text.

165 *See* Gunnar, *supra* note 8, at 44.

166 *Id.* at 45.

167 *Id.*

168 *Id.*

These problems clearly point to the need for uniform regulation of time-share interests. Before proposing such a solution to the problem, it is important first to examine the regulatory environment in which time-share interests now operate. In addition to the three federal regulatory bodies which presently regulate time-share interest—the SEC, FTC, and HUD—these interests are also subject to condominium regulation in some states. In a number of states, however, specific time-share acts have been passed. Furthermore, there are currently two proposed uniform time-share acts. This section discusses the present regulatory environment of time-sharing; the next section examines and compares current state statutes with the two uniform statutes; and the final section proposes recommendations for uniform legislation to address the problem areas.

A. *Regulation of Time-Share Interests as Securities*

Presently, it is uncertain whether time-share offerings must be registered under federal securities laws, although a number of states[169] do require registration of a time-share offering as a security.[170] The possible jurisdiction of the SEC over time-share offerings is determined by the Federal Securities Act of 1933[171] and the Securities and Exchange Act of 1934.[172]

The Securities Act of 1933 specifically defines "security" to include investment contracts,[173] thereby requiring their registration. Thus classification of a time-share interest as a security depends on its characterization as an investment contract.[174] The traditional test used for determining whether an arrangement constitutes an investment contract is set forth in *SEC v. W.J. Howey Co.*[175] There the Supreme Court defined an investment contract as:

> a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immate-

169 Alaska, Illinois, Michigan, Minnesota, Nevada, Oklahoma, Oregon, Washington, and Wisconsin. *See* Gunnar, *supra* note 8, at 41.

170 *See, e.g.*, Lowery v. Ford Hill Investment Co., 192 Colo. 125, 556 P.2d 1201 (1976) (The sale of a time-share unit, under certain circumstances, constitutes the offering of a security.).

171 Federal Securities Act of 1933, ch. 38, tit. I, § 1, 48 Stat. 74 (1933). (current version at 15 U.S.C.A. §§ 77a to 77bbbb (West 1971 & Supp 1980)).

172 Securities and Exchange Act of 1934, ch. 404, § 1, 48 Stat. 881 (1934) (current version at 15 U.S.C.A. §§ 78a to 78111 (West 1971 & Supp. 1980)).

173 15 U.S.C.A. 77b(1) (West 1971 & Supp. 1980).

174 Eastman, *supra* note 4, at 158.

175 328 U.S. 293 (1946).

> rial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.[176]

Thirty-one years after *Howey*, the SEC in 1967 issued Release No. 4877 in which it indicated that "rental arrangements and pooling in real estate promotions constituted investment contract securities within the definition of the *Howey* case."[177]

Clearly time-share investments may be characterized as "an investment of money in a common enterprise." However, time-share purchasers must also expect to derive profits from their interest in order for it to be classified as a security. Pursuant to a case decided after *Howey*, *United Housing Foundation, Inc. v. Forman*,[178] the Supreme Court defined the profits associated with investment contracts as either "capital appreciation resulting from the development of the initial investment, . . . or participation in earnings resulting from the use of investors' funds . . . . In such cases, the investor is 'attracted solely by the prospects of a return' on his investment."[179] On the other hand, the Court stated that the securities laws do not apply when the purchaser was motivated by a desire to use or consume the interest purchased.[180] The facts of *Forman*, where the investment interest involved was stock in a housing cooperative, are germane to time-shares. Fundamental to the Court's decision was its finding that the purchaser had procured the shares in the housing cooperative for purposes of private consumption and not with a view toward profit.[181]

Time-share offerings must also be examined in light of SEC Re-

176 *Id.* at 298-99. The *Howey* criteria, although still valid today, have been to some extent modified by subsequent federal court cases. In one case, the Ninth Circuit held that even where a "modicum of effort" was contributed by the investor, the *Howey* requirement of profits derived solely from the efforts of others was applicable. *See* SEC v. Glenn W. Turner Enters., Inc., 474 F.2d 476, 482 (9th Cir. 1973). In a Fifth Circuit decision, the court similarly focused on "whether the efforts made by those other than the investor are the undeniably significant ones." SEC v. Koscot Interplanetary, Inc., 497 F.2d 473, 483 (5th Cir. 1974) (citing SEC v. Glenn W. Turner Enters., Inc., *supra*).

177 Ellsworth, *Condominiums Are Securities*, 2 REAL EST. L.J. 695 (1974). Specifically, the Commission obtained the first registration statement covering a condominium offering from Hale Kaanapoli Apartment Hotel Development Corp., Registration Statement No. 2-25489 (Apr. 13, 1967), after informing that company that the offer and sale of condominiums, coupled with an option to have one's unit operate as part of a resort hotel, was an offer and sale of a security. *See* Gunnar, *supra* note 8, at 36 n.24; Comment, *Condominium Regulation: Beyond Disclosure*, 123 U. PA. L. REV. 639, 652 n.67 (1975).

178 421 U.S. 837 (1975).

179 *Id.* at 852.

180 *Id.* at 852-53, 858.

181 *Id.* at 852-53.

lease No. 5347[182] which establishes when the offering of condominium units will *not* constitute the offering of securities:

> If the condominiums are not offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of others, and assuming that no plan to avoid the registration requirements of the Securities Act is involved, an owner of a condominium unit may, after purchasing his unit, enter into a non-pooled rental arrangement with an agent not designated or required to be used as a condition to the purchase, whether or not such agent is affiliated with the offeror, without causing a sale of security to be involved in the sale of the unit. Further a continuing affiliation between the developers or promoters of a project and the project by reason of maintenance arrangements does not make the unit a security.[183]

Generally, time-share units are not purchased with a view toward profit, but rather for the purpose of personal enjoyment and "consumption." Thus it would appear that with proper structuring of the transaction, sale of time-share interests may avoid the characteristics of a security.[184] However, the SEC has yet to interpret any time-share offerings in light of either *Howey*, *Forman*, or the more recent *Grenader v. Spitz*[185] decision. Since 1974 the SEC's policy has been to refuse to comment on offerings of time-share interests.[186] Previously

182 SEC Sec. Act Release No. 5347, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,163, at 82, 535 (Jan. 4, 1973). For discussions of the application of Securities Laws to Condominiums, see Clurman, *Condominiums as Securities: A Current Look*, 19 N.Y.L.F. 457 (1974); Rosenbaum, *The Resort Condominium and the Federal Securities Laws—A Case Study in Governmental Inflexibility*, 60 VA. L. REV. 785 (1974); Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective*, 62 GEO. L.J. 1403 (1974).

183 SEC Sec. Act Release No. 5347, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,163, at 82, 540 (Jan. 4, 1973).

184 A developer may take certain precautions to assure that the sale of time-share interests does not constitute securities. The developer should avoid all representations to a prospective seller concerning profits on resale of the interest. The agreement should avoid providing for any pooling arrangements for the rental of the time-share units when not in use by the owners. Furthermore, if time-share owners express an interest in renting their units, the developer or manager should recommend seeking the services of an autonomous agency. Eastman, *supra* note 4, at 159; Pollack, *supra* note 18, at 294; *see also* Yurow, *Resort Condominiums: Rental and Time Sharing Programs; Tax and Securities Problems*, 33 N.Y.U. INST. FED. TAX'N L. 1193, 1223 (1975).

185 537 F.2d 612 (2d Cir. 1976). In this case the Second Circuit relied on *Forman* to find that shares purchased in a private cooperative apartment corporation were not within the purview of the SEC.

186 The SEC did not, however, withdraw its previous no-action letters, nor did it take a position that time-share offerings were securities. The SEC expressed concern that fallacious inferences might be drawn from the issuance of no-action letters in this area and warned recipients of previous letters not to rely on them for future projects, stating:

> While no-action letters are limited to the facts presented, . . . and do not represent

the SEC had freely stated its opinion in "no action" letters[187] with respect to the securities question surrounding time share offers.[188]

At the same time that the SEC has refused to take a definitive position as to whether, and under what circumstances, time-share offerings will be deemed securities, diverse state interpretations have arisen. Certain states have relied on a more expansive test than that used by the federal government, adopting a risk capital test to be used in conjunction with the "*Howey-Forman*" test.[189] Originally the risk capital analysis, as formulated by Chief Justice Traynor in *Silver Hills Country Club v. Sobieski*,[190] asked whether a purchaser risked his investment with others toward the end of achieving future benefits. Subsequently this analysis was expanded in *State v. Hawaii Market Center, Inc.*,[191] where the court promulgated a four-part risk capital test:

> [W]e hold that for the purposes of the Hawaii Uniform Securities Act (Modified) an investment contract is created whenever:
> (1) An offeree furnishes initial value to an offeror, and
> (2) A portion of this initial value is subjected to the risks of the enterprise, and
> (3) The furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and
> (4) The offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.
> The above test provides, we believe, the necessary broad coverage

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> an interpretation of the law even as to these, the Commission is, nevertheless, concerned that inferences might be drawn from the issuance of no-action letters in this rapidly evolving area. Such inferences could lead to misunderstandings as to the Commission's position, and to contentions in future situations that the Commission had taken a position that it had not in fact taken. The Commission has consequently directed the staff not to issue no-action letters in this area, and to advise that no-action letters issued in the past in this general field do not extend beyond the particular issuer involved and should not be relied upon by any other person or by the persons receiving prior letters for any other offerings.

SEC No-Action Letter, *In re* Tropics International, 252 SEC. REG. & L. REP. (BNA) C-1 (May 6, 1974).

