

## § 93A-41. Definitions.

When used in this Article, unless the context otherwise requires, the term:

- (1) **Assessment.** – The share of funds required for the payment of common expenses which is assessed from time to time against each owner by the managing entity.
- (2) **Board.** – The board of directors of a timeshare owners' association.
- (3) **Closing or close.** – One of the following:
  - a. For the sale and purchase of a timeshare estate, conveyance of the legal or beneficial title to the timeshare estate as evidenced by the delivery of a timeshare instrument for conveyance of legal title or beneficial title to the purchaser or to the clerk of superior court in the county where the timeshare estate is located for recording.
  - b. For the sale and purchase of a timeshare use, the final execution and delivery by all parties of the last document necessary for vesting in the purchaser the full rights available under the timeshare program.
- (4) **Commission.** – The North Carolina Real Estate Commission.
- (5) **Common expense.** – All of the following:
  - a. Those expenses, fees, or taxes properly incurred for the maintenance, operation, and repair of the timeshare units or facilities, or both, constituting the timeshare program.
  - b. Any other expenses, fees, or taxes designated as common expenses in a timeshare declaration.
- (6) **Conspicuous type.** – A print type that is separated on all sides from other type and print and that is either (i) print type in upper- and lowercase letters two point sizes larger than the largest non-conspicuous type, exclusive of headings, on the page on which it appears, but not less than 10-point type, or (ii) where the use of 10-point type would be impractical or impossible, a different style of type or print that is conspicuous under the circumstances.
- (7) **Consumer resale timeshares.** – One of the following:
  - a. A timeshare owned by an owner.
  - b. One or more reserved occupancy rights relating to a timeshare owned by an owner.
  - c. One or more reserved occupancy rights relating to, or arranged through, an exchange program in which an owner is a member.
- (8) **Consumer timeshare reseller.** – An owner who acquires a timeshare for their own use and occupancy and later offers the timeshare or the occupancy rights associated with the timeshare for resale or rental, or who contracts with a transfer service provider.
- (9) **Developer.** – Any person or entity which (i) creates a timeshare, timeshare project, or timeshare program, (ii) purchases a timeshare for purpose of resale, or (iii) is engaged in the business of selling timeshares it owns or controls and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling timeshares for the developer.
- (10) **Electronic.** – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (11) **Enrolled.** – Membership in an exchange program.
- (12) **Exchange company.** – Any person operating an exchange program.

- (13) Exchange program. – Any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy timeshare units among owners, even if enrollment is not voluntary.
- (14) Foreclosing party. – A trustee, mortgagee, managing entity, or their authorized agent who has the designated authority to pursue a nonjudicial foreclosure proceeding pursuant to G.S. 93A-62.
- (15) Independent escrow agent. – A licensed attorney located in this State, or a federally insured depository institution or licensed title insurance underwriter or agency, lawfully doing business in this State, which agrees to make its records of the account available for inspection by the Commission's representative; provided, however, that (i) the independent escrow agent is not a relative or an employee of the developer or managing entity, or of any officer, director, affiliate, or subsidiary thereof, (ii) there is no financial relationship, other than the payment of fiduciary fees, between the independent escrow agent and the developer or managing entity, or any officer, director, affiliate, or subsidiary thereof, and (iii) compensation paid by the developer to an independent escrow agent is not paid from funds in the escrow account unless and until the developer is otherwise entitled to receive the disbursement of such funds from the escrow account in accordance with this Article. A person shall not be disqualified to serve as an independent escrow agent solely because of any of the following:
  - a. A nonemployee, attorney-client relationship exists between the developer or managing entity and the independent escrow agent or any officer, director, affiliate, or subsidiary thereof.
  - b. The independent escrow agent provides the developer or managing entity with routine banking services which do not include construction or receivables financing or any other lending activities.
  - c. The independent escrow agent performs closings for the developer or issues owner's or lender's title insurance commitments or policies in connection with such closings.
  - d. The independent escrow agent is a licensed attorney or a licensed title insurance underwriter or agency and performs timeshare transfer services.
- (16) Interest holder. – A developer, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the real property or personal property comprising or underlying the timeshare property, including the timeshares and the timeshare units, but excluding the timeshare declaration and any encumbrance placed against an owner's timeshare securing the owner's payment of purchase money financing for the purchase. With respect to a multisite timeshare program which contains timeshare units that are also part of an underlying timeshare program or condominium or other property regime, the term does not include a developer, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against a timeshare in an underlying timeshare program or against a timeshare unit or other accommodation in an underlying condominium or property regime, except as to any timeshare, timeshare unit, or other accommodation that is specifically subject to, or otherwise dedicated to, the multisite timeshare program.
- (17) Lead dealer. – A person who sells or otherwise provides a resale service provider or any other person with personal contact information for five or

