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CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION AND  
MANAGEMENT OF TIMESHARE PROPERTIES; FOR THE  
PROTECTION OF CONSUMERS UNDER TIMESHARE AND POINTS  
BASED-CONTRACTS; AND FOR INCIDENTAL AND CONNECTED  
PURPOSES**

**THE TIMESHARE BILL, 2014**  
**[MEMORANDUM OF OBJECTS AND REASONS]**

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**THE TIMESHARE BILL, 2014**

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ENACTED by the Legislature of the Cayman Islands.

**PART 1- PRELIMINARY**

1. This Law may be cited as the Timeshare Law, 2014. Short title
2. (1) In this Law - Interpretation
  - “Board” means the Hotels Licensing Board established by section 7 of the Tourism Law (1995 Revision); (1995 Revision)
  - “Class A bank” means a bank licensed under section 6 of the Banks and Trust Companies Law (2013 Revision) to conduct banking business within and outside the Islands but subject to such conditions as may be imposed by the Cayman Islands Monetary Authority; (2013 Revision)
  - “consumer” includes a person who is a party to a timeshare or points-based contract who has given valuable consideration or is liable therefor in exchange for the acquisition of a timeshare interest;
  - “Director” means the Director of Tourism appointed under the Tourism Law (1995) Revision; (1995 Revision)

“exchange program” means a program under which participants in a timeshare plan have the right or option to exchange a right to use property within the timeshare plan for a right to use property under another timeshare plan;

“licence” means a timeshare licence issued under section 17 to carry out timeshare business;

“licensee” means the holder of a timeshare licence;

“managing agent” means a person appointed pursuant to this Law to undertake the duties, responsibilities and obligations of the management of a timeshare property and who holds a licence;

“non-disturbance clause” means one or more legally binding provisions of a contract between a person having an interest in timeshare property under a charge, security agreement or other financial instrument and a supplier-

- (a) requiring the person to ensure that in the event of a receivership, sale or other transfer of the timeshare property caused by the exercise of any right of the person, the receiver, consumer or other transferee assumes the obligations of the supplier under this Law and the contract to current and future consumers who have timeshare interests in the property;
- (b) providing that the timeshare interests of current and future consumers in the timeshare property take priority over the person’s interest in the property; and
- (c) restraining the person from interfering, when exercising rights in relation to the person’s interest or any financial encumbrance associated with it, with the use or enjoyment of the timeshare property by current and future consumers;

“ownership interest” means a legal interest in property, and includes a beneficial interest in a trust, whether held directly or as a shareholder or member of a body corporate;

“points” means points, credits or similar equivalencies that are assigned to a timeshare interest by or under a timeshare plan;

“points-based contract” means a contract in which a consumer acquires points and rights or options to exchange the points for a right to use, occupy or possess real or personal property, whether located in the Islands or not-

- (a) as part of a timeshare plan that provides for other participants in the plan to acquire and exchange points in the same manner; and
- (b) for a period of time determined under the timeshare plan, whether or not the consumer receives any other interest, right, privilege or benefit under the contract;

“proprietor” means-

- (a) a person who holds an absolute title or a leasehold interest for a term of forty years or such number of years, being not less than five years more than those constituting the timeshare interests, whichever is the greater term, in the real property comprising the timeshare property; and
- (b) who is in the business of creating and selling his own timeshare interests in the timeshare property and otherwise engages in the activities of a timeshare business;

“supplier” means a proprietor and any other person who, whether directly or through an employee, representative or agent, engages in the activities of a timeshare business but does not include a managing agent;

“timeshare business” means the activity of offering, soliciting, negotiating or concluding timeshare contracts or points-based contracts and developing or managing a timeshare property;

[“timeshare interest” means an ownership interest in real or personal property, or a right to use, occupy or possess such property, received by a consumer under a timeshare contract or a points-based contract;]<sup>1</sup>

“timeshare plan” means a plan that provides participants in the plan with rights or options to use, occupy or possess real or personal property, and includes the following-

- (a) a plan under which a right to use, occupy or possess a specific property circulates among the participants; and
- (b) a plan that provides the participants with a right or option to exchange points for the right to use, occupy or possess real or personal property;

“timeshare contract” means a contract under which a consumer acquires a timeshare interest;

“timeshare property” means any premises or complex of premises (whether contiguous or not) and the grounds appurtenant thereto that are subject to a timeshare plan;<sup>2</sup> and

“timeshare unit” means that part of a timeshare property intended for the use and occupation of a consumer during his timeshare period.