187 For a full discussion of the SEC's pre-and post-1974 position on no action letters in reference to time-shares purchases as investments, see Ellsworth and Pendergast, *Securities Maze Awaits Resort Time-Share Offerings*, 10 REAL EST. REV. 59 (Spring 1980).

188 *Id.* at 60. *See* The Innisfree Corp., [1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 73398 at 83, 154 (Apr. 5, 1973); Carribbean Beach Club, Inc., [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 78819, at 801, 803 (Apr. 25, 1972).

189 *See* notes 175-81 *supra*.

190 55 Cal.2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961).

191 52 Hawaii 642, 485 P.2d 105 (1971).

> to protect the public from the novel as well as the conventional forms of financing enterprises.[192]

It is this test which a growing number of states are utilizing in determining whether an offering constitutes an "investment contract" and thus a security.[193] Nonetheless, there is a general lack of uniformity in the states' application of either the risk capital analysis expounded in *Silver Hills Country Club* or the four-prong test enunciated in *Hawaii Market Center*, even when states have adopted the Uniform Securities Act.[194]

The consensus among commentators is that securities laws should not apply to most time-share offerings.[195]

> The "risks" incidental to the time-share unit and the control element involved in time-share offerings are those found in connection with the operation of most condominium purchases or long-term leases. The "benefits derived" from time-share ownership are not pecuniary gain but rather savings of "vacation costs" analogous to the savings of "housing costs" commented upon in *Forman*.[196]

The SEC's refusal to comment on time-share offerings and the various states' responses to offerings in their territories have confused both developer and consumer, highlighting all the more the need for definitive legislation governing these offerings.

B. *Regulation of Time-Share Interests as Real Estate*

The Office of Interstate Land Sales Registration (OILSR) has taken the position that because condominiums carry the indicia of real estate, the units are a subdivision of real estate and are subject to the provisions of the Interstate Land Sales Full Disclosure Act[197] (ILSFDA). ILSFDA is a disclosure statute whose primary focus is on the sale of recreational lots. The National Association of Home Builders was successful in its efforts to obtain provisions which effectively exempt most recreational housing from registration requirements. Section 1702 of ILSFDA specifically exempts residential housing which is contracted to be completed and delivered within

192 *Id.* at 648-49, 485 P.2d at 109 (footnote omitted). This test was first proposed by Professor Ronald J. Coffey; *see* Coffey, *The Economic Realities of a "Security": Is There a More Meaningful Formula?*, 18 CASE W. RES. L. REV. 367 (1967).

193 Byrne, *supra* note 15, at 7.

194 *Id.* at 13.

195 *See, e.g.*, Byrne, *supra* note 15, at 13; Eastman, *supra* note 4, at 159.

196 Byrne, *supra* note 15, at 13.

197 15 U.S.C. §§ 1701-1720 (1982).

two years.[198] As one author notes,[199] the act is so mechanically structured and is so oriented towards real estate that considerations germane to a consumer's decision in purchasing second-home rental housing were covered only cursorily if at all. For example, the act requires disclosure of distances to the nearest schools and shopping areas but not the number of tourists visiting the area, the seasonality of tourism, or an inventory of competing resort accommodations.[200] Most developers, however, have discovered that they may avoid regulation by HUD/OILSR registration simply by structuring their offerings so that no specific unit is designated as the time-share or, more typically, by availing themselves of the exemption under Section 1702 for structures to be built within two years.[201]

Because exemption from OILSR regulation in practice is readily available, the absence of a definitive federal position again has left the regulation of time-share offerings to the states. Thus the real estate or land sales regulatory agencies of the states in which time-share offerings are made may exercise jurisdiction over them. Exemptions may also be obtained at the state level in states which have patterned their statutes on the federal one. Recently several states refused to exert jurisdiction under their subdivision registration laws over certain types of right to use time-share offerings.[202] In California, for example, the type of offering which escaped state jurisdiction did not involve the use of a particular unit or the conveyance of a fee title to the real property, but instead consisted of a non-proprietary time-share interest acquired by the purchaser for his use and enjoyment.[203]

C. *Regulation of Time-Share Interests as Consumer Transactions*

Time-sharing as an alternative to the purchase of a vacation home has increased in popularity to such a degree[204] that inevitably some consumers will fall prey to fraudulent transactions or some form of misconduct or malfeasance by time-share sellers. Indeed, several time-share promoters and projects have recently attracted the attention of the FTC in connection with transactions which left the consumers with far less in the way of a vacation home than they had

198 15 U.S.C. § 1702(a)(2) (1982).
199 Gunnar, *supra* note 8, at 35.
200 Statement of Record, 24 C.F.R. § 1710.105 (1977).
201 15 U.S.C. § 1702(a)(2) (1982).
202 Ellsworth and Pendergast, *supra* note 187, at 60.
203 CALIFORNIA DEPARTMENT OF REAL ESTATE ADMINISTRATIVE INTERPRETATION, CLUB MAEVA LAS HADAS (May 23, 1979).
204 *See* note 10 *supra* and accompanying text.

anticipated.[205]

The FTC recently took on the time-share industry in a landmark case involving the sale of time-share units in Hawaii. One author suggests that the decision, *Federal Trade Commission v. Paradise Palms Vacation Club*,[206] will serve as a primer in this area for future private litigation by victimized consumers.[207] The malfeasance in this case involved not only the developers but also the time share sales organizations and the owners' association or clubs, as well as several individuals. The FTC alleged that these parties had committed numerous violations of section 5 of the Federal Trade Commission Act[208] amounting to deceptive and unfair trade practices. The promoters sold approximately three thousand time-share interests at six thousand dollars each, using enticing literature featuring pictures of luxurious Hawaiian condominium units on or near the back of Waikiki. In fact, the defendants had enough Hawaiian units to accommodate at most twenty percent of the time-share buyers. The remaining eighty percent were offered "comparable" units at Lake Tahoe and Ocean Shores, Washington. A report[209] filed by the court-appointed special counsel revealed that the "comparable" units were far from being that and were in fact undesirable as vacation sites. In sum, the defendants were alleged to have misrepresented the availability of the Hawaiian time-share units and to have been unable to deliver comparable units at comparable sites.[210] The defendants were further charged with failing to provide membership in a large time-share resort exchange network[211] which had been used in the advertising to entice purchasers. The transaction was alleged to violate the Federal Trade Commission Act in that the contracts signed by various purchasers did not contain language which the FTC's holder in due course rule requires.[212] So far the case has

205 *See, e.g.*, Guenther, *Jim Quincy is a Master at Selling Resort Units, But Buyers Complain*, Wall St. J., June 22, 1982, at 1, col. 1 (discussion of time-sharing projects dealing with fraudulent and abusive practices of promoters); TIME, Aug. 16, 1982, at 54 (highlight of problems facing consumers in the purchasing of time-share units).

206 FTC v. Paradise Palms Vacation Club, No. C811160V (W.D. Wash. Sept. 30, 1981).

207 Dickerson, "Litigating Resort Timeshare Abuses," Nat'l L.J., June 7, 1982, at 44.

208 15 U.S.C. § 45 (1976).

209 *See* FTC v. Paradise Palms Vacation Club, No. C811160V (W.D. Wash. Sept. 30, 1981), Motion of The Paradise Palms Vacation Club Special Counsel for an Order Instructing Special Counsel as to His Further Administration of and Responsibilities in Regard to Paradise Palms Vacation Club, dated Nov. 24, 1981.

210 *Id.* It was alleged that the value of the substitute units was found to be substantially lower than that of the units in Hawaii.

211 *Id.*

212 Dickerson, *supra* note 207, at 45.

resulted in a preliminary injunction against several defendants and the appointment of special counsel to administer the assets of the owners' association.[213]

IV. Current Legislative Approaches at the State Level

Allegations made in *Paradise Palms* concerning the possibilities for fraud and misrepresentation unique to the time-share industry emphasize the need for legislation to provide consumer protection in this area. Furthermore, because of the lack of SEC guidance in determining when time-share interests are securities, and of HUD guidance as to classification of the interest as real estate, states have stepped in to regulate time-share interests under various, and often conflicting, theories. For example, to sell a time-share offering in Oregon, Washington, Alaska, Illinois, Oklahoma, Michigan, Minnesota, or Wisconsin, developers must register it as a security with their respective securities agencies.[214] On the other hand, in California, Hawaii, Texas, and Colorado, developers must register the offerings with their respective real estate departments.[215] While in New York, New Jersey, and Florida, developers must register time-share offerings under the state consumer protection laws.[216] In still other states, dual registration of the offering is required.[217]

Thus time-sharing is currently regulated in various states under various types of statutes including condominium acts, subdivision acts, land sales acts, real estate licensing acts, consumer protection acts, and securities acts.[218] Regulation under these acts typically begins with opinions issued by state agencies determine that time-sharing is subject to a given act. State agencies may approach time-share offerings on a case by case basis,[219] or adopt administrative regulations which have the force of law.[220] Alternatively, states may pass legislation that either amends existing law to incorporate time-sharing[221] or regulate some aspects of time sharing.[222]

213 Dickerson, "Litigating Resort Timeshare Abuses," Nat'l L.J., June 14, 1982, at 45.

214 *See* Gunnar, *supra* note 18, at 41.

215 *Id.*

216 *Id.*

217 *Id.*

218 Smith, "Timesharing Regulation by the States," Nat'l L.J., May 10, 1982, at 34.

219 *Id.*

220 *Id.* Florida, for example, was one of the first states to adopt administrative regulations, since superseded by time-share legislation, designed particularly to address time-sharing. FLA. STAT. ANN. § 721 (West Supp. 1983).