more purchasers or owners. If a lead dealer is not a natural person, the term shall also include the natural person providing personal contact information to a resale service provider or other person on behalf of the lead dealer entity. The term does not include developers, managing entities, or exchange companies to the extent they provide others with personal contact information about purchasers or owners of timeshares in their own timeshare programs or members of their own exchange programs. The term does not include persons providing personal contact information that is not designed specifically or primarily to identify owners of timeshares even though the information provided may include five or more purchasers or owners.

- (18) Managing entity. – Any developer, timeshare owners' association, or third-party management firm that has the duties, responsibilities, and obligations of managing a timeshare project or timeshare program.
- (19) Multisite timeshare program. – A timeshare program under which an owner obtains, by any means, a recurring right to reserve, use, or occupy timeshare units of more than one timeshare project through the mandatory use of a reservation system in competition with other owners in the same timeshare program.
- (20) One-to-one use night to use right ratio. – The ratio of the number of owners eligible to use the timeshare units on a given night to the number of timeshare units available for use within the timeshare program on that night, such that the total number of owners eligible to use the timeshare units during a given calendar year never exceeds the total number of timeshare units available for use in the timeshare program during that year. For purposes of the calculation under this definition, each owner must be counted at least once, and no individual timeshare units may be counted more than 365 times per calendar year or more than 366 times per leap year. An owner who is delinquent in the payment of timeshare program assessments shall continue to be considered eligible to use the timeshare units of the timeshare program for purposes of calculating the one-to-one use night to use right ratio.
- (21) Owner. – Any person, other than a developer, who has acquired a timeshare.
- (22) Person. – One or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof.
- (23) Personal contact information. – Any information that can be used to contact a purchaser or an owner, including, but not limited to, the purchaser's or owner's name, address, telephone number, and email address.
- (24) Program broker. – A natural person licensed as a real estate broker and designated by the developer to supervise brokers at the timeshare program.
- (25) Purchaser. – Any person, other than a developer, who is advertised or solicited to acquire a timeshare, offered a timeshare, or enters into a timeshare instrument to acquire a timeshare.
- (26) Regulated party. – Any developer, exchange company, managing entity, timeshare owners' association, timeshare owners' association director or officer, third-party management firm, independent escrow agent, lead dealer, resale broker, resale service provider, resale advertiser, timeshare transfer provider, timeshare registrar, any other person having duties or obligations pursuant to this Article, and any of their respective assignees or agents.
- (27) Resale advertiser. – Any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or other valuable consideration, regardless of whether the offer is made in

person, by mail, by telephone, through the internet, or by any other medium of communication. The term does not include any of the following:

- a. A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance.
  - b. A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshares in their own timeshare programs.
  - c. A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than ten percent (10%) of its gross revenue from providing resale advertising services.
- (28) Resale advertising service. – The provision of any good or service relating to advertising or promoting the resale or rental of a consumer resale timeshare located or offered within this State, including any offer to advertise or promote the sale or purchase of any such interest.
- (29) Resale broker. – Any person who is issued a broker's license by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or other valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the internet, or by any other medium of communication. The term includes any agent or employee of a resale broker.
- (30) Resale brokerage services. – With respect to a consumer resale timeshare located or offered within this State, any activity that directly or indirectly consists of any of the activities regulated under G.S. 93A-1.
- (31) Resale service provider. – Any resale advertiser, or other person or entity, including any agent or employee of that person or entity, who offers resale brokerage or resale advertising services to consumer timeshare resellers. The term does not include (i) developers or managing entities to the extent they offer resale brokerage or resale advertising services to owners of timeshares in their own timeshare programs or (ii) resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance.
- (32) Reservation system. – The method, arrangement, procedure, rules, and regulations by which an owner reserves the use and occupancy of a timeshare unit for one or more timeshare periods.
- (33) Reservation system operator. – The person who has the responsibility for operating any reservation system for the timeshare program. Unless the timeshare declaration provides otherwise, the operator of the reservation system is the managing entity of a timeshare program. The reservation system operator may be a third-party entity that has contracted with the developer or managing entity to provide the reservation system for the timeshare program, provided that the third party shall be deemed a managing entity as to the operation of the reservation system for purposes of this Article.
- (34) Timeshare. – A timeshare estate or timeshare use.
- (35) Timeshare declaration. – One or more documents, by whatever name denominated, establishing, creating, or governing the operation of a timeshare program.

- (36) Timeshare estate. – The right to occupy a timeshare unit coupled with ownership of any of the following real property interests:
  - a. A freehold estate or an estate for years with a future interest in property.
  - b. An ownership interest in a condominium unit.
  - c. A direct or indirect beneficial interest in a trust, provided that both of the following conditions are met:
    - 1. The timeshare instrument contains a provision declaring that such interests are real property interests.
    - 2. The trust does not contain any timeshares created in personal property.
- (37) Timeshare instrument. – An instrument transferring a timeshare or any interest, legal or beneficial, in a timeshare to a purchaser, including a contract, installment contract, lease, deed, or other instrument.
- (38) Timeshare owners' association. – An association made up of all owners of timeshares in a timeshare program, including developers.
- (39) Timeshare period. – The period or periods of time when an owner is afforded the opportunity to use a timeshare unit under the terms of the timeshare program.
- (40) Timeshare program. – Any arrangement, plan, program, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement, or by any other means whereby an owner receives the right to use timeshare units for a period of time less than a full year during any given year, but not necessarily for consecutive years.
- (41) Timeshare project. – A specific geographic site where all or a portion of the timeshare units of a timeshare program are located. If phased development is permitted under applicable law, separate phases operated as a single development located at a specific geographic site under common management may be deemed a single timeshare project by the developer.
- (42) Timeshare property. – The property included in or subject to a timeshare program, including timeshares in an underlying timeshare program, one or more timeshare units, any amenities, any other property, and appurtenant property or rights.
- (43) Timeshare registrar. – A natural person who is designated by the developer to record or cause timeshare instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article.
- (44) Timeshare salesperson. – A person who sells or offers to sell on behalf of a developer a timeshare to a purchaser.
- (45) Timeshare transfer services. – Any service provided in this State that provides assistance in the resale, transfer, relinquishment, or other disposition of a consumer timeshare reseller's timeshare, including a reconveyance or other transfer to a developer or managing entity, whether referred to as timeshare exit, timeshare cancellation, timeshare relief, or any similar phrase. The term does not include resale advertising services.
- (46) Timeshare transfer services agreement. – A contract or other agreement between a transfer service provider and a consumer timeshare reseller in which the transfer service provider agrees to provide such services.

- (47) Timeshare unit. – The real property or real property improvement in a project which is divided into timeshares and designated for separate occupancy and use.
- (48) Timeshare use. – The right to occupy a timeshare unit that is not coupled with ownership of a real property interest.
- (49) Transfer service provider. – Any person, including any agent, representative, subsidiary, successor, or employee of that person or entity, unless otherwise exempt, who offers or uses telemarketing, direct mail, email, or any other means of communication in connection with the offering of timeshare transfer services. (1983, c. 814, s. 1; 1985, c. 578, s. 1; 1999-229, ss. 13, 14; 2000-140, s. 19(b); 2005-395, s. 20; 2011-217, s. 19; 2021-163, s. 1(c); 2021-192, s. 5(a); 2022-75, s. 17(a).)