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<sup>1</sup> See definition in Alberta Regulations; cf Bahamian definition in section 2- “time-sharing interest” means the right to use and occupy a unit, which may be coupled with the right to use other facilities or other rights and privileges, pursuant to a time-sharing plan

<sup>2</sup> See definition of time-sharing project in Bahamian Act

**PART 2- TIMESHARE CONTRACTS AND POINTS-BASED  
CONTRACTS**

Contents of contracts	<p>3. (1) A supplier shall provide a consumer with a written timeshare contract or a points-based contract and such contracts shall, at a minimum, include the information set out in paragraph (1) of the Schedule.</p> <p>(2) Paragraphs 2 to 5 of Schedule 1 shall apply for the purposes of this Law.</p> <p>(3) The Cabinet may, by order, amend Schedule 1.</p>
Contract to be signed	<p>4. (1) A supplier shall not enter into a timeshare contract or a points-based contract unless it is signed by the supplier or the supplier's agent and by the consumer, and the name of each signatory to the contract must be printed legibly beside or below the signature.</p> <p>(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.</p>
Contract to be provided to consumer	<p>5. (1) A supplier who enters into a timeshare contract or a points-based contract with a consumer shall provide the consumer with a copy of the signed contract at the time the contract is signed.</p> <p>(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.</p>
Right to cancel within one year	<p>6. A timeshare contract and a points-based contract shall contain a provision allowing the consumer to cancel the contract at any time within one year after the date on which the contract is entered into if-</p> <ul style="list-style-type: none"><li>(a) the supplier does not hold a valid licence at the time the contract is entered into and is not excluded by section 16 from the requirement to hold a licence;</li><li>(b) the supplier does not include the information required by section 3(1)(a) to (n) in the contract;</li><li>(c) the contract is not signed by the supplier or by the consumer; or</li><li>(d) the supplier does not provide a copy of the contract to the consumer as required by section 5.</li></ul>
Absolute cancellation right	<p>7. (1) A timeshare contract and a points-based contract shall contain a provision allowing the consumer to cancel the contract, without any reason at any time within ten days after the date on which the contract is entered into.</p> <p>(2) A timeshare contract and a points-based contract is cancelled on the giving of a notice of cancellation in accordance with section 8.</p>



8. (1) A consumer who cancels a timeshare or a points-based contract shall give a written notice of cancellation to the supplier and the consumer shall state the reason for the cancellation in the notice of cancellation. Method of cancellation

(2) A consumer may send a notice of cancellation by serving the notice to the supplier in person or by-

- (a) registered mail sent to the most recent business address;
- (b) e-mail sent to the most recent e-mail address; or
- (c) facsimile sent to the most recent facsimile number,

as provided by the supplier to the consumer under section 3(1)(b) or (4).

9. (1) Where a timeshare contract provides for the transfer of real property, a supplier shall hold in trust all funds received from the consumer in consideration for the transfer of the property until- Funds to be held in trust

- (a) the cancellation period provided by section 7(1);
- (b) construction of the timeshare property is complete; or
- (c) the consumer has a legal right to use or occupy the property,

whichever is latest.

(2) A supplier shall-

- (a) within two business days after receiving funds referred to in subsection (1), deposit the funds into a trust account at a "Class A" bank, a credit union or trust corporation in the Islands; and
- (b) continue to hold the funds in trust until they are releasable under subsection (1)(a), (b) or (c).

(3) Funds held in trust under this section shall not be commingled with non-trust money; and a supplier who contravenes this section commits an offence and is liable on conviction to a fine of one hundred thousand dollars, to imprisonment or two years or to both.

10. (1) A supplier shall not, in respect of a timeshare contract or a points-based contract with a consumer, make a representation to the consumer that differs materially from the contract. Inconsistent representations

(2) A supplier who contravenes this section commits an offence and is liable on conviction to a fine of one hundred thousand dollars, to imprisonment or two years or to both.

11. (1) Subject to subsections (2) and (3), within fifteen days after a timeshare contract or points-based contract is cancelled, the supplier shall refund to the consumer all money paid by the consumer. Obligation of supplier on cancellation

(2) If a points-based contract is cancelled after the consumer has exercised a right or option under the contract, the supplier is entitled to reasonable

compensation for the exercise of the right or option by the consumer, and such compensation shall be agreed between the parties and deducted from the refund payable under subsection (1).

(3) Where a timeshare contract has been cancelled and the consumer has used the property under the timeshare contract, the supplier is entitled to reasonable compensation for the use of the property and such compensation shall be agreed between the parties and deducted from the refund payable under subsection (1).