221 *Id.* California has amended its subdivided land statute to regulate time-sharing. *See* CAL. BUS & PROF. CODE § 1100.35 - 11004.8 (West 1983). Similarly, South Dakota recently

Another means by which certain state agencies may obtain jurisdiction over time-share offerings is "self-executing" statutes under which time-share interests automatically fall because of the manner in which they operate.[223] Finally, several states regulate time-share offerings under existing securities statutes, consumer protection statutes, or land sales statutes.[224]

Today, for lack of a better or more formal solution, time-sharing has been regulated at the state level most frequently under existing state condominium laws, which determine the legal rights and liabilities of developers, sales personnel, and purchasers of time sharing property. As at least one author has pointed out, however, that because of the great variation in time-share interests and the unique qualities that the dimension of time brings to such interests, condominium laws are neither appropriate nor adequate to regulate time sharing estates.[225] Accordingly, a growing number of states have recognized the need for better regulation of time shares. To date Florida,[226] Georgia,[227] Hawaii,[228] Nebraska,[229] Nevada,[230] South Carolina,[231] Tennessee,[232] Virginia,[233] and Washington[234] have enacted specific legislation dealing with time sharing.

Although there is no enacted uniform legislation, two model acts have been proposed for regulating time-share ownership. Adoption of such legislation by the states would be desirable, if only to avoid conflicts among the states.[235] The first was proposed by the National Conference of Commissioners of Uniform State Laws, *Uniform Real Estate Time Share Act* (URETSA),[236] the second is the *Model Time-*

amended its horizontal property rights statute to incorporate time-share units. *See* S.D. CODIFIED LAWS ANN. § 43-15B (1983). Utah amended its Land Sales Practices Act to bring time-sharing within its scope. *See* UTAH CODE ANN. § 57-11 (1983).

222 Connecticut and Maine, for example, have enacted legislation regulating some limited aspects of time-sharing. *See* CONN. GEN. STAT. § 42-103w. to 42-103bb.; ME. REV. STAT. ANN. tit. 33, § 588 (1982).

223 Smith, *supra* note 218, at 34.

224 *See* notes 168-218 *supra* and accompanying text.

225 Pollack, *supra* note 18, at 295.

226 FLA. STAT. ANN. § 721 (West 1981 & Supp. 1982).

227 GA. CODE § 44-3-160 (1983).

228 HAWAII REV. STAT. § 514E (Supp. 1980).

229 NEB. REV. STAT. § 76-1701 (1980).

230 1983 Nev. Stat. ch. 401, § 1.

231 S.C. CODE ANN. § 27-32 (Law. Co-op. Supp. 1982).

232 TENN. CODE ANN. § 66-32 (1981).

233 VA. CODE § 55-360 (1981).

234 1983 Wash. Legis Serv. ch. 22, § 1.

235 *See* URETSA, *Commissioners' Prefatory Note*, 7A U.L.A. 259 (1979 & Supp. 1983).

236 *Id.* § 1-101, at 259, 261.

Share Ownership Act,[237] adopted by the Resort Time-Sharing Council of the American Land Development Association and the National Association of Real Estate License Law Officials (the RTC/NARELLO Act). Both model acts address a number of common issues, including the status and taxation of time-share units;[238] their creation, termination, and management;[239] protection of purchasers;[240] and administration and registration by a regulatory body.[241] Yet the two model acts differ markedly, not only in their scope and specificity, but also in fundamentals such as definitions.[242] In general, URETSA is the more detailed and comprehensive of the two. To date, the RTC/NARELLO Act has had a greater influence

237 RTC/NARELLO Model Time-Share Ownership Act (1979) [hereinafter cited as RTC/NARELLO Act].

238 The status and taxation of time-share estates is defined in URETSA as:

> (a) Except as expressly modified by this Act and notwithstanding any contrary rule of common law, a grant of an estate in a unit conferring the right of possession during a potentially infinite number of separated time periods creates an estate in fee simple having the character and incidents of such an estate at common law, and a grant of an estate in a unit conferring the right of possession during [5] or more separated time periods over a finite number of years equal to [5] or more, including renewal options, creates an estate for years having the character and incidents of such an estate at common law.
>
> (b) Each time-share estate constitutes for all purposes a separate estate in real property. Each time-share estate (other than a time-share estate for years) must (not) be separately assessed and taxed. (Notices of assessments and bills for taxes must be furnished to the managing entity, if any, or otherwise to each time-share owner, but the managing entity is not liable for the taxes as a result thereof.)
>
> (c) A document transferring or encumbering a time-share estate may not be rejected for recordation because of the nature or duration of that estate.

RTC/NARELLO defines the status of the time-share estate much more generally:

> (A) A "Time-Share Estate" is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years, if a leasehold, except as expressly modified by this Act. The foregoing shall supercede any contrary rule at common law.
>
> (B) A document transferring or encumbering a Time-Share Estate in real property may not be rejected for recordation because of the nature or duration of that estate or interest.

RTC/NARELLO Act § 1-104 (1979).

239 URETSA § 2-101 to 2-108, 7A U.L.A. (1979 & Supp. 1983); RTC/NARELLO Act §§ 2-101 to 2-107 (1979). While RTC/NARELLO specified that a time-share program may be created in any unit, unless specifically prohibited by statute, *see* RTC/NARELLO Act § 2-101 (1979), URETSA in contrast requires specifically that instruments provide for time-sharing.

240 URETSA §§ 4-101 to 4-116, 7A U.L.A. 259, 289-300 (1979 & Supp. 1983); RTC/NARELLO Act §§ 3-101 to 3-110 (1979).

241 URETSA §§ 5-101 to 5-110, 7A U.L.A. 259, 301-06 (1979 & Supp. 1983); RTC/NARELLO Act §§ 4-101 to 4-107 (1979).

242 *See, e.g.*, the difference in the definition of time-share estate, notes 244-46 *infra* and accompanying text.

than URETSA on the drafting of specific time-share legislation. Nebraska and Tennessee, for example, have substantially adopted RTC/NARELLO, while Georgia and Virginia have followed it to a lesser extent.

A. *Definition of Time-sharing*

A critical need of time-share ownership to establish uniform terminology, especially a uniform definition of time-sharing. Currently there is considerable divergence, with the consequent possibility of litigation. Standardized definitions would certainly reduce confusion for the time-share purchaser who is already at a disadvantage in comprehending the nature of the property interest he has purchased.

The model acts vary in a number of respects in their definition of time-shares. URETSA defines a time-share as either "a time-share estate or a time-share license."[243] The RTC/NARELLO Act defines a time-share estate as "a right to occupy a unit or any of several units during [5] or more separate time periods over a period of at least [5] years, including renewal options, coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof."[244] A time-share license is defined by URETSA as "a right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, not coupled with a freehold estate or an estate for years."[245] In contrast, the definition in the RTC/NARELLO Act is less specific: " 'Time-Share Estate' means, an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, internal ownership) and a timeshare lease."[246]

Furthermore, there is a lack of consensus in the definitions among those states which have adopted specific time-share legislation. Nebraska and Tennessee, which adopted time share legislation in 1980 and 1981 respectively,[247] both followed the RTC/NARELLO definition; while Virginia, which enacted time-share legislation in 1981, adopted the URETSA definition of a time-share estate.[248] Hawaii and California, which each adopted time-share legislation in 1980, define time-share estates in yet a different

243 URETSA § 1-102(13) 7A U.L.A. (1979 & Supp. 1983).
244 *Id.* § 1-102(14).
245 *Id.* § 1-12(18).
246 RTC/NARELLO Act § 1-103 (1979).
247 NEB. REV. STAT. § 76-1702(13) (1981); TENN. CODE ANN. § 66-32-102 (1982 & Supp. 1983).
248 VA. CODE § 55-362(16) (1981).

manner. Hawaii[249] defines the concept in terms of a periodically recurring entitlement to use, occupy, or possess. Recent legislative enactments in Georgia and Nevada have added to the disparity among definitions of time-share interests.[250] Neither the Florida nor South Carolina statutes defines the time-share estate, but instead address the concept only in terms of a time-sharing plan. The South Carolina definition distinguishes between a vacation time-share lease plan and a vacation time-sharing ownership plan,[251] but includes both in its definition of vacation time-sharing plans.[252] The Florida definition of time-sharing plan[253] is extremely broad and comprehensive. Washington defines time-shares broadly like URETSA to include both time-share estates licenses.[254]

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249 Hawaii's definition of time-share interest is "any interest in a time share unit or plan which entitles the owner or holder thereof to the use, occupancy or possession of a time share unit on a periodically recurring basis." HAWAII REV. STAT. § 514E-1 (Supp. 1982).

250 GA. CODE § 44-3-162 (1983); 1983 Nev. Stat. ch. 401, § 11.

251 "Vacation time sharing ownership plan" means any arrangement, plan or similar devise, whether by tenancy in common, sale, deed or by other means, which is subject to supplemental agreement or contract for use of the time share unit, whereby the purchaser receives an undivided ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

"Vacation time sharing lease plan" means any arrangement, plan or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year.

Such lease plans do not include an arrangement or agreement whereby a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state accommodations, of companies which operate nationwide in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which no interest in real property is transferred.

S.C. CODE ANN. § 27-32-10(8), (9) (Law. Co-op. Supp. 1982).

252 " 'Vacation timesharing plan' means either a vacation time sharing ownership plan or a vacation timesharing lease plan as defined herein." S.C. CODE ANN. § 27-32-10(10) (Law. Co-op. Supp. 1982).

253 "Time sharing plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for a consideration, receives a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than 3 years.

FLA. STAT. ANN. § 721.05(14) (West Supp. 1982).

254 1983 Wash. Legis. Serv. ch. 22, § 1 (West).

