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Property; Time Share Sales

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Property

Property; time share sales

NEV. REV. STAT. §90.— (new); Title 10, §90.090 (amended).
SB 176 (Committee on Judiciary); 1983 STAT. Ch 401
(Effective May 19, 1983)

Chapter 401 regulates the sale of time shares¹ by providing for the rights of developers² and purchasers³ and enacting penalties for non-compliance.⁴ Chapter 401 was enacted in an apparent response to *State Department of Commerce v. Carriage House*⁵ which held that “vacation licenses” are neither licenses nor leases.⁶ As a result of this decision, the real estate division of the Nevada Department of Commerce [hereinafter referred to as Division] could neither exercise jurisdiction nor regulate contracts under existing statutes affecting leaseholds or other interests in subdivisions.⁷

Chapter 401 governs all sales of time shares, including, by definition, sales of “vacation licenses,” except those, licenses involving (1) the sale of twelve or fewer time shares in a project,⁸ (2) the sale or transfer of a time share by an owner who is not the developer, unless the time share is sold in that owner’s ordinary course of business,⁹ (3) any transfer of a time share by deed in lieu of foreclosure or as a result of foreclosure,¹⁰ (4) any gratuitous transfer,¹¹ (5) a transfer by devise or descent,¹² or (6) a transfer to an intervivos trust.¹³ Time share projects covered by

1. 1983 Nev. Stat. c. 401, §11, at 978 (definition of time share).

2. *Id.* c. 401, §4, at 977 (defines developer as any person offering to dispose of or disposing of an interest in a time share).

3. *Id.* c. 401, §8, at 978 (definition of purchaser).

4. *See generally id.* c. 401, §§2-54, at 977-96.

5. 94 Nev. 707, 585 P.2d 1337 (1978).

6. *Id.* at 1337. “Vacation license” is defined as a contractual right to reserve occupancy for an aggregate of seven days each year, at a vacation condominium, a suite of designated type and location during a designated season, but not a specific suite. The right exists for the useful life of the resort and is irrevocable and transferable but is neither a license nor a lease. *Id.*

7. *Id.*; *see* NEV. REV. STAT. §§645.001-.850, 110.010-119.340 (regulating real estate brokers and salesmen as well as the licensing and regulating of land sales).

8. 1983 Nev. Stat. c. 401, §14(1)(a), at 978 (unless the developer offers to sell time shares in other projects in the same subdivision and the number of time shares exceeds 26 within one year).

9. *Id.* c. 401, §14(1)(b), at 978.

10. *Id.* c. 401, §14(1)(c), at 978.

11. *Id.* c. 401, §14(1)(d), at 978.

12. *Id.* c. 401, §14(1)(e), at 978. *But see id.* c. 401, §14(1), at 978 (provisions do apply if disposition was adopted to evade provisions of Chapter 401).

13. *Id.* c. 401, §14(1)(e), at 978.

the provisions of Chapter 401 are no longer required to comply with existing law¹⁴ governing the licensing and regulation of land sales.¹⁵

Chapter 401 mandates that creation of time share projects be evidenced by a time share instrument.¹⁶ This document must contain (1) a legal description of the project,¹⁷ (2) the name and location of the project,¹⁸ (3) an alphanumeric system of identifying the time periods,¹⁹ (4) a provision for assessing the expenses of the time share, for allocating those expenses among the time shares, and for determining the voting rights assigned to each share,²⁰ (5) a procedure to add units to the project,²¹ (6) a provision for selecting a trustee for the insurance that must be maintained by the association or developer,²² (7) provisions for maintaining the units,²³ (8) provisions for management of the project,²⁴ (9) a method for amending the instrument,²⁵ and (10) a statement of the purchaser's occupancy rights.²⁶

Rights and Restrictions of Developers

Chapter 401 mandates that a developer obtain either a permit²⁷ or a preliminary permit²⁸ from the administrator before offering to sell any time shares.²⁹ A full permit must be obtained prior to the sale of any time shares.³⁰ Furthermore, the developer is required to name a person to act as project broker.³¹ The developer is restricted from making any offer or sale except through the named project broker.³²

Chapter 401 specifically sets forth the format that must be used to reserve a time share.³³ Moreover, the Division must fully investigate

14. See generally NEV. REV. STAT. §§119.010-.340 (licensing and regulation of land sales).

15. See 1983 Nev. Stat. c. 401, §54.5, at 996.

16. *Id.* c. 401, §11.5, at 978 (definition of time share instrument); *id.* c. 401, §15, at 978.

17. *Id.* c. 401, §15(1), at 978.

18. *Id.* c. 401, §15(2), at 978.

19. *Id.* c. 401, §15(3), at 978.

20. *Id.* c. 401, §15(4), at 978.

21. *Id.* c. 401, §15(5), at 978.