(4) A supplier who fails to refund to the consumer moneys paid by the consumer under the contract commits an offence and is liable on summary conviction to a fine of fifty thousand dollars, to imprisonment for four years, or to both.

Recovery of refund

12. Where a supplier fails to refund to a consumer all moneys paid by the consumer under the contract in accordance with section 11, the consumer may recover the money from the supplier as a contract debt in a court of competent jurisdiction.

### **PART 3-REGISTRATION OF TIMESHARE AND POINTS-BASED CONTRACTS**

Registration of consumer rights.

13. (1) Within sixty days of the execution of a timeshare contract or points-based contract, the proprietor or his managing agent shall apply to the Registrar to register the rights of the consumer.

(2) On an application under subsection (1), the Registrar shall, upon receipt of a duly executed contract, specify the name of the consumer of the timeshare interests, enter, upon payment of the prescribed fee, such particulars as may be prescribed in a register to be maintained by the Registrar to be called the "Register".

(3) The Register shall be open to inspection by any member of the public at all reasonable times upon payment of such fee as may be prescribed.

(4) The Registrar shall, on the application of a consumer, proprietor or managing agent, make such alterations to the particulars in the Register as appear necessary to the Registrar by virtue of the application.

(5) A proprietor shall provide a consumer with a written certificate or other evidence of such consumer's registered timeshare interest within sixty days after execution, and the form of such certificate or other document shall be as prescribed and shall be provided to the proprietor by the Registrar.

(6) A proprietor or managing agent who contravenes the provisions of subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for one year or to both.

(7) The Registrar in this section means a Registrar of Timeshares who is an officer of the Department responsible for tourism and who is designated as such.

14. (1) Upon the registration of a person under section 13 as a consumer with a timeshare interest, a charge shall be created on the timeshare property and all estates and interests in such property in favour of the consumer to the extent and for the duration of such consumer's interest therein.

Effect of registration of consumer's rights

(2) A charge upon the timeshare property arising under subsection (1) shall prevail against any subsequent consumer of the same whether or not he purchased in good faith, for value, and without actual notice of such charge.

15. (1) Subject to subsection (2), notwithstanding any other law to the contrary-

Protection of purchaser from other estates and interests

- (a) in no event shall the exercise of power of sale or pursuit of other right or remedy under a charge or other debt instrument covering all or any portion of a timeshare property (whether covering real or personal property or both) extinguish or impair a purchaser's timesharing interest in the same timesharing property, irrespective of whether any such charge or other debt instrument is given or filed for record prior to completion of any such timeshare interest;
- (b) in no event shall the determination of any leasehold estate in real property subject to a timesharing property extinguish or impair a purchaser's timesharing interest, irrespective of whether any such leasehold estate was created prior to completion of any such timeshare interest; and
- (c) a trustee shall not, in any proceedings under the Bankruptcy Law (1997 Revision) in which a timeshare property is included among a bankrupt's property, be permitted to disclaim any timeshare interest.

(1997 Revision)

(2) Nothing in this Law is intended to prohibit the exercise of a power of sale or pursuit of other right or remedy pursuant to any law relating to-

- (a) any debt instrument covering a purchaser's timeshare interest that was given at the time of completion of any such timeshare interest in order to secure all or any portion of the unpaid purchase price thereof (including any future advances made thereafter under any such debt instrument or other instrument between the same parties or their respective successors); or
- (b) any charge or lien upon a timeshare interest arising out of any law or by contract whereby any such charge or lien arises or is given in order to secure payment of a purchaser's pro rata share

of operating, maintenance or similar expenses to which such purchaser is subject under a timeshare plan.

#### PART 4- TIMESHARE LICENCE

[Application of this Part 16. This Part does not apply in respect of the offering, soliciting, negotiating or concluding of timeshare contracts or points-based contracts by a real estate agent<sup>3</sup> who is acting in the course of his profession as a real estate agent.]

Timeshare licences 17. (1) A person shall not develop or operate a timeshare property as a proprietor of that property, except under and in accordance with the terms of a proprietor's timeshare licence granted for that purpose by the Board.

(2) A person shall not engage in the -

- (a) sale of timeshares;
- (b) advertising of timeshares;
- (c) marketing of timeshares; or
- (d) offering of timeshares for sale,

except under and in accordance with a supplier's timeshare licence granted for that purpose by the Board.

(3) A person shall not manage a timeshare property except under and in accordance with the terms of a managing agent's timeshare licence granted for that purpose by the Board.

