

STATUTES OF THE REPUBLIC OF SOUTH AFRICA -- PURCHASE AND SALE

PROPERTY TIME-SHARING CONTROL ACT NO. 75 OF 1983

[ASSENTED TO 15 JUNE, 1983]

[DATE OF COMMENCEMENT: 1 MARCH,
1984]

(Afrikaans text signed by the State President)

ACT

To regulate the alienation of time-sharing interests pursuant to property time-sharing schemes; and to provide for matters connected therewith.

1. **Definitions.-** In this Act, unless the context otherwise indicates-

"accommodation", in relation to a time-sharing interest, means any immovable property or any portion or part thereof;

"alienate", in relation to a time-sharing interest, means sell or let for utilization over a prescribed period of at least three years, whether such sale or lease is subject to a suspensive or resolutive condition; and "alienation" has a corresponding meaning;

"architect" means an architect as defined in section 1 of the Architects Act, 1970 (Act No. 35 of 1970);

"club", in relation to a property time-sharing scheme, means any club or association of persons in respect of which a right to membership or a right of participation in activities or functions may be sold to a member of the general public;

"consideration" means the purchase price and interest, or rent, or any other consideration, which is payable or which must be rendered in terms of a contract;

"contract" means a document in terms of which a time-sharing interest is alienated, and includes any agreement or agreements which together have the same import, whatever form the agreement or agreements may take;

"estate agent" means an estate agent as defined in section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976);

"immovable property" means land, and includes any building, or other improvements on land whether of a permanent nature or not, erected or to be erected;

"insolvent" means--

- (a) any person whose estate is under sequestration in terms of the Insolvency Act, 1936 (Act No. 24 of 1936);
- (b) any insolvent deceased estate which is dealt with in terms of the provisions of section 34 (5) of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
- (c) any juristic person in liquidation which is unable to pay its debts;
- (d) any person whose estate is dealt with in terms of section 28 (5) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966);

"Minister" means the Minister of Industries, Commerce and Tourism;

"practitioner" means a practitioner as defined in section I of the Attorneys Act, 1979 (Act No. 53 of 1979);

"prescribe" means prescribe by regulation; and "prescribed" has a corresponding meaning;

"property time-sharing scheme" means--

- (a) any scheme, arrangement or undertaking in terms of which time-sharing interests are offered for alienation or are alienated and the utilization of such interests is regulated and controlled, whether such scheme, arrangement or undertaking is operated pursuant to a share block scheme, any scheme under which time-sharing interests connected with rights to membership of or participation in any club are granted, any time-sharing development scheme based on the alienation of undivided shares in a unit as defined in section 1 of the Sectional Titles Act, 1971 (Act No. 66 of 1971), or otherwise; or
- (b) any scheme, arrangement or undertaking declared a property time-sharing scheme by the Minister by notice in the Gazette for the purposes of this Act, in terms of which interests in the use or occupation of immovable property, or any portion or part thereof, defined in the notice, are sold or leased,

"purchaser" means any person to whom a time-sharing interest pursuant to a property time-sharing scheme is alienated by virtue of a contract;

"seller" means any person who alienates a time-sharing interest pursuant to a property time-sharing scheme by virtue of a contract;

"share block scheme" means a share block scheme referred to in section 1 of the Share Blocks Control Act, 1980(Act No. 59 of 1980);

"this Act" includes any regulation or notice made or issued in terms of this Act;

"time-sharing interest", in relation to a property time-sharing scheme, means any right to or interest in the exclusive use or occupation, during determined or determinable periods during any year, of accommodation.

2. Formalities in respect of contracts.

- (1) No alienation of a time-sharing interest shall, subject to the provisions of section 9, be of any force or effect unless it is contained in a contract signed by the parties thereto or by their agents, acting on their written authority.
- (2) The provisions of subsection (1) relating to signature by the agent of a party acting on the written authority of the party, shall not derogate from the provisions of any law relating to the making of a contract in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered.

3. Language in which contract shall be drawn up.

A purchaser is entitled to choose the official language in which the contract shall be drawn up.

4. Contents of contract.

- (1) Without derogating from the requirements of any other law, a contract shall contain--
 - (a) the names of the purchaser and the seller and their residential or business addresses in the Republic;
 - (b) a description of the legal basis and duration of the relevant property time-sharing scheme and of the time-sharing interest which is the subject of the contract, including the recurrent period during which and the conditions on which the purchaser shall be entitled to the relevant time-sharing interest;
 - (c) a description of the relevant immovable property;
 - (d) a statement as to whether such immovable property is held by the seller by virtue of ownership or lease and, in the case of a lease, the name and address of the lessor and the duration of the unexpired period of such lease;
 - (e) if the seller is not the registered owner of such immovable property, the name and address of that owner;
 - (f) if the immovable property is encumbered by a mortgage bond, the name and address of the person, in favor of whom, or, in the case of a participation bond, the name and address of the relevant nominee company referred to in the Participation Bonds Act, 1981 (Act No. 55 of 1981), in favor of which the mortgage bond is registered at the time the contract is concluded;
 - (g) the amount or nature of the relevant consideration;
 - (h) the annual rate at which interest (if any) is to be paid on any balance in respect of the relevant consideration;
 - (i) the amount, or the method of determining the amount, of each installment payable under the contract in reduction or settlement of the relevant consideration (if any);