Most statutes, including both model acts, limit their application according to the duration and/or number of time-share periods. Under URETSA, both the specified duration as well as the specified minimum number of times of usage[255] are required; whereas RTC/NARELLO, although providing for a specified duration, does not provide for any minimum number of usage periods in its definition of time-share estate.[256] Nebraska has substantially adopted the RTC/NARELLO definition of time-share programs,[257] and Virginia has adopted another variation.[258] Hawaii defines a time-share plan to include only those units which are occupied for less than a sixty day period in any year by any occupant.[259] Florida defines time-sharing plans to include a right to use accommodations for a specific period of less than a full year during any given year but not necessarily for consecutive years, and which extends for a period of more than three years.[260] Washington's definition of a time-share requires five or more separate periods over at least five years.[261]

B. *Regulatory Body*

In light of the regulatory issues that time-share offerings raise, it would be desirable for these property interests to be subject to a single regulatory body within the state.[262] Some of the state statutes do specify a time-share regulatory body: Florida (Division of Florida Land Sales and Condominiums of the Department of Business Regulation),[263] Georgia (Georgia Real Estate Commission),[264] Hawaii (Hawaii Real Estate Commission),[265] Nevada (Real Estate Division of the Department of Commerce),[266] South Carolina (South Carolina

255 *See* notes 244-45 *supra* and accompanying text.

256 "Time-share program" means any arrangement for Time-Share Intervals in a Time-Share Project whereby the use, occupancy or possession of real property has been made subject to either a Time-Share Estate or Time-Share Use whereby such use, occupancy or possession circulates among purchasers of the Time-Share Intervals according to a fixed or floating time schedule on a periodic basis occuring [sic] annually over any period of time in excess of three (3) years in duration." RTC/NARELLO Act § 1-103 (1979).

257 NEB. REV. STAT. § 76-1702(16) (1981).

258 VA. CODE § 55-362(21) (1981).

259 HAWAII REV. STAT. § 514E-1 (Supp. 1982).

260 FLA. STAT. ANN. § 721.05(14) (West Supp. 1982).

261 1983 Wash. Legis. Serv. ch. 22, § 1 (West).

262 *See* text accompanying notes 214-17 *supra*; and Gunnar, *supra* note 8, at 41-42.

263 FLA. STAT. ANN. § 721.05(6) (West Supp. 1982).

264 GA. CODE § 44-3-162(2) (Supp. 1983).

265 HAWAII REV. STAT. § 514E-1 (Supp. 1982).

266 1983 Nev. Stat. ch. 401, § 5.

Real Estate Commission),[267] Tennessee (Tennessee Real Estate Commission),[268] Virginia (Virginia Real Estate Commission),[269] and Washington (Director of Licensing).[270] Both the URETSA[271] and the RTC/NARELLO Acts[272] have optional provisions for a regulatory body to be determined by the state of adoption.

The statutes empower the regulatory body to perform a number of functions, including:

> (1) register time-share offerings (Florida,[273] Georgia,[274] Hawaii,[275] Nevada,[276] South Carolina,[277] Tennessee,[278] Virginia,[279] Washington,[280] URETSA,[281] and RTC/NARELLO Act[282]);
> (2) register developers or sales agents (Hawaii,[283] Nevada,[284] Tennessee,[285] Virginia,[286] and Washington[287]);
> (3) adopt, amend, and repeal rules, regulations, and orders (Georgia,[288] Hawaii,[289] South Carolina,[290] Tennessee,[291] Virginia,[292] Nebraska,[293] Nevada,[294] Washington,[295] URETSA,[296] and

267 S.C. CODE ANN. § 27-32-10(4) (Law. Co-op. Supp. 1982).
268 TENN. CODE ANN. § 66-32-102(2) (1982).
269 VA. CODE § 55-362(2) (1981).
270 1983 Wash. Legis. Serv. ch. 22, § 1(3).
271 URETSA § 5-101, 7A U.L.A. 301 (1979 & Supp. 1983).
272 RTC/NARELLO Act § 1-103 (1979).
273 FLA. STAT. ANN. § 721.07 (West Supp. 1982).
274 GA. CODE § 44-3-191 (Supp. 1983).
275 HAWAII REV. STAT. § 514E-10 (Supp. 1982).
276 1983 Nev. Stat. ch. 401, §§ 19-22.
277 S.C. CODE ANN. § 27-32-20 (Law. Co-op. Supp. 1982).
278 TENN. CODE ANN. § 66-32-122 (1982).
279 VA. CODE § 55-390 (1981).
280 1983 Wash. Legis. Serv. ch. 22, § 2.
281 The registration requirement in URETSA states: "A developer may not offer or transfer a time share unless the time share is registered with the agency, but an offering by a developer of time shares in no more than one time-share unit at any one time is exempt from the requirements of this section and Section 5-103(b)." URETSA § 5-102, 7A U.L.A. 302 (1979 & Supp. 1983).
282 RTC/NARELLO Act § 4-102 (1979).
283 HAWAII REV. STAT. § 514E-10(c) (Supp. 1982).
284 1983 Nev. Stat. ch. 401, §§ 31-32.
285 TENN. CODE ANN. § 66-32-122(c) (1982).
286 VA. CODE § 55-396 (1981).
287 1983 Wash. Legis. Serv. ch. 22, § 8.
288 GA. CODE § 44-3-198(b) (Supp. 1983).
289 HAWAII REV. STAT. § 514E-13 (Supp. 1982).
290 S.C. CODE ANN. § 27-32-130 (Law. Co-op. Supp. 1982).
291 TENN. CODE ANN. § 66-22-121 (1981).
292 VA. CODE § 55-396 (1981).
293 NEB. REV. STAT. § 76-1725(1) (Supp. 1982).
294 1983 Nev. Stat. ch. 401, § 32(7).
295 1983 Wash Legis. Serv. ch. 22, § 26.
296 URETSA § 5-107, 7A U.L.A. 304 (1979 & Supp. 1983).

RTC/NARELLO Act[297]);
(4) conduct investigations (Florida,[298] Georgia,[299] Hawaii,[300] Nebraska,[301] Nevada,[302] South Carolina,[303] Tennessee,[304] Virginia,[305] Washington,[306] URETSA,[307] and RTC/NARELLO Act[308]);
(5) issue cease and desist orders (Florida,[309] Georgia,[310] Hawaii,[311] Nebraska,[312] Nevada,[313] Tennessee,[314] Virginia,[315] Washington,[316] URETSA,[317] and RTC/NARELLO Act[318]);
(6) impose civil penalties (Florida,[319] Hawaii,[320] and South Carolina[321]);
(7) institute judicial enforcement proceedings (Florida,[322] Georgia,[323] Hawaii,[324] Nebraska,[325] Nevada,[326] Virginia,[327] and URETSA[328]);
(8) revoke registrations of time share offerings (Georgia,[329] Hawaii,[330] Nebraska,[331] Nevada,[332] Tennessee,[333] Virginia,[334] Wash-

297 RTC/NARELLO Act § 4-101 (1979).
298 FLA. STAT. ANN. § 721.26(1) (West Supp. 1983).
299 GA. CODE § 44-3-201 (1983).
300 HAWAII REV. STAT. § 514E-11.2 (Supp. 1982).
301 NEB. REV. STAT. § 76-1725(4) (Supp. 1982).
302 1983 Nev. Stat. ch. 401, § 19.5.
303 S.C. CODE ANN. § 27-32-190(c) (Law. Co-op. Supp. 1982).
304 TENN. CODE ANN. § 66-32-121(C) (1981).
305 VA. CODE § 55-399 (1981).
306 1983 Wash. Legis. Serv. ch. 22, § 18 (West).
307 URETSA § 5-108, 7A U.L.A. 308 (1979 & Supp. 1983).
308 RTC/NARELLO Act § 4-101 (D) (1979).
309 FLA. STAT. ANN. § 721.26 (5)(b) (West 1970 & Supp. 1983).
310 GA. CODE § 44-3-201(d) (1983).
311 HAWAII REV. STAT. § 514E-12 (1976 & Supp. 1982).
312 NEB. REV. STAT. § 76-1726(2) (1981 & Supp. 1982).
313 1983 Nev. Stat. ch. 401, § 48.
314 TENN. CODE ANN. § 66-32-121(g) (1981).
315 VA. CODE § 55-396(2) (1981).
316 1983 Wash. Legis. Serv. ch. 22, § 19 (West).
317 URETSA § 5-105, 7A U.L.A. 304 (1979 & Supp. 1983).
318 RTC/NARELLO Act § 4-101(F) (1979).
319 FLA. STAT. ANN. § 721.26(5)(d) (West Supp. 1982).
320 HAWAII REV. STAT. § 514E-12(b)(1) (Supp. 1982).
321 S.C. CODE ANN. § 27-32-120 (Law. Co-op. Supp. 1982).
322 FLA. STAT. ANN. § 721.26(5)(d)(2) (West Supp. 1982).
323 GA. CODE § 44-3-202 (1983).
324 HAWAII REV. STAT. § 514E-11.2 (Supp. 1980).
325 NEB. REV. STAT. § 76-1722(3) (1980).
326 1983 Nev. Stat. ch. 401, § 47.
327 VA. CODE § 55-396(G) (1981).
328 URETSA § 5-107(b), 7A U.L.A. 304 (1979 & Supp. 1983).
329 GA. CODE § 44-3-201(c) (1983).
330 HAWAII REV. STAT. § 514E-12(b)(2) (Supp. 1982).
331 NEB. REV. STAT. § 76-1726(3) (1980).
332 1983 Nev. Stat. ch. 401, § 20(e).
333 TENN. CODE ANN. § 66-32-121(h) (1982).

ington,[335] URETSA,[336] and RTC/NARELLO Act[337]);
(9) revoke or suspend registration of developers or sales agents (Hawaii,[338] Nebraska,[339] Nevada,[340] Tennessee,[341] and Washington[342]);
(10) generally enforce the provisions of the statute (South Carolina[343]); and
(11) assess violations for all reasonable costs of investigation and prosecution (South Carolina[344]).