(4) The Board may grant a licence under this section subject to such terms and conditions as may be specified in the licence or as may be prescribed.

(5) A person may hold more than one class of licence.

Application for licence 18. A person may apply for a licence by submitting an application in the prescribed form to the Board through the Director.

Term of licence and renewal 19. (1) A licence shall be for a period not exceeding two years and may be renewed in accordance with this Law.

(2) An application for a renewal shall be made in the prescribed form and submitted to the Board through the Director.

(3) If the Board is satisfied that the applicant continues to meet the requirement for the issue of a licence, the Board shall renew the licence for a period not exceeding two years.

Proprietor divesting of a licence 20. A proprietor may voluntarily divest himself of his licence at such time as the timeshare property is completely sold out and the proprietor no longer retains any estate, right, title or interest therein.

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<sup>3</sup> Do real estate agents sell timeshares in Cayman?

21. (1) Where a proprietor divests himself of his licence or dies, the Board may, upon an application in that behalf made by any person claiming the right to succeed to such licence, transfer the licence to that person, subject to such terms and conditions as the Board may see fit to impose.

Transfer of a licence

(2) Before transferring any licence under subsection (1), the Board shall, where practicable, give to the licensee or to his personal representatives a reasonable opportunity to make any representations that either may wish to make in relation to any such application, and shall take into account any representations so made by either of them or on his behalf.

(3) A managing agent's and a supplier's timeshare licence is not transferable.

22. (1) Subject to subsection (2), the Board may, of its own motion or at any time upon an application by a licensee, vary any terms of a licence.

Variation of a licence

(2) The Board shall not of its own motion vary any of the specified terms without first giving to the licensee no less than seven days' notice delivered to the business address of the licensee of the intention to make such variation and shall take into account any representations made by or on behalf of the licensee.

23. (1) Without prejudice to any other provisions of this Law, where the Board is satisfied that in relation to any timeshare property, any provision of law or any condition of a licence, is alleged to be contravened-

Power of the Board to suspend or revoke licence

- (a) the Board may serve upon the licensee a notice specifying the provision of law or the condition of the licence that is alleged to be contravened and-
  - (i) requiring the licensee to comply or ensure compliance therewith to the satisfaction of the Board; or
  - (ii) requiring that the Board be satisfied as to why the licence should not be suspended or revoked within such reasonable period as the Board may specify in the notice;

and, if at the expiry of such period the licensee has failed to so comply or ensure compliance therewith or to so satisfy the Board, the Board may suspend or revoke the licence; or

- (b) if the Board is satisfied that such alleged contravention is likely to endanger the health or safety of any of the persons in or likely to use the facilities of the timeshare property, the Board may forthwith suspend or revoke the licence granted in respect thereof until such time as it is satisfied that such contravention has ceased.

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

(3) The Board may also revoke a licence if it is satisfied that the premises to which the licence relates have ceased to be operated as a timeshare property.

Suspension of managing agent's licence

24. (1) Where, as a result of an inspection made under section 35, the Board determines that it is in the public interest that the licence of a managing agent should be suspended, the Board may suspend the licence of the managing agent and, by notice in writing, require the proprietor within such time as is specified in the notice to appoint, subject to its approval, an interim or other managing agent for the orderly continuation of the management of the timesharing property.

(2) If a proprietor fails to comply with the requirements of the notice under subsection (1), any interested party may apply to the Grand Court for an order appointing an interim or other managing agent who shall continue in that office until the Board grants a licence to another managing agent; and all expenses incurred in connection with the appointment of an interim managing agent shall be payable out of any moneys provided by the consumers for the operation and maintenance of the timeshare property.

(3) A proprietor who fails to comply with the requirements of a notice under subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars, and in addition, to a fine of one thousand dollars, for each day during which such offence continues, or to imprisonment for one year or to both such fine and imprisonment.

Power to appoint interim managing agent

(2004 Revision)

25. Notwithstanding anything to the contrary in this Law, where-

- (a) a managing agent's licence has been suspended under this Law, except as under section 24;
- (b) a chargee has exercised his power of sale acquired pursuant to the Registered Land Law (2004 Revision), on any real property comprising the timeshare property; or
- (c) the term of a leasehold estate in the timeshare property has determined,

and there is no managing agent to manage the timeshare property, any interested party may apply to the Grand Court for an order appointing an interim managing agent for a period not exceeding three years for the orderly continuation of the management of the timeshare property; and all expenses incurred in connection with the appointment of an interim managing agent shall be payable out of any moneys provided by the consumers for the operation and maintenance of the timeshare property.