- (j) the due date, or the method of determining the due date, of each such installment;
 - (k) if a certificate in terms of section 7 (1) in respect of the relevant accommodation has not been issued at the time the contract is concluded, the latest date by which such certificate, subject to subsection (2), will be issued and delivered to the purchaser;
 - (l) a statement of the place at which and the hours during which written details of the relevant property time-sharing scheme and of any rules in accordance with which the relevant time-sharing interest is to be utilized, may be inspected;
 - (m) an inventory of any movables which will be available for use by the purchaser in conjunction with the relevant time-sharing interest;
 - (n) a statement as to the official language chosen by the purchaser in terms of section 3.
- (2) The date stated in a contract in terms of subsection (i) (k), shall not be later than three years from the date of the contract.
- (3) If for any reason whatsoever the seller is unable, by the date referred to in subsection (1) (k), to furnish the certificate referred to in that subsection, the purchaser may cancel the contract, in which event the parties shall be entitled to the relief provided for in section 9, or the purchaser may abide by the contract, in which event no interest shall be payable by him in terms of the contract as from the date in question until such time as such certificate is furnished to him.

5. Invalidity of certain provisions.

- (1) A provision in any contract whereby-
- (a) any person who acted on behalf of the seller in connection with the conclusion of the contract or the negotiations which preceded the conclusion of the contract, is appointed or is deemed to have been appointed as the agent of the purchaser;
 - (b) the seller is exempted from liability for any act, omission or representation by any person acting on his behalf
 - (c) the liability of a seller to indemnify the purchaser against eviction is restricted or excluded;
 - (d) the purchaser binds himself in advance to agree to an assignment by the seller of his obligations in terms of a contract, shall be null and void.
- (2) Any rouwkoop stipulation in a contract in terms of which the purchaser is deemed to have terminated the contract on account of any act or omission on his part and he, in consequence thereof, is liable for any forfeiture or for the payment of a penalty or damages or for the delivery or performance of

anything, or any other stipulation of like import, is subject to the Conventional Penalties Act, 1962 (Act No. 15 of 1962), as if the stipulation were a penalty stipulation contemplated in that Act.

6. Advertising of certain information.

- (1) No person shall advertise for alienation any time-sharing interest unless the prescribed information regarding the relevant time-sharing interest, property time-sharing scheme and alienation is disclosed in such advertisement.
- (2) Any person who contravenes a provision of subsection (1) shall be guilty of an offense and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

7. Restriction on receipt of consideration by virtue of a contract.

- (1) No person shall by virtue of any contract relating to accommodation consisting of any building or improvements, or any portion or part thereof, receive any consideration or part thereof, unless an architect has issued a certificate that the relevant accommodation, as erected, is substantially in accordance with any applicable and relevant officially approved building plans and town planning scheme and applicable local authority by-laws, and is sufficiently complete for the purposes of utilization of the relevant time-sharing interest, and unless a copy of such certificate has been delivered to the purchaser concerned.
- (2) Any person who contravenes any provision of subsection (1) shall, subject to the provisions of subsection (3), be guilty of an offense and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- (3) The provisions of subsection (1) shall not apply to the receipt of any amount-
 - (a) which the purchaser, by virtue of a contract, entrusts to a practitioner or an estate agent in his capacity as such, to keep, for the benefit of the seller in terms of that contract, in the trust account of the practitioner or estate agent until the certificate referred to in subsection (1) has been issued and a copy thereof has been delivered to the purchaser; or
 - (b) which by virtue of a contract is paid to the seller if, before such payment, the purchaser is furnished with an irrevocable and unconditional guarantee by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), a building society registered otherwise than provisionally under the Building Societies Act, 1965 (Act No. 24 of 1965), or a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of which the said banking institution, building society or insurer undertakes to repay the said amount to the purchaser if the certificate referred to in subsection (1) is not issued within the period referred to in section 4(l)(k).

- (4) If, in the circumstances contemplated in subsection (3), the seller becomes an insolvent before the certificate referred to in subsection (1) is issued, any amount kept in a trust account in terms of paragraph (a) of subsection (3) or the repayment of which was guaranteed in terms of paragraph (b) of that subsection, shall immediately become payable to the purchaser concerned by the practitioner, estate agent, banking institution, building society or insurer concerned.