Some statutes explicitly address the issue of whether time-shares are to be regulated by the state as a security. For example, the Florida statute provides that time-sharing plans are not securities.[345] Conversely, the Tennessee[346] and Virginia[347] statutes and the RTC/NARELLO Act[348] exempt from registration under the time-share statutes any time-share program for which a public offering statement has been prepared for registration under the state or federal securities act, or state subdivided land act, or Federal Interstate Lands Sales Full Disclosure Act.[349]

C. *Information Disclosure*

To protect both the time-share purchaser and non time-share owners in a project, full and complete information disclosure is important. Both model acts provide for substantial disclosure to the purchasers in the form of public offering statements.[350]

Similarly a number of states, including Florida,[351] Georgia,[352] Hawaii,[353] Maine,[354] Nebraska,[355] Nevada,[356] South Carolina,[357]

334 VA. CODE § 55-396(F) (1981).
335 1983 Wash. Legis. Serv. ch. 22, § 10 (West).
336 URETSA § 5-106 7A U.L.A. 304 (1979 & Supp. 1982).
337 RTC/NARELLO Act § 4-101(G)(1979).
338 HAWAII REV. STAT. § 514E-12(b)(2) (Supp. 1982).
339 NEB. REV. STAT. § 76-1726(1) (1980).
340 1983 Nev. Stat. ch. 401, § 44.3.
341 TENN. CODE ANN. § 66-32-121(f) (1982).
342 1983 Wash. Legis. Serv. ch. 22, § 9 (West).
343 S.C. CODE ANN. § 27-32-130 (Law. Co-op. Supp. 1982).
344 S.C. CODE ANN. § 27-32-150(d) (Law. Co-op. Supp. 1982).
345 FLA. STAT. ANN. § 721.23 (West Supp. 1983).
346 TENN. CODE ANN. § 66-32-115 (1982).
347 VA. CODE § 55-395 (1981).
348 RTC/NARELLO Act § 4-107 (1979).
349 15 U.S.C. § 1701-1720 (1976).
350 URETSA § 4-103 7A U.L.A. 290 (1979 & Supp. 1983); RTC/NARELLO Act § 3-101 (1979).
351 FLA. STAT. ANN. § 721.07 (West Supp. 1983).
352 GA. CODE § 44-3-172 (1983).
353 HAWAII REV. STAT. § 514E-9 (Supp. 1982).

Tennessee,[358] Virginia,[359] and Washington,[360] require full and detailed disclosure in their public offering statements. In general the statements require such information as the developer's name and address, unit descriptions, designation of which units are strictly timeshare, projected budgets, disclosure of any required fees, descriptions of any liens, financing arrangements offered by the developer, cancellation provisions, restraints on numbers of intervals, insurance coverage, purchasers' liability for taxation, transfer restrictions, and expected maintenance fees.

Some of the statutes provide specific exemptions from the disclosure requirements, including:

> (1) any transaction pursuant to a court order (Georgia,[361] Hawaii,[362] Nebraska,[363] Tennessee,[364] Virginia,[365] Washington,[366] URETSA,[367] and RTC/NARELLO Act[368]);
> (2) any disposition by a government or governmental agency (Georgia,[369] Hawaii,[370] Nebraska,[371] Tennessee,[372] Virginia,[373] Washington,[374] URETSA,[375] and RTC/NARELLO Act[376]);
> (3) normal hotel operations (Hawaii[377]);
> (4) any gratuitous transfer (Georgia,[378] Hawaii,[379] Nebraska,[380] Nevada,[381] Tennessee,[382] Virginia,[383] Washington,[384] URETSA,[385]

354 ME. REV. STAT. ANN. tit. 33, § 588 (1982).
355 NEB. REV. STAT. § 76-1713 (1981).
356 1983 Nev. Stat. ch. 401, § 37.
357 S.C. CODE ANN. § 27-32-100 (Law. Co-op. Supp. 1982).
358 TENN. CODE ANN. § 66-32-112 (1982).
359 VA. CODE § 55-374 (1981).
360 1983 Wash. Legis. Serv. ch. 22, § 3.
361 GA. CODE § 44-3-178(b)(2) (1983).
362 HAWAII REV. STAT. 514E-9(b)(1) (Supp. 1982).
363 NEB. REV. STAT. § 76-1719(2) (1981).
364 TENN. CODE ANN. § 66-32-126(2) (1982).
365 VA. CODE § 55-395(B)(2) (1981).
366 1983 Wash. Legis. Serv. ch. 22, § 2(3)(c).
367 URETSA § 4-101(b)(2), 7A U.L.A. 289 (1979 & Supp. 1983).
368 RTC/NARELLO Act § 3-105(B)(2) (1979).
369 GA. CODE § 44-3-178(b)(3) (Supp. 1983).
370 HAWAII REV. STAT. 514E-9(b)(2) (Supp. 1982).
371 NEB. REV. STAT. § 76-1719(3) (1981).
372 TENN. CODE ANN. § 66-32-126(3) (1982).
373 VA. CODE § 55-395(B)(3) (Supp. 1983).
374 1983 Wash. Legis. Serv. ch. 22, § 2(3)(d) (West).
375 URETSA § 4-101(3) 7A U.L.A. 289 (1979 & Supp. 1983).
376 RTC/NARELLO Act § 3-105(B)(3) (1979).
377 HAWAII REV. STAT. § 514E-9(b)(3) (Supp. 1982).
378 GA. CODE § 44-3-178(b)(6) (Supp. 1983).
379 HAWAII REV. STAT. § 413E-9(b)(4) (Supp. 1982).
380 NEB. REV. STAT. § 76-1719(6) (1981).
381 1983 Nev. Stat. ch. 401, § 14(d).

and RTC/NARELLO Act[386]);
(5) disposition by foreclosure (Georgia,[387] Nebraska,[388] Nevada,[389] Tennessee,[390] Virginia,[391] URETSA,[392] and RTC/NARELLO Act[393]);
(6) disposition of a time-share interval in a time-share project situated wholly outside the state provided that all solicitations and negotiations took place wholly outside the state and the contract was executed wholly outside the state (Georgia,[394] Nebraska,[395] Tennessee,[396] Virginia,[397] URETSA,[398] and RTC/NARELLO Act[399]);
(7) whenever public disclosure is provided to purchasers under the Securities Act of 1933 or the Federal Interstate Land Sales Full Disclosure Act (Georgia,[400] Nebraska,[401] Tennessee,[402] Virginia,[403] Washington,[404] and RTC/NARELLO Act[405]);
(8) an offering by a developer of time-shares in not more than two time-share units at any one time (Virginia[406] and URETSA[407], or not more than one time-share in any twelve month period (Washington[408]);
(9) any transfer of a time-share unit by an owner of the unit other than the developer or an agent of the developer (Florida,[409] Georgia,[410] Nebraska,[411] Nevada,[412] Tennessee,[413] Virginia,[414]

382 TENN. CODE ANN. § 66-32-126(6) (1982).
383 VA. CODE § 55-395(6) (1983).
384 1983 Wash. Legis. Serv. ch. 22, § 2(3)(e) (West).
385 URETSA § 4-101, 7A U.L.A. 289 (1979 & Supp. 1983).
386 RTC/NARELLO Act § 3-105(B)(6) (1979).
387 GA. CODE § 44-3-178(b)(4) (Supp. 1983).
388 NEB. REV. STAT. § 76-1719(4) (1981).
389 1983 Nev. Stat. ch. 401, § 14(c).
390 TENN. CODE ANN. § 66-32-126(4) (1982).
391 VA. CODE § 55-395 (4) (Supp. 1983).
392 URETSA § 4-101(b)(4), 7A U.L.A. 289 (1979 & Supp. 1983).
393 RTC/NARELLO Act § 3-105 (B)(4) (1979).
394 GA. CODE § 44-3-178(b)(5) (1983).
395 NEB. REV. STAT. § 76-1719(5) (1981).
396 TENN. CODE ANN. § 66-32-126(5) (1982).
397 VA. CODE § 55-395(B)(5) (1981).
398 URETSA § 4-101(b)(6), 7A U.L.A. 289 (1979 & Supp. 1983).
399 RTC/NARELLO Act § 3-105 (B)(5) (1979).
400 GA. CODE § 434-3-178(a) (1983).
401 NEB. REV. STAT. § 76-1718 (1981).
402 TENN. CODE ANN. § 66-32-115 (1982).
403 VA. CODE § 55-395(A) (1981).
404 1983 Wash. Legis. Serv. ch. 22, § 7 (West).
405 RTC/NARELLO Act § 3-105(A) (1979).
406 VA. CODE § 55-395 (B)(9) (1979).
407 URETSA § 4-101(7) 7A U.L.A. 289 (1979 & Supp. 1983).
408 1983 Wash. Legis. Serv. ch. 22, § 2(3) (West).
409 FLA. STAT. ANN. § 721.05(12) (West Supp. 1983).
410 GA. CODE § 44-3-178(b)(1) (1983).
411 NEB. REV. STAT. § 76-1719(1) (1981).
412 1983 Nev. Stat. ch. 401, § 14(b).

URETSA,[415] and the RTC/NARELLO Act[416]).

D. *Resale of Time-Shares*

A number of states exempt an owner of a time-share unit who is not a developer or his agent from the statutory registration requirements.[417] However, the Virginia statute[418] and the URETSA[419] require the reselling owner to furnish prescribed information to the new purchaser.