Surrender of revoked or suspended licence

26. (1) Where a licence has been revoked or suspended under this Law, the Board shall serve a notice upon the licensee notifying him of the revocation or suspension and calling upon him to surrender the licence to the Board within seven days of the date of the notice.

(2) A licensee who fails to comply with a notice under subsection (1) commits an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or to both such fine and imprisonment.

27. (1) An applicant shall pay the fee specified in Schedule 2 for the- Fees  
(a) issue of a licence;  
(b) transfer of a licence; and  
(c) renewal of a licence.

(2) The Cabinet may, by order, amend Schedule 2.

28. (1) A proprietor's timeshare licence shall not be issued, renewed or transferred unless the applicant provides security to the Board in the prescribed form and amount. [Security

(2) Before the term of a proprietor's timeshare licence expires, the Board may, if the Board considers additional security to be necessary, require the licensee to provide additional security in the prescribed amount.]

29. (1) A licensee shall not represent, expressly or by implication, that a timeshare business licence is an endorsement or approval of the licensee by the Government. Representations

(2) Subsection (1) does not preclude a licensee from representing that the licensee is licensed under this Law.

(3) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

#### **PART 5- MANAGEMENT OF TIMESHARE PROPERTY**

30. (1) A proprietor shall, before the first sale of a timeshare interest within a timeshare property, create or provide for a managing agent, which may be either the proprietor, a separate manager or management firm, a board of the consumers or a combination of all of those persons. Creation of managing agent

(2) A proprietor shall be considered the managing agent of the timeshare plan during the marketing of the timeshares and before the appointment of a timeshare managing agent unless and until such proprietor notifies the Board through the Director in writing that a different party will serve as managing agent, which party has acknowledged in writing that it has accepted the duties and obligations of serving as managing agent; and in the event that other party subsequently resigns or otherwise ceases to perform its duties as managing agent, the proprietor shall again be considered the managing agent until the proprietor arranges for a new managing agent pursuant to this subsection.

(3) Notwithstanding the appointment of a managing agent, the proprietor shall continue to be jointly and severally responsible for the obligations of the managing agent under this Law and under any contract with a consumer unless and until-

- (a) the proprietor no longer retains any estate, right, title or interest in or to the timeshare property; and
- (b) the proprietor has voluntarily divested himself of his licence.

Fiduciary relationship

31. A managing agent shall act in the capacity of a fiduciary to the consumers.

Duties of managing agent

32. (1) The duties of a managing agent shall include-

- (a) the management and maintenance of all accommodations and facilities constituting the timeshare property;
- (b) the collection of all assessments for common expenses;
- (c) providing each year to all consumers an itemised annual budget which shall include all estimated revenues and expenses and be in such form as may be prescribed;
- (d) the maintenance of all books and records concerning the timeshare and points-based contracts and the timeshare property so that-
  - (i) all such books and records are reasonably available for inspection by any consumer or the authorised agent of such consumer;
  - (ii) all such books and financial records of the timeshare and points-based contracts plan and of the timeshare property are maintained in accordance with International Accounting Standards; and
  - (ii) all consumers are notified of the location of the books and records and the name and address of the custodian in the copy of the annual budget provided to them pursuant to paragraph (c);
- (e) scheduling occupancy of the timeshare units, when consumers are not already entitled to use specific timeshare periods, so that all consumers will be provided the use and possession of the accommodations and facilities of the timeshare and points-based contract with respect to which they have purchased;
- (f) performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities as provided in the timeshare and points-based contract and as advertised; and
- (g) maintaining among its records and providing to the Board upon request a complete list of the names and addresses of all consumers.



- (2) The records referred to in subsection (1)(d) shall include-
  - (a) every timeshare contract and every points-based contract entered into, including cancelled contracts;
  - (b) any assessment of the monetary value of a timeshare interest sold under any timeshare contract or points-based contract entered into by the licensee and, if applicable, the number of points assigned to the interest;
  - (c) all marketing and advertising materials used in relation to a timeshare plan, timeshare contract or points-based contract; and
  - (d) all refunds given to consumers in respect of timeshare contracts and points-based contracts.

(3) In addition to the records specified in subsection (1) every proprietor and managing agent and former proprietor and managing agent shall create and maintain complete and accurate financial records of its operations under this Law for at least seven years after the records are made.

33. (1) A managing agent may deny the use of the accommodations and facilities of the timeshare property to any consumer who is delinquent in the payment of any assessments made by the managing agent against such consumer for common expenses.

Denial of use due to delinquency

(2) Any denial of use shall also extend to parties claiming under any such delinquent consumer.

