

1 **H. B. 2842**

2
3 (By Delegates Boggs, Swartzmiller, Ferro,
4 Caputo and D. Poling)

5 (By Request of the State Auditor)

6 [Introduced March 6, 2013; referred to the
7 Committee on the Judiciary.]

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9
10 A BILL to amend and reenact §36-9-3 and §36-9-23 of the Code of
11 West Virginia, 1931, as amended, all relating to clarifying
12 that time-sharing plans, accommodations and facilities are
13 subject to regulation by the Division of Land Sales and
14 Condominiums; and granting the Division of Land Sales and
15 Condominiums the authority to seek additional relief in
16 circuit courts.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §36-9-3 and §36-9-23 of the Code of West Virginia, 1931,
19 as amended, be amended and reenacted to read as follows:

20 **ARTICLE 9. WEST VIRGINIA REAL ESTATE TIME-SHARING ACT.**

21 **§36-9-3. Scope.**

22 (a) This article applies only to time-sharing plans consisting
23 of more than seven time-sharing periods other than condominium fee
24 ownership time-sharing plans, except that sections six, ten,

1 eleven, twelve, thirteen, seventeen, twenty, twenty-one, twenty-
2 three, twenty-four, twenty-five and twenty-six of this article
3 shall apply to all time-sharing plans.

4 (b) All time-sharing accommodations or facilities which are
5 located outside the state but offered for sale in this state shall
6 be subject to all of the provisions of this article except sections
7 eleven through sixteen and twenty through ~~twenty-three~~ twenty-two.

8 (c) Notwithstanding other provisions of this article, either
9 expressed or implied, to the contrary, it is the legislative intent
10 that nothing herein be deemed to alter the existing procedure for
11 the assessment and collection of ad valorem taxes on accommodations
12 or facilities subject to a time-sharing plan.

13 **§36-9-23. Regulation by division.**

14 The division of land sales and condominiums is hereby created
15 in the office of the State Auditor to administer the provisions of
16 this article. The division has the power and authority to enforce
17 and ensure compliance with the provisions of this article. In
18 performing its duties, the division shall have the following powers
19 and duties:

20 (a) To aid in the enforcement of this chapter, the division
21 may make necessary public or private investigations within or
22 outside this state to determine whether any person has violated or
23 is about to violate this article;

24 (b) The division may require or permit any person to file a

1 written statement under oath or otherwise, as the division
2 determines, as to the facts and circumstances concerning a matter
3 under investigation;

4 (c) For the purpose of any investigation under this chapter,
5 the director of the division or any officer or employee designated
6 by the director may administer oaths or affirmations, subpoena
7 witnesses and compel their attendance, take evidence, and require
8 the production of any matter which is relevant to the
9 investigation, including the identity, existence, description,
10 nature, custody, condition and location of any books, documents or
11 other tangible things and the identity and location of persons
12 having knowledge of relevant facts or any other matter reasonably
13 calculated to lead to the discovery of material evidence. Upon
14 failure to obey a subpoena or to answer questions propounded by the
15 investigating officer and upon reasonable notice to all persons
16 affected thereby, the division may apply to the circuit court for
17 an order compelling compliance;

18 (d) The division may prepare and disseminate a prospectus and
19 other information to assist prospective purchasers, sellers and
20 managing entities of time-sharing plans in assessing the rights,
21 privileges and duties pertaining thereto; and

22 (e) Notwithstanding any remedies available to purchasers, if
23 the division has reasonable cause to believe that a violation of
24 this chapter has occurred, the division may institute enforcement

1 proceedings in its own name against any developer, exchange
2 program, seller, managing entity, association or other person as
3 follows:

4 (1) The division may permit any person whose conduct or
5 actions may be under investigation to waive formal proceedings and
6 enter into a consent proceeding whereby an order, rule or letter of
7 censure or warning, whether formal or informal, may be entered
8 against that person;

9 (2) The division may issue an order requiring a developer,
10 exchange program, seller, managing entity, association or other
11 person, or other assignees or agents, to cease and desist from an
12 unlawful practice under this article and take such affirmative
13 action as in the judgment of the division will carry out the
14 purposes of this article;

15 (3) The division may bring an action in circuit court for
16 declaratory or injunctive relief and for other appropriate relief;

17 (4) (A) The division may impose a civil penalty against any
18 developer, exchange program, seller, managing entity, association
19 or other person for a violation of this chapter. A penalty may be
20 imposed on the basis of each day of continuing violation, but in no
21 event shall the penalty for any offense exceed \$10,000. All
22 accounts collected shall be deposited with the treasurer to the
23 credit of the West Virginia real estate time-sharing trust fund;

24 (B) If a developer, exchange program, seller or other person

1 fails to pay the civil penalty, the division shall thereupon issue
2 an order directing that such developer, exchange program, seller or
3 other person cease and desist from further operation until such
4 time as the civil penalty is paid; or the division may pursue
5 enforcement of the penalty in a court of competent jurisdiction.
6 If an association or managing entity fails to pay the civil
7 penalty, the division shall thereupon pursue enforcement in a court
8 of competent jurisdiction;

9 (5) In order to permit the developer, exchange program,
10 seller, managing entity, association or other person an opportunity
11 either to appeal such decision administratively or to seek relief
12 in a court of competent jurisdiction, the order imposing the civil
13 penalty or the cease and desist order shall not become effective
14 until twenty days after the date of such order; and

15 (6) Any action commenced by the division shall be brought in
16 the county in which the violation occurred.

NOTE: The purpose of this bill is to clarify that time-sharing plans, accommodations and facilities are subject to regulation by the Division of Land Sales and Condominiums. The bill grants the Division of Land Sales and Condominiums the authority to seek relief, in addition to declaratory or injunctive relief, in circuit courts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.