E. *Regulation of Sales Activities*

In addition to requiring disclosure of information, a number of statutes regulate the sales and promotional activities of developers and sales agents.[420] Florida and Georgia require that all advertising materials be filed with the regulatory body within ten days of their use.[421] South Carolina requires such materials to be made available to the Real Estate Commission upon request.[422] No time-share may be advertised nor offered for sale in Nevada until the advertisement is approved by the Real Estate Division.[423] No person may advertise a time-share offering in the state of Washington unless a copy of the advertisement has been filed in the office of the Director of Licensing at least seven days before publication and has been approved by him within that time period.[424]

The statutes in Florida, Georgia, Hawaii, and South Carolina forbid specific sales and advertising practices,[425] and include a broad prohibition against misrepresentation. For example, the South Caro-

413 TENN. CODE ANN. § 66-32-115(b)(1) (1982).
414 VA. CODE § 55-395(B)(1) (1981).
415 URETSA § 4-101(b)(1) 7A U.L.A. 289 (1979 & Supp. 1983) (to one purchaser).
416 RTC/NARELLO Act § 3-105(B)(1) (1979).
417 *See* notes 409-16 *supra* and accompanying text.
418 VA. CODE § 55-380 (1981).
419 URETSA § 4-106 7A U.L.A. 293 (1979 & Supp. 1983).
420 It is interesting to note that neither URETSA nor the RTC/NARELLO Act addresses the regulation of sales and promotional activities of developers and sales agents. In light of the alleged fraudulent activities in the FTC v. Paradise Palms Vacation Club, No. C811160V, (W.D. Wash. Sept. 30, 1981), *see* notes 206-13 *supra* and accompanying text, this type of regulation would appear entirely necessary.
421 FLA. STAT. ANN. § 721.11 (West. 1983); GA. CODE § 44-3-186 (1983).
422 S.C. CODE ANN. § 27-32-20(2) (Law. Co-op Supp. 1982).
423 1983 Nev. Stat. ch. 401, § 53.
424 1983 Wash. Legis. Serv. ch. 22, § 31 (West).
425 FLA STAT. ANN. § 721.11(2) (West Supp. 1983); GA. CODE §§ 44-3-185, 187 (1983); HAWAII REV. STAT. §§ 514-11, 11.1 (Supp. 1982); S.C. CODE ANN. § 27-32-110 (Law. Co-op. Supp. 1982).

lina statute prohibits any act which constitutes fraud, misrepresentation, or failure to make a disclosure of a material fact. Similarly, the Hawaii statute prohibits misrepresenting or deceptively representing any material fact concerning a time-share plan or time-share unit. The Florida statute forbids misrepresenting facts or creating false or misleading impressions regarding the time-sharing plan. The Tennessee statute implicitly prohibits any developer from engaging in any unlawful act or practice or disseminating any false or misleading promotional materials.[426] The statutes in Nevada and Washington also contain broad prohibitions against misrepresentation.[427] Georgia and Virginia regulate the use of prizes.[428]

F. *Management*

The importance of competent management cannot be overemphasized. As a recent commentator explained:

> Project management is important to any condominium's success. In a time-sharing project, where the number of individual owners can exceed 10,000 and where (during the season) there is virtually 100 percent occupancy of each unit by several different owners, management can make or break a project very quickly. Without professional management to ensure routine cleaning and maintenance, the project could rapidly deteriorate. With the number of owners large and the occupancy periods short, managing a time-sharing project becomes very similar to managing a hotel.[429]

States which have simply included time-shares in their condominium acts make no mention of management or maintenance of individual time-share units. Florida, Georgia, Nebraska, Nevada, Tennessee, Virginia, URETSA, and the RTC/NARELLO Act have provisions requiring the developer to establish an entity to manage and maintain the time-share units.[430] The South Carolina, Hawaii, and Washington[431] statutes mention management and record keeping, but do not specifically provide for the establishment of a management entity or impose management duties.

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426 TENN. CODE ANN. § 66-32-121(f)(3) (1982).

427 1983 Nev. Stat. ch. 401, § 52; 1983 Wash. Legis. Serv. ch. 22, § 20 (West).

428 GA. CODE § 44-3-188 (1983); VA. CODE § 55-374.1 (1983).

429 Boster, *Marketing the Time-Share Unit*, 3 REAL EST. REV. 104, 108 (Spring 1975).

430 *See* FLA. STAT. ANN. § 721.13 (West Supp. 1983); GA. CODE §§ 44-3-167, 170 (1983); NEB. REV. STAT. § 76-1711(4) (1981); TENN. CODE ANN. § 66-32-107(4) (1982); VA. CODE § 55-371 (1981); URETSA §§ 3-101, 3-106, 7A U.L.A. 275, 279 (1979 & Supp. 1983); RTC/NARELLO Act § 2-106 (1979).

431 S.C. CODE ANN. § 27-32-30 (Law. Co-op. Supp. 1982); HAWAII REV. STAT. § 514E-10 (Supp. 1982); 1983 Wash. Legis. Serv. ch. 22, § 3 (West).

G. *Transfer of Seller's Interest*

The statutes in Florida, Georgia, South Carolina, and the URETSA,[432] contain provisions regulating the transfer of a seller's interest in a time-share plan. They forbid such a transfer unless the transferee agrees in writing to (1) honor fully the purchasers' right to occupy and use the facilities and to cancel their contracts, and (2) comply with the provision of the statute. Notice must be given to each purchaser of a time-share unit within thirty days. The Florida statute also requires the transferee to assume all obligations of the seller to the purchasers.

H. *Penalties*

A number of the states impose penalties for violations of the time-share statute. Criminal penalties are imposed in Georgia (misdemeanor), Nebraska (class I misdemeanor), Nevada (misdemeanor), South Carolina (misdemeanor, fine up to $5,000 for each offense), Tennessee (misdemeanor, fine up to $5,000 and/or imprisonment up to one year), Virginia (class 2 misdemeanor), Washington (gross misdemeanor or class C felony), and under the RTC/NARELLO Act (misdemeanor, fine up to $5,000 and/or imprisonment up to one year).[433] Washington provides for a civil penalty not to exceed $2000 for each violation.[434] Florida and Hawaii provide for the regulatory body to impose civil penalties.[435] Hawaii also preserves the state's right to punish any person for violation of the statute.[436]

I. *Exchange Program*

The statutes in Florida, Georgia, Hawaii, Nebraska, Nevada, Virginia, and Washington, as well as URETSA and the RTC/NARELLO Act,[437] require detailed disclosure of information

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432 FLA STAT. ANN. § 721.17 (West Supp. 1983); GA. CODE § 44-3-181 (1983); S.C. CODE ANN. § 27-32-80 (Law. Co-op. Supp. 1982); URETSA § 3-104, 7A U.L.A. 277 (1979 & Supp. 1983).

433 GA. CODE §§ 44-3-202, 44-3-203 (1983); NEB. REV. STAT. § 76-1722 (1981); 1983 Nev. Stat. ch. 401, § 51; S.C. CODE ANN. § 27-32-120 (Law Co-op. Supp. 1982); TENN. CODE ANN. § 66-32-118(b) (1982); VA. CODE § 55-400 (1981); 1983 Wash. Legis. Serv. ch. 22, § 22 (West); RTC/NARELLO Act § 3-108 (1979).

434 1983 Wash. Legis. Serv. ch. 22, § 21 (West).

435 FLA STAT. ANN. § 721.26 (West Supp. 1983); HAWAII REV. STAT. § 514E-12 (Supp. 1982).

436 HAWAII REV. STAT. § 514E-12.5 (Supp. 1982).

437 FLA. STAT. ANN. § 721.18 (West Supp. 1983); GA. CODE § 44-3-172 (1983); HAWAII REV. STAT. § 514E-9.5 (Supp. 1982); NEB. REV. STAT. § 76-1714 (1981); 1983 Nev. Stat. ch.

regarding any exchange programs in which purchasers of time-share units are permitted or required to participate.

J. *Right of Cancellation*

A number of states provide the purchasers with an absolute right to cancel the contract without penalty for a specified period of time after its execution or the receipt of the public offering statement. For example, South Carolina provides four days, Hawaii and Nevada five days, Georgia and Washington seven days, Florida ten days, and Tennessee fifteen days.[438] Virginia provides a limited right of cancellation for five days if the developer fails to provide the purchaser with the public offering statement five days before signing the contract.[439] The URETSA has a similar provision but substitutes seven days for three days.[440]

Some states give both purchaser and seller the right to cancel. Nebraska and the RTC/NARELLO Act provide a mutual right to cancel without penalty for three days, Hawaii for five days, Georgia for seven days, and Tennessee for fifteen days.[441]

K. *Purchaser's Remedies*

The time-share statutes generally provide purchasers of a time-share unit with remedies other than cancellation for violations by the developer or sales agent. In addition to preserving any other remedy provided by law, the statutes provide for a number of specific remedies. Rescission is explicitly provided as a remedy by Hawaii and Washington.[442] Punitive damages for willful violations are available under the Georgia and Tennessee statutes as well as the URETSA and the RTC/NARELLO Act.[443] Attorney's fees may be awarded by the court under the statutes in Florida, Georgia, Hawaii, Ne-

401, § 37; VA. CODE § 55-374 (1981); 1983 Wash. Legis. Serv. ch. 22, § 3 (West); URETSA § 4-102, 7A U.L.A. 289 (1979 & Supp. 1983); RTC/NARELLO Act § 3-101(B) (1979).