(3) For purposes of this section, a consumer shall be considered delinquent in the payment of a given assessment only upon the expiration of sixty days after the date the assessment is billed to the consumer or upon the expiration of sixty days after the date the assessment is declared to be due, whichever is later.

34. (1) A proprietor shall provide and maintain for the benefit of all consumers and their guests public liability insurance in respect of the accommodations and facilities to be used under the timeshare plan, and such insurance shall be in an amount of not less than [two million dollars] or such greater amount as the Board may see fit to impose from time to time.

Proprietor to provide insurance

(2) A proprietor shall keep all the property of the timeshare property of an insurable nature insured against loss or damage in an amount not less than the replacement cost of such property.

(3) A valuation of the re-instatement cost of a timeshare property that is required to be insured under this section shall be obtained by the proprietor, at least once every three years and the valuation shall be carried out by a person who is a qualified chartered surveyor.

(4) A proprietor may delegate or assign to a managing agent responsibility for compliance with the requirements of subsections (1), (2) and (3), but the proprietor shall remain jointly and severally responsible for such compliance until he is no longer involved with the timeshare property as contemplated in section 30(3).

(5) A proprietor or managing agent who contravenes any of the provisions of this section commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for two years or to both.

#### PART 6-INSPECTION

Inspection of timeshare property

35. The Board shall make or cause to be made periodic inspections with such scope and frequency as it shall determine of every timeshare property in order to ascertain whether there is compliance with this Law and for the purpose of investigating any complaints made by an aggrieved person regarding the application of this Law to any particular timeshare property.

Power of entry and inspection without warrant

36. (1) Without prejudice to any other Law but subject to subsection (2), the Director or any other public officer duly authorised by the Board for such purposes, an officer of the Ministry responsible for health, an officer of the department of responsible for planning or a police or fire service officer, may, without a warrant, enter upon and inspect any premises licensed as a timeshare property.

(2) Before an inspection is carried out under the authority of section 35 or of subsection (1), the proprietor of the timeshare property to be inspected, or the management agent or a servant of the managing agent, shall be given notice of the intention to carry out the inspection as may, in the circumstances of the case and having regard to the objects of the inspection, be reasonable; and the proprietor, his management agent or servant shall be given an opportunity to be present or have some person selected by him to be present at the inspection.

(3) If any person authorised under the provisions of section 35 or of subsection (1) has reason to believe that a contravention of any provision of law is being committed on a timeshare property and that the contravention is of such a nature that there is a likelihood of danger therefrom to the safety or health of persons therein if such contravention is not promptly remedied, then that person may give such directions to the person for the time being in charge of the premises as will, in his opinion, prevent or minimise such danger.

(4) Further to subsection (3), a person authorised under section 35 or subsection (1) may require persons or classes of persons in a timeshare property as he may specify, to vacate the premises or such part of the premises as he may specify until such danger is, in his opinion, prevented or minimised and may, if such directions or requirements are not carried out, call to his assistance such

persons as he may think fit for the purpose of enforcing compliance therewith or carrying out such works of an emergency nature as he may think necessary.

(5) Any person giving directions or making requirements under the authority of subsection (3) shall forthwith report the action he has taken to the Board.

37. Where it has been made to appear to a magistrate that premises not licensed as a timeshare property are being operated as such, he may issue a warrant to a police officer of or above the rank of sergeant authorising him, with or without assistance, to enter upon and inspect the premises and to conduct such enquiries therein for the purpose of determining whether there is a contravention of this Law.

Power of magistrate to issue warrant to enter premises

#### PART 7- OFFENCES

38. A supplier shall not do any of the following-

Offences

- (a) in respect of a timeshare contract or a points-based contract, make any false or misleading representation regarding the contents of the contract, the timeshare plan, any exchange program or any interest, right, privilege, benefit or obligation of a consumer under the contract or the Law or its regulations;
- (b) misrepresent the availability of any prize, gift or other promotional item or discount offered in connection with a timeshare contract or a points-based contract;
- [(c) offer, solicit, negotiate or conclude a timeshare contract if A exceeds B, where-
  - (i) A is the combined total amount of time that all participants in the timeshare plan are entitled to use, occupy or possess the timeshare property in any one-year period, and
  - (ii) B is the total amount of time that the timeshare property is available for use, occupation or possession in the one-year period referred to in paragraph (i);
- (d) offer, solicit, negotiate or conclude a points-based contract if A exceeds B, where-
  - (i) A is the total number of points held by all the timeshare plan participants in any one-year period, and
  - (ii) B is the total number of points required to use, occupy or possess the timeshare property for the one-year period referred to in paragraph (i);
- (e) use an asterisk or other reference symbol in marketing or advertising material as a means of obscuring a material fact or of contradicting or substantially changing a statement made in the material;