8. Relief that court may grant in respect of contracts.

- (1) Notwithstanding the provisions of any law to the contrary but subject to any other powers that any court may have, if a contract does not substantially comply with any provision of section 3 or 4 (1), or if a seller has contravened or has failed to comply with any provision of a regulation made under section 12, and a purchaser proves that he has in consequence thereof suffered any prejudice, a court within whose area of jurisdiction the accommodation referred to in the contract is situated is, if appropriate proceedings are instituted by the purchaser within a period of two years from the date upon which the contract was concluded, competent--
 - (a) to reduce the rate of interest payable to the seller in terms of the contract to such rate as it may deem just and equitable in the circumstances;
 - (b) to grant an order for rectification of the contract;
 - (c) to declare the contract to be void ab initio; or
 - (d) to grant such alternative relief as it may deem fit.
- (2) A magistrate's court shall, notwithstanding the value of the relevant time-sharing interest, have jurisdiction to grant any relief contemplated in subsection (1).

9. Consequences of contracts which are void or are canceled.

- (1) Subject to the provisions of subsection (2), any person who has performed partially or in full in terms of a contract which is of no force or effect in terms of section 2 (1) or a contract which has been declared void in terms of the provisions of section 8 (l)(c), or has been canceled under this Act, is entitled to recover from the other party what he has performed under the contract, and--
 - (a) the purchaser may in addition recover from the seller—
 - (i) interest at the prescribed rate on any payment that he made in terms of the contract, from the date of the payment to the date of recovery;
 - (ii) a reasonable compensation for-

- (aa) necessary expenditure he had incurred, with or without the authority of the owner of the relevant accommodation or the seller concerned, in regard to the preservation of the accommodation; or
- (bb) any improvement which enhances the market value of the relevant accommodation and was effected by him with the express or implied consent of the said owner or seller; and
- (b) the seller may in addition recover from the purchaser--
 - (i) a reasonable compensation for the occupation or use the purchaser may have had of the accommodation;
 - (ii) compensation for any damage caused intentionally or negligently to the accommodation by the purchaser or any person for whose actions the purchaser may be liable.
- (2) Any alienation which does not comply with the provisions of section 2 (1) shall in all respects be valid ab initio if the purchaser has in terms of the alienation rendered the full consideration and the relevant time-sharing interest has been transferred to or has otherwise been vested in the purchaser.

10. Property time-sharing schemes conducted pursuant to share block schemes.

When a property time-sharing scheme is operated under any share block scheme, the provisions of this Act, excepting sections 1, 4, 5 (1), 6, 7 and 12 (2) and the provisions of regulations made under section 12(l)(a), (6) and (d), shall not apply to any such scheme, any contract for the acquisition of a share, and any use agreement, referred to in the Share Blocks Control Act, 1980 (Act No. 59 of 1980), and the parties thereto, in so far as any such scheme, contract or agreement embodies any such property time-sharing scheme and regulates the alienation and utilization of any time-sharing interest: Provided that--

- (a) in such application of subsection (3) of section 4 the reference in that subsection to relief for which provision is made in section 9 of this Act, shall be construed as a reference to relief for which, mutatis mutandis, provision is made in section 18 (1) of the said Act;
- (b) in the application of section 18 of the said Act in respect of any such contract and agreement, the reference in that section to sections 16 and 17 of the said Act shall be construed as a reference also to section 4 of this Act; and
- (c) a provision of any regulation referred to in the foregoing provisions of this section shall only so apply in so far as such provision is not in conflict with any provision of the said Act.

11. Exemptions.

The Minister may, subject to any regulation made under section 12(l) (e) , on such conditions as he may deem fit, by notice in writing to any person or category of

persons, exempt such person or category of persons from any provision of this Act, and may at any time in like manner revoke any such exemption.

12. Regulations.

- (1) The Minister may make regulations-
 - (a) prescribing the information to be disclosed in any advertisement regarding the alienation of time-sharing interest;
 - (b) prescribing the information which should be disclosed in writing by a seller to a purchaser prior to the signature of any contract by a purchaser,
 - (c) prescribing the rate of interest for the purposes of section 9 (1) (a) (i);
 - (d) regarding the control over and the operation of property time-sharing schemes, including the payment of levies by purchasers and the establishment of levy funds;
 - (e) regarding the exemption of any person or category of persons from any provision of this Act;
 - (f) regarding any matter which is required or permitted to be prescribed under this Act, or which is considered necessary or expedient to be prescribed in order to achieve the objects of this Act;
 - (g) prescribing that the whole or any part of the Alienation of Land Act, 1981 (Act No. 68 of 1981), shall or shall not apply to transactions to which this Act applies.
- (2) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R1 000 or imprisonment for a period of one year.

13. Short title and commencement.

- (1) This Act shall be called the Property Time-sharing Control Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.
- (2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.