438 S.C. CODE ANN. § 27-32-50 (Law. Co-op. Supp. 1982); HAWAII REV. STAT. § 514E-8 (Supp. 1982); 1983 Nev. Stat. ch. 401, § 25; 1983 Wash. Legis. Serv. ch. 22, § 14 (West); GA. CODE § 44-3-172 (1983); FLA STAT. ANN. § 721.06 (West Supp. 1983); TENN. CODE ANN. § 66-32-114 (1982).

439 VA. CODE § 55-376 (1981).

440 URETSA § 4-106, 7A U.L.A. 293 (1979 & Supp. 1983).

441 NEB. REV. STAT. § 76-1716 (1981); RTC/NARELLO Act § 3-103 (1979); HAWAII REV. STAT. § 514E-8 (Supp. 1982); GA. CODE § 44-3-174(b) (1983); TENN. CODE ANN. § 66-32-114 (1982).

442 HAWAII REV. STAT. § 514E-11.3 (Supp. 1982); S.C. CODE ANN. § 27-32-10 (Law. Co-op. Supp. 1979); 1983 Wash. Legis. Serv. ch. 22, § 23 (West).

443 GA. CODE § 44-3-183 (1983); TENN. CODE ANN. § 66-32-118 (1982); URETSA § 4-115, 7A U.L.A. 299 (1979 & Supp. 1983); RTC/NARELLO Act § 3-108 (1979).

braska, Tennessee, Virginia, and Washington, and under the URETSA and the RTC/NARELLO Act.[444]

L. *Partition*

As discussed previously,[445] it is of critical importance in certain time-share ownership arrangements that the right to partition be restricted. A partition may arise under both the time-span estate and the interval estate forms of ownership. In the former, the threat of partition encompasses both the common areas and the separate condominium units. In the latter, only the common elements of the property are threatened by partition. Under either form of ownership, prohibiting partition is crucial since time-share ownership of a unit is untenable without the ability to use the common areas.[446]

Since the states including time-shares in their condominium acts only deal with partition of common areas, time-share estates are not protected unless expressly mentioned in an amended section. Florida, Georgia, Nebraska, Tennessee, Virginia, URETSA, and the RTC/NARELLO Act permit the partition of time-share units only to the extent provided by the time-share instrument.[447] The Hawaii and South Carolina statutes make no mention of partition.

M. *Tort Liability*

None of the adopted time-share acts specifically addresses the issue of shielding the time-share estate owner from tort liability.[448] Several statutes do, however, require that the management entity provide comprehensive general liability insurance for death, bodily injury, and property damage arising out of or in connection with the use and enjoyment of units by time-share owners, their guests, and

444 FLA. STAT. ANN. § 721.21 (West Supp. 1983); GA. CODE § 44-3-183 (1983); HAWAII REV. STAT. § 514E-11.3 (Supp. 1982); NEB. REV. STAT. § 76-1722 (1981); TENN. CODE ANN. § 66-32-118 (1982); VA. CODE § 55-382 (1981); 1983 Wash. Legis. Serv. ch. 22, § 21 (West); URETSA § 4-115, 7A U.L.A. 299 (1979 & Supp. 1983); RTC/NARELLO Act § 3-108 (1979).

445 *See* notes 30-43 and 94 *supra* and accompanying text.

446 *See* Comment, *supra* note 18, at 432-34.

447 FLA. STAT. ANN. § 721.22 (West Supp. 1983); GA. CODE § 44-3-165(b) (1983); NEB. REV. STAT. § 76-1712 (1981); TENN. CODE ANN. § 66-32-111 (1982); VA. CODE § 55-372 (1981); URETSA § 2-104, 7A U.L.A. 271 (1979 & Supp. 1983); RTC/NARELLO Act § 2-107 (1979).

448 *See* notes 110-15 *supra* and accompanying text. The three areas of tort liability which may create problems for time-share owners are liability for injury resulting from negligent upkeep or design of common areas; liability of co-owners as tenants in common for injury to third parties on the premises while another owner has the right to possession; and liability of an owner to co-owners for damage to the unit while he is in possession.

other users.[449]

URETSA specifically mentions tort liability. It provides:

> (a) A time-share owner is personally liable for his own acts and omissions and those of his employees and agents other than the managing entity.
>
> (b) An action may not be maintained against a time-share owner, nor is a time-share owner precluded from maintaining an action, merely because he owns a time share or is an officer, director or member of the association.
>
> (c) An action in tort alleging a wrong done by a developer, a managing entity selected by the developer or his appointees, or an agent or employee of either, in connection with any portion of the property which the developer or his appointees, or an agent or employee of either, in connection with any portion of the property which the developer or the managing entity has the responsibility to maintain, may not be maintained against the association or any time-share owner other than a developer. Other actions in tort alleging a wrong done by an association or by an agent or employee of the association or by an agent or employee of the association or an action arising from a contract made by or on behalf of the association may be maintained only against the association. If the tort or breach of contract occurred during any period of developer control, the developer is subject to liability for all unreimbursed losses suffered by the association or time-share owners as a result, including costs and reasonable attorney's fees. The operation of any statute of limitations affecting the right of action of the association or time-share owners under this section is tolled until the period of developer control terminates. A time-share owner is not precluded from maintaining an action contemplated by this subsection because he is a time-share owner or a member or officer of the association.
>
> (d) A judgment for money against an association [if recorded] [if docketed] [if (insert other procedure required under state law to perfect a lien on real property as a result of a judgment)] is a lien against all of the time shares, but no other property of a time-share owner is subject to the claims of creditors of the association.
>
> (e) A judgment against the association must be indexed in the name of the association.[450]

Although no state has yet adopted such language in its time-share statute, these authors believe its inclusion to be highly advisable so that potential tort liability may be clearly understood by time-share purchasers and developers.

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449 GA. CODE §§ 44-3-167(8), 170(9) (1983); NEB. REV. STAT. § 76-1708(8) (1980); TENN. CODE ANN. § 66-32-110(9) (1981); VA. CODE § 55-371(7) (1981); URETSA § 3-108(a)(2), 7A U.L.A. 280 (1979 & Supp. 1983); RTC/NARELLO Act § 2-106(9) (1979).

450 URETSA § 3-107, 7A U.L.A. 280 (1979 & Supp. 1983).

N. *Liens*

Another area of critical importance to time-share estate owners, and therefore an issue which should be addressed in any time-share legislation, is responsibility for liens assessed against the time-share real estate.[451] There is clear potential for the forfeiture of a time-share owner's interest by foreclosure if another time-share owner fails to pay federal or state taxes.

URETSA and RTC/NARELLO address the two aspects of the lien issue in remarkably similar fashion. First, the developer is required, upon transfer of a time-share interest to an owner, to record or furnish him with releases of all liens affecting that time-share, or alternatively to provide the him with a surety bond or insurance against liens in the same manner that the state provides for liens against real estate.[452] Second, if a lien other than a deed of trust becomes effective against more than one time-share estate, any time-share owner is entitled to a release of his time-share estate from the lien upon payment of his proportionate liability.[453] These provisions give the owner a measure of security, although they are not entirely satisfactory.

Most statutes which have been drafted after the two model acts have adopted their lien language.[454] The South Carolina and Hawaii statutes, however, enacted prior to the model acts, do not address the question. Nevada has taken a unique approach to the lien issue by requiring that the sale contract for the time-share interest provide in large bold type that the purchaser is relieved of all obligations under the contract if his interests are defeated because of foreclosure of liens against the development.[455] Washington simply requires disclosure to the purchaser of any liens affecting the property.[456]

O. *Termination of Timeshares*

It is important to provide for the ultimate disposition of the property.[457] Only the Virginia statute and URETSA provide for ter-

451 *See* notes 44-61 *supra* and accompanying text.

452 URETSA § 4-109(a), 7A U.L.A. 295 (1979 & Supp. 1983).

453 URETSA § 4-109(b), 7A U.L.A. 295 (1979 & Supp. 1983).

454 *See, e.g.*, FLA. STAT. ANN. § 721.16 (West Supp. 1983); NEB. REV. STAT. § 76-1721(2) (1981); GA. CODE § 44-3-180(b) (1983); TENN. CODE ANN. § 66-32-117 (1981); VA. CODE § 55-381(b) (1981).

455 1983 Nev. Stat. ch. 401, § 28.

456 1983 Wash. Legis. Serv. ch. 22, § 3 (West).

457 *See* Davis, *supra* note 29, at 54.

mination.[458] Each specifies detailed termination procedures. The Virginia statute requires the written agreement of the time-share owners having at least fifty-one percent of the time-shares, or by such larger percentage as may be provided for in the time-share instrument. URETSA substitutes eighty percent for fifty-one percent.

V. Recommendations

All states should take prompt steps to enact legislation regulating the sale and operation of time-sharing. The diverse and inherently confusing nature of time-sharing interests, as well as the associated marketing techniques, make this type of real estate ownership a fertile area for abuse of purchasers. Consequently, a state should provide protection both to purchasers of time-shares developed within the state, and to its citizens who purchase time-shares located outside the state. It is also in the best interests of developers that time-shares be regulated to protect them from unfair competition by unscrupulous developers employing deceptive practices, and to inspire confidence in potential purchasers. Moreover, the current regulatory confusion and uncertainty diminishes consumers' acceptance of the time-share ownership while increasing the developers' risks and costs. Accordingly, it is in the public interest that states regulate through legislation the advertising, offering, sale, operation, and termination of time-shares. It is further in the public interest that states adopt a uniform time-share statute so that there will be a cohesive and consistent body of regulation covering all time-share estates.