- (f) offer, negotiate or conclude a timeshare contract or a points-based contract that provides a consumer with a right to use, occupy or possess, or with an ownership interest in any real or personal property that is subject to a lease or a charge, lien, charge, money judgment, security interest or other financial encumbrance, unless the lease or financial encumbrance is the subject of a non-disturbance clause;
- (g) if the supplier is the proprietor, lease, charge, pledge as security or otherwise grant to a third party any interest, other than a timeshare interest, in real or personal property in respect of which a consumer has an ownership interest or a right of use, occupation or possession under a timeshare contract or a points-based contract, unless the interest and any financial encumbrance associated with it are the subject of a non-disturbance clause;
- (h) if the supplier is the proprietor, sell or otherwise transfer ownership of any real or personal property in respect of which a consumer has an ownership interest or a right of use, occupation or possession under a timeshare contract or a points-based contract, unless-
  - (i) the buyer or other transferee of the property assumes all of the supplier's obligations to the consumer under this Law, and the contract; or
  - (ii) the consumer has consented in writing to any terms of the sale or transfer that provide for a person other than the buyer or other transferee to assume the supplier's obligations to the consumer or that provide for the supplier to retain those obligations;
- (i) if the supplier is the proprietor, fail to discharge a financial encumbrance or lease in accordance with section paragraph 1 (l)(iii) of Schedule 1;
- (j) invite a consumer to any event, function or location where sales or promotional activity will occur unless the invitation and any correspondence regarding it clearly indicates that the sales or promotional activity will occur.

Penalties under section  
38

39. A supplier who contravenes section 38 commits an offence and is liable on summary conviction-

- (a) to a fine of one hundred thousand dollars; or
- (b) three times the amount obtained by him as a result of the offence,

whichever is greater, to imprisonment for two years or to both.

(2) Each day that an offence continues constitutes a separate offence but the total term of imprisonment that may be imposed on a person in respect of a continuing offence shall not exceed two years.

40. (1) A person who develops, markets or manages a timeshare property when there is not in force a licence granted to him under this Law to develop, market or manage such property commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for two years or to both.

Penalty for irregular operation of timeshare property

(2) A licensee who develops, markets or manages a timeshare property otherwise than in accordance with the terms and conditions of the licence that has been granted to him commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both.

41. (1) Where a body corporate is guilty of an offence under this Law, every director or other officer concerned in the management of the body corporate is guilty of that offence unless he proves that the offence was committed without his consent or connivance or that he exercised reasonable diligence to prevent the commission of the offence.

Offences by body corporate

(2) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate

42. A person who obstructs an authorised officer assigned by the Board, the Director, any officer of the Ministry responsible for health, the Department responsible for planning or a police or fire service officer in the exercise of any power conferred on him or the performance of any duty imposed upon him by this Law commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both.

Penalty for obstructing officers

43. For the purposes of this Law, an act or omission by an employee, agent or contractor of a licensee in the course of that person’s employment, agency or contractual relationship is deemed also to be an act or omission by the licensee.

Vicarious responsibility

#### PART 8 - GENERAL

44. A person aggrieved by a decision of the Board to-

Appeals against certain decisions of the Board

- (a) refuse an application for a licence;
- (b) impose a condition on a licence;
- (c) vary a licence; or
- (d) revoke or suspending a licence,

may, within twenty-one days of the date on which notice of the decision is received, appeal to the Grand Court against the decision.

45. Any purported waiver by a purchaser of any of the requirements of this Law or of any of the rights or remedies of a purchaser set forth in this Law or under any other law is invalid.