22. *Id.* c. 401, §15(6), at 978.

23. *Id.* c. 401, §15(7), at 978.

24. *Id.* c. 401, §15(8), at 978.

25. *Id.* c. 401, §15(9), at 978.

26. *Id.* c. 401, §15(10), at 978.

27. *Id.* c. 401, §5.5, at 977 (definition of permit).

28. See *id.* c. 401, §21(1)(a), at 981 (preliminary permit issued when deficiencies must be corrected prior to the issuance of a permit).

29. *Id.* c. 401, §3, at 977 (definition of administrator); *id.* c. 401, §16(1), at 979.

30. *Id.* c. 401, §16(2), at 979.

31. *Id.* c. 401, §7, at 977 (definition of project broker); *id.* c. 401, §16(3), at 979 (before either offering for sale or selling a time share).

32. *Id.* c. 401, §16(4), at 979.

33. See *id.* c. 401, §18, at 979. Requirements include (1) a provision granting the purchaser the right to cancel the reservation anytime prior to the execution of the contract of sale with a full refund of the deposit, (2) a provision for the deposit to be placed in escrow until a permit is issued

information submitted by a developer and may, if necessary, inspect the property before issuing a permit or license.³⁴ Reasonable expenses incurred as a result of this investigation must be paid by the developer.³⁵

A developer who fails to satisfy the provisions of Chapter 401 or regulations adopted by the Division will be denied a permit.³⁶ The administrator of the Division will also deny a permit if the developer or an affiliate has (1) been convicted of a felony involving fraud or misrepresentation,³⁷ (2) been permanently enjoined from selling real estate or securities,³⁸ (3) had either a registration as a broker-dealer in securities or a license to sell real estate revoked,³⁹ (4) had a time share permit revoked,⁴⁰ or (5) been convicted of selling time shares without first obtaining a license.⁴¹ If the administrator denies a permit, Chapter 401 allows the developer to file a request for a hearing within thirty days.⁴² The date of the hearing must be within ninety days of receipt of the petition unless a postponement is obtained.⁴³ If, however, the Division fails to (1) hold the hearing within the ninety day period,⁴⁴ (2) render its decision within sixty days after the hearing,⁴⁵ or (3) notify the developer in writing of the results within the fifteen day period following its final decision, the order of denial expires and a permit must be issued within fifteen days.⁴⁶

According to Chapter 401, if the time share project has not been completed prior to the issuance of a permit, the developer must deliver a bond to the agency to insure completion of the time share project free of liens.⁴⁷ This bond must be made payable to the Division for the benefit of the purchasers and will remain in effect until the project is in fact completed free of liens.⁴⁸ In addition, the developer must deposit with an escrow agent the amount in cash estimated as necessary to

by the administrator to the developer, (3) a guarantee of the purchase price of the time share unit for a certain period following the issuance of that permit, and (4) a provision requiring any interest earned on the deposit to be paid to the purchaser. *Id.*

34. *Id.* c. 401, §19.5(1), at 980.

35. *Id.* The permit will be withheld until the developer pays the expenses in full. *Id.*

36. *Id.* c. 401, §20(1), at 980.

37. *Id.* c. 401, §20(2)(a), at 980.

38. *Id.* c. 401, §20(2)(b), at 980.

39. *Id.* c. 401, §20(2)(c), at 980.

40. *Id.* c. 401, §20(2)(e), at 980.

41. *Id.* c. 401, §20(2)(d), at 980.

42. *Id.* c. 401, §22(1), at 981.

43. *Id.* The specific date of the hearing will be decided by the applicant and the Division. *Id.*

44. *Id.* c. 401, §22(2)(a), at 981.

45. *Id.* c. 401, §22(2)(b), at 981.

46. *Id.* c. 401, §22(2), at 981.

47. *Id.* c. 401, §23(1), at 981 (permit must state expected date of completion and the bond must be in an amount approved by the division).

48. *Id.*

complete the project.⁴⁹ Chapter 401 also grants the Division a discretionary right to approve any other arrangement in lieu of the above restrictions.⁵⁰

Furthermore, each developer, through its project broker and sales agents, must provide the prospective purchasers with a copy of the public offering statement⁵¹ containing a copy of the permit to sell time shares.⁵² The project broker or sales agent must review the statement with the prospective purchaser prior to executing any contract for sale.⁵³

Under Chapter 401, a deposit from the sale of a time share must be placed in escrow.⁵⁴ Escrow must remain open until the developer proves to the administrator that specified contingencies have been satisfied.⁵⁵ Should the contingencies remain unsatisfied, the developer is required to provide a statement in the contract of sale that relieves the purchaser of all obligations under the contract if any interests in the time share are destroyed due to the foreclosure of liens against the project.⁵⁶

With the enactment of Chapter 401, the developer, or an affiliate, must execute a written agreement with the owners of the units providing for the management of the time share project.⁵⁷ This agreement must provide that (1) the agreement may be terminated by the manager or a majority of the owners,⁵⁸ (2) the manager's resignation cannot be

49. *Id.* c. 401, §23(2), at 981.