> Without [an] "escape" mechanism, the time-shared developer may be creating a monster. At the end of its economic life, say forty years hence, the underlying real property will be useless as a vacation facility. It is desirable that the property then be sold and the proceeds distributed among the various owners of time-shared interests. Since *each* of the interval owners has a direct and distinct interest in the property, no disposition of the property may be made without consent of all in the absence of the right to partition.
>
> In a facility containing 100 units, each divided into two-week time periods, 2,500 separate consents would have to be obtained. Of what use is a potentially valuable piece of property with ownership fractionalized among large numbers of people, *all* of whom must agree to any disposition? And if the property may not be effectively disposed of, the owners will face continuing carrying costs. Many of them undoubtedly will refuse to pay for unusable property, and the final result will be a legally tangled and blighted parcel.

458 VA. CODE § 55-373 (1981); URETSA § 2-105, 7A U.L.A. 272 (1979 & Supp. 1983).

A. *General Considerations*

In designing the currently needed uniform protective legislation, the goals of comprehensiveness, clarity, and flexibility should be paramount. Otherwise the result will be increased confusion and the addition of a new set of problems to the existing ones. It is also critical that regulation of time-shares be placed under a single regulatory body in order to provide simplicity and regulatory stability. These objectives and the unique attributes of time-shares require specific legislation addressed to time-shares, and argue against the adoption of piecemeal regulation,[459] as well as against attempts to amend existing condominium or consumer protection legislation as some states have done.[460]

An additional objective is uniformity. The Commissioner's Prefatory Note to the Uniform Real Estate Time Share Act suggests a number of advantages to uniform legislation:

> Uniform legislation appears desirable for many reasons. Uniformity is important to the multi-state purchasers and national lenders who find it difficult to assess the appropriateness of varying real estate documents and financing arrangements in several states. Uniformity is particularly important with regard to time-share ownership because most real estate time-sharing involves recreational or resort property, and consequently more multi-state relationships exist than with other types of real estate. Moreover, multi-state exchange programs for time-share owners have been introduced and are being rapidly expanded. Consequently, uniformity is especially desirable in view of the fact that a higher proportion of purchasers in time-share properties is likely to be from outside the state in which the property is located than in any other type of real estate sales. The desirability of uniformity will become even more important as time-sharing, in all of its various forms, continues to become more widespread and as exchange networks become more and more popular.[461]

Absolute uniformity would be achieved through adoption by all states of the same legislation, although this appears to be unlikely, at least in the short term. Some degree of relative uniformity may nonetheless be achieved among states considering the adoption of time-share legislation if they examine the existing legislation for common patterns and use them whenever appropriate and desirable. The statutes of Florida and Hawaii are highly instructive as precedents since these states have had the greatest experience with time-

459 *See* note 222 *supra*.

460 *See* note 224 *supra*.

461 URESTA, *Commissioners' Prefatory Note*, 7A U.L.A. 259 (1979 & Supp. 1983).

shares. The importance of providing complete regulation suggests in addition a careful scrutiny of the statutes of all those states which have specifically adopted time-share legislation. These enactments are invaluable for identifying actual and potential problems that might otherwise be overlooked.

B. *Critical Areas*

This article has highlighted a number of the problems associated with time-shares, but legislation should not be limited to these problem areas. The statutes and model acts must be scrutinized to identify other actual and anticipated problems. At the same time it is desirable that efforts be made to anticipate and address future areas of confusion before they grow to problematic proportions.

This article has also outlined the current legislative solutions to these problem areas. It is evident that these solutions share a number of common features, yet each differs from one another. There is a rich but coherent pool of alternative solutions upon which a state can draw. By way of summary, we now outline the minimal set of problems that require attention and propose guidelines for their solution in one uniform act.

C. *Definition of Time-shares.*

Time-shares must be defined broadly to encompass all the existing forms as well as any new forms that might be developed. It is better to capture all forms within the regulatory net and then to exempt some specific offerings than to fail to regulate new or variant forms. Moreover, it is important to validate time-share interests so that they do not, as presently, act as "traps for the unwary." Attention should be paid to "definitional exemptions" as well as "transactional exemptions," that is, those based upon the nature of the offering.

D. *Regulatory Body*

Reducing regulatory confusion, uncertainty, and duplication by centralizing the regulatory authority in one governing body must be given high priority. Since time-shares are a form of real property and are typically sold by real estate agents, a state's real estate licensing board is the logical choice if it is given expanded authority. This is the approach taken by Florida, Georgia, Hawaii, Nebraska, Ne-

vada, South Carolina, Tennessee, and Virginia.[462] So long as adequate provision is made for the disclosure of information and the prohibition of deception, there should be no need for other state agencies to regulate time-shares. The regulatory body should be given sufficient authority and power to issue rules and regulations as well as to enforce the statute and its rules. It must have sufficient resources to accomplish these functions. An approach taken by a number of states, including Florida, Georga, Nevada, South Carolina, Tennessee, Virginia, and Washington,[463] is to impose registration fees which the regulatory body retains to defray the expenses of administering and enforcing the time-share statute. Georgia and Tennessee require that the fees charged and collected be sufficient to cover the cost of administering the statute.[464] Georgia, South Carolina, Tennessee, and Virginia authorize the regulatory body to accept grants-in-aid from any governmental source and to contract with agencies charged with similar functions in that state or other states.[465] South Carolina also authorizes the regulatory commission to receive grants-in-aid from any private source.[466]

E. *Offerings and Sales*

It is absolutely essential that adequate and accurate information be disclosed to prospective purchasers. The current legislation and the model acts provide a number of satisfactory models. Just as critical is the prohibition of fraud and other deceptive selling practices; otherwise, the required disclosures of information through registration are rendered pointless because purchasers are more likely to rely upon the seller's advertising and sales pitch than upon detailed and typically turgid registration statements. Moreover, registration statements are usually examined by purchasers only after the sale, if ever. Accordingly, it is necessary to provide a period of time in which the purchaser has an absolute right of cancellation. An explicit right of

462 FLA. STAT. ANN. § 721.05(6) (West Supp. 1983); GA. CODE § 44-3-162(2) (1983); HAWAII REV. STAT. § 514E-1 (Supp. 1982); NEB. REV. STAT. § 77-1702(2) (1980); S.C. CODE ANN. § 27-32-10(4) (Law. Co-op. Supp. 1982); TENN. CODE ANN. § 66-32-102(2) (1981); VA. CODE § 55-363 (1981).

463 FLA. STAT. ANN. § 721.27 (West Supp. 1983); GA. CODE § 44-3-195(a) (1983); 1983 Nev. Stat. ch. 401, § 36; S.C. CODE ANN. § 27-32-150 (Law. Co-op. Supp. 1982); TENN. CODE ANN. § 66-32-123(b) (1981); VA. CODE § 55-392(A) (1981); 1983 Wash. Legis. Serv. ch. 22, § 29 (West).

464 GA. CODE § 44-3-195 (1983); TENN. CODE ANN. § 66-32-123(3) (1981).

465 GA. CODE § 44-3-198(c) (1983); S.C. CODE ANN. § 27-32-160 (Law. Co-op. Supp. 1982); TENN. CODE ANN. § 66-32-121(c) (1981); VA. CODE § 55-396(B)(1981).

466 S.C. CODE ANN. § 27-32-160 (Law. Co-op. Supp. 1982).

rescission for fraud should also be granted. Escrow accounts should be required to cover the return of deposits or the purchase price for the period of cancellation. The statutes of Florida, Georgia, South Carolina, Tennessee, and Virginia address these issues.[467] Another alternative is the use of surety bonds, as required by the Florida, Georgia, and Hawaii statutes.[468] Additional remedies, such as punitive damages, attorney's fees, and criminal penalties should be considered.

Provisions should be made for transactional exemptions based upon the nature or type of offering. For example, exemptions should be provided for gratuitous transfers, dispositions by foreclosure, whenever public disclosure is provided under the Securities Act of 1933 or the Federal Interstate Land Sales Full Disclosure Act, and transfers of a time-share unit by an owner who is not the developer or an agent of the developer.

F. *Management*

It is essential that management and maintenance duties be statutorily imposed. Furthermore, provision should be made for these statutory duties to extend to parties who acquire the seller's (i.e., the developer's) interest in the time-share facilities or accommodations.

G. *Relations Among Time Share Owners*

The various legal issues concerning the relations among time-share owners need to be addressed. These include, but are not limited to, tort liability; liability for tax and other liens; the right of partition; resale of time-share units; exchange expenses and liabilities; voting rights, including the right of initiative, referendum, and recall; financing time-shares; appraisal of time-shares; and termination of time-shares. The existing legislation and the model acts deal in varying ways and extents with these matters. URETSA is the most comprehensive.

H. *Conclusion*

Time-sharing promises to keep growing as a segment of the real estate industry. Consumer and developer protection is necessary to

467 FLA. STAT. ANN. § 721.09 (West Supp. 1983); GA. CODE § 44-3-175 (1983); S.C. CODE ANN. 27-32-95 (Law. Co-op. Supp. 1982); TENN. CODE ANN. § 66-32-113 (1981); VA. CODE § 55-375 (1981).

468 FLA. STAT. ANN. § 721.08(d) (West Supp. 1983); GA. CODE § 44-3-175(c) (1983); HAWAII REV. STAT. § 514E-10 (Supp. 1980).

provide the market with attractive alternatives to hotel accommodations and second-home purchases. Time-sharing must be regulated in a uniform, thorough, clear, and flexible manner to handle the anticipated volume and problems of the nationwide time-share market. As evidenced by the current problems and the increasing number of states enacting statutes, regulation by legislation is the preferred approach. This regulation should facilitate the growth and success of time-shares in the real estate industry, and at the same time to protect the legitimate interests of all interested parties.