

H. B. 2842

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CAPUTO AND POLING, D.)

[BY REQUEST OF THE STATE AUDITOR'S OFFICE]

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

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

Be it enacted by the Legislature of West Virginia:

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

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

§36-9-3. Scope.

1 (a) This article applies only to time-sharing plans consisting
2 of more than seven time-sharing periods other than condomin-
3 ium fee ownership time-sharing plans, except that sections six,
4 ten, eleven, twelve, thirteen, seventeen, twenty, twenty-one,
5 twenty-three, twenty-four, twenty-five and twenty-six of this
6 article shall apply to all time-sharing plans.

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

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

§36-9-23. Regulation by division.

1 The division of land sales and condominiums is hereby
2 created in the office of the State Auditor to administer the

3 provisions of this article. The division has the power and
4 authority to enforce and ensure compliance with the provisions
5 of this article. In performing its duties, the division shall have
6 the following powers and duties:

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

11 (b) The division may require or permit any person to file a
12 written statement under oath or otherwise, as the division
13 determines, as to the facts and circumstances concerning a
14 matter under investigation;

15 (c) For the purpose of any investigation under this chapter,
16 the director of the division or any officer or employee designated
17 by the director may administer oaths or affirmations, subpoena
18 witnesses and compel their attendance, take evidence, and
19 require the production of any matter which is relevant to the
20 investigation, including the identity, existence, description,
21 nature, custody, condition and location of any books, documents
22 or other tangible things and the identity and location of persons

23 having knowledge of relevant facts or any other matter reason-
24 ably calculated to lead to the discovery of material evidence.
25 Upon failure to obey a subpoena or to answer questions pro-
26 pounded by the investigating officer and upon reasonable notice
27 to all persons affected thereby, the division may apply to the
28 circuit court for an order compelling compliance;

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

33 (e) Notwithstanding any remedies available to purchasers, if
34 the division has reasonable cause to believe that a violation of
35 this chapter has occurred, the division may institute enforcement
36 proceedings in its own name against any developer, exchange
37 program, seller, managing entity, association or other person as
38 follows:

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

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

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

52 (4)(A) The division may impose a civil penalty against any
53 developer, exchange program, seller, managing entity, associa-
54 tion or other person for a violation of this chapter. A penalty may
55 be imposed on the basis of each day of continuing violation, but
56 in no event shall the penalty for any offense exceed \$10,000. All
57 accounts collected shall be deposited with the treasurer to the
58 credit of the West Virginia real estate time-sharing trust fund;

59 (B) If a developer, exchange program, seller or other person
60 fails to pay the civil penalty, the division shall thereupon issue
61 an order directing that such developer, exchange program, seller
62 or other person cease and desist from further operation until such
63 time as the civil penalty is paid; or the division may pursue

64 enforcement of the penalty in a court of competent jurisdiction.

65 If an association or managing entity fails to pay the civil penalty,

66 the division shall thereupon pursue enforcement in a court of

67 competent jurisdiction;

68 (5) In order to permit the developer, exchange program,

69 seller, managing entity, association or other person an opportu-

70 nity either to appeal such decision administratively or to seek

71 relief in a court of competent jurisdiction, the order imposing the

72 civil penalty or the cease and desist order shall not become

73 effective until twenty days after the date of such order; and

74 (6) Any action commenced by the division shall be brought

75 in 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.