Purchaser waivers invalid

- Occupancy tax  
(2013 Revision)
46. The provisions of the Tourist Accommodation (Taxation) Law (2013 Revision) apply for the purposes of this Law.
- Regulations
47. (1) The Cabinet may make such regulations as are necessary to give effect to the purposes of this Law.
- (2) Regulations made under this Law may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Law for any offence under this Law.
- [Transitional-
48. (1) A proprietor of a timeshare property who was operating such timeshare property on the date of commencement of this Law, may continue to operate such timeshare property without a licence under this Law-
- (a) during the period of twenty four months from the date of the commencement of this Law; and
- (b) if within that period application is made for a licence, until that application is finally disposed of or withdrawn and, if the application is refused, for a further period of six months.
- (2) Within sixty days of the date of being licensed under this Law the proprietor referred to in subsection (1) shall apply to the Registrar to register all timeshare or points-based contracts executed in relation to his timeshare property and he shall provide each relevant consumer with a written certificate or other evidence of such consumer's timeshare interest within sixty days after registration and the form of such certificate or other document shall be as prescribed.
- (3) A supplier and marketing agent who were operating as such on the date of the commencement of this Law may continue to operate without a licence under this Law-
- (a) during the period of twelve months from the date of the commencement of the Law; and
- (b) if within that period application is made for a licence, until that application is finally disposed of or withdrawn and, if the application is refused, for a further period of six months.
- (4) Part 2 and Schedule 1 do not apply to a timeshare contract or a points-based contract that is executed before the date of the commencement of this Law.

Section 3

### **SCHEDULE 1**

#### **Minimum contents of timeshare and points-based contracts**

1. A supplier shall provide a consumer with a written timeshare contract or a points-based contract and such contracts shall, at a minimum, include the following information-

- (a) the consumer's name, address and telephone number;
- (b) the supplier's name, business address, including a street address, telephone number and, if applicable, fax number and e-mail address;
- (c) the name and position of any agent or employee who is representing the supplier and the consumer (if applicable) in respect of the contract;
- (d) the date and place at which the contract is entered into;
- (e) in the case of a timeshare contract-
  - (i) a description of the timeshare property, including its legal description and precise location; and
  - (ii) a full description of the timeshare interest being purchased by the consumer under the contract, including a statement of any period during which, or any dates on which, the consumer is entitled to use, occupy or possess the timeshare property;
- (f) in the case of a points-based contract-
  - (i) an explanation of the options available to the consumer under the contract to exchange points for the right to use, occupy or possess real or personal property within the timeshare plan; and
  - (ii) a full description of the timeshare interest being purchased by the consumer under the contract and a statement of the terms of any trust or other arrangement under which the consumer's interest is to be held;
- (g) any financial conditions that must be met before the consumer may exercise a right under the contract, including any requirement that all or any portion of the purchase price be paid beforehand;
- (h) an itemised statement of-
  - (i) the total cost of the timeshare interest being purchased by the consumer;
  - (ii) the number of points, if any, being acquired by the consumer;
  - (iii) any closing costs payable by the consumer in respect of the contract; and
  - (iv) any expense, fee, levy, assessment or cost to which the consumer is or may become subject under the contract, timeshare plan or exchange program, if any;
- (i) if credit is extended by the supplier, a statement of any security taken for payment;
- (j) a statement as to whether the number of points referred to in paragraph (h)(ii) or any expense, fee, levy, assessment or cost

referred to in paragraph (h)(iv) is subject to change in the future, and if so, an explanation of how and when it may change;

- (k) the terms of payment;
- (l) unless the third party's interest and any financial encumbrance associated with it are the subjects of a non-disturbance clause, provisions warranting-
  - (i) that the timeshare property and any other property or facility in respect of which the consumer has an interest or right under the contract are not subject to any leases or charges, liens, charges, money judgments, security agreements or other financial encumbrances of a third party;
  - (ii) that the supplier, if he is the proprietor of the timeshare property, will not charge the property or facility, pledge it as security or lease or otherwise grant any interest in it to a third party, other than a timeshare interest; and
  - (iii) that the supplier, if he is the proprietor of the timeshare property, will discharge any financial encumbrance or lease registered by a third party as soon as reasonably possible;
- (m) full particulars of the timeshare plan under which the contract is made, or in which the consumer is to be a participant; and
- (n) a statement of the consumer's cancellation rights in the prescribed form.

2. The supplier shall ensure that the information specified in this Schedule is set out legibly in the contract.

3. The statement referred to in paragraph 1(n) or a notice indicating where that statement is located in the contract must be printed in not less than 12-point bold type on the front of the contract.

4. A supplier shall notify the consumer and a consumer shall notify the supplier, in writing and without delay, of any change in the information required to be provided under paragraph 1(a) or (b).

5. A notification under paragraph 4 shall be given to a person in accordance with the most recent information provided by the person under paragraph 1(a) or (b) or 4.

Section 27

## SCHEDULE 2

### Fees

Application fee for the issue of a licence- \$300

Application fee for the renewal of a licence- \$300



Application fee for the transfer of a proprietor's timeshare licence- \$300.

Passed by the Legislative Assembly the     day of     , 2014.

Speaker.

Clerk of the Legislative Assembly.