50. *Id.* c. 401, §23(3), at 981.

51. *Id.* c. 401, §7.5, at 977 (definition of public offering statement).

52. *Id.* c. 401, §24(1), at 981.

53. *Id.* c. 401, §24(2), at 981; *see id.* c. 401, §24(3), at 982 (must obtain signed receipt to be kept on file for three years and subject to any inspections and audits that may later be proscribed by regulations adopted by the Division).

54. *Id.* c. 401, §26, at 982.

55. *Id.* c. 401, §27(1)-(5), at 982. The project must be free and clear of blanket mortgages or each person who holds an interest in that blanket mortgage must execute an agreement to subordinate their rights to the rights of the purchaser or title to the project must convey to a trustee. In addition, all holders of a lien recorded against the project must have recorded an instrument providing for the release and reconveyance of each time share from the lien on the occurrence of payment of a specified sum or the performance of a specified act. The developer must also obtain and record a binding nondisturbance agreement, that has been approved by the administrator and executed by both the developer and all other lien holders. The agreement must provide that all subsequent owners or foreclosing holders of a lien take title to the project subject to the rights of prior purchasers provided in the contracts of sale. Alternative arrangements approved by the administrator will suffice if the developer proves they have been completed. *Id.* *See also id.* c. 401, §27.5, at 982 (administrator must adopt regulations governing alternative arrangements for closing of escrow).

56. *Id.* c. 401, §28(1), at 983.

57. *Id.* c. 401, §39(1), at 989. The initial term of the agreement must expire upon the occurrence of the first annual meeting of the members of the association or at the end of five years, whichever comes first. All succeeding terms of the agreement must be renewed annually unless the majority of the owners, excluding the developer, or the manager refuse to renew the agreement. *Id.*

58. *Id.* c. 401, §39(2)(a), at 989.

accepted until ninety days after the owners receive a written resignation,⁵⁹ and (3) the manager must deliver a fidelity bond to the association.⁶⁰ If the developer retains a reversionary interest in the project, the agreement must also include the association, manager, and developer as parties.⁶¹ Furthermore, if a request to be made a party is denied, the developer will be deemed a third party beneficiary of the agreement.⁶²

When the developer's interest in the project is a leasehold, Chapter 401 requires the lease to provide that the lessee/developer give notice to the association of a termination of the lease due to any default on the part of the lessor.⁶³ Should the developer go bankrupt, the lessor must enter into a new lease with the association that includes the same terms and conditions as the prior lease.⁶⁴ In addition, Chapter 401 affords the Division the discretion to require a developer to post a bond or an alternative form of security for payment of the rental obligation.⁶⁵

Chapter 401 permits the developer or association to levy and enforce a reasonable assessment upon a time share pursuant to provisions in the time share instrument.⁶⁶ Enforcement of this debt may be accomplished through a sale of the time share by the developer or association if specified contingencies are met.⁶⁷ Chapter 401 expressly prohibits the filing of a lien based on (1) labor performed, or (2) services or materials

59. *Id.* c. 401, §39(2)(b), at 989.

60. *Id.* c. 401, §39(2)(c), at 989.

61. *Id.* c. 401, §39(3), at 989. If the developer retains a reversionary interest in the project, the agreement must provide that the project will be maintained in good condition and that any defect not cured within 10 days may be cured by the developer after notifying the association. In an emergency situation, the developer may cure defects without first giving notice. The association is required to reimburse the developer for these costs plus interest. In addition, the agreement must provide that if any disputes arise between the developer and the association or the manager, either party may request arbitration. The agreement must also include a provision for a collection of assessments to be made from the owners in order to satisfy any damages due to the developer in the case of a breach of the covenant to maintain the project in good condition. *Id.*

62. *Id.* c. 401, §39(3), at 989.

63. *Id.* c. 401, §43(1)(a), at 991.

64. *Id.* c. 401, §43(1)(b), at 991.

65. *Id.* c. 401, §43(2), at 991.

66. *Id.* c. 401, §43(1), at 991. The amount of the assessment is treated as a debt of the owner at the time the assessment is made and is a lien upon the time share assessed when the developer or association causes the lien to be recorded properly. This lien is prior to all other liens recorded subsequently unless otherwise provided in the time share instrument, but will expire automatically if not satisfied or enforced within one year after the date of recordation. The lien may be enforced by a sale of the time share by the developer or association after failure of the time share owner to pay the assessment. *Id.*

67. *Id.* c. 401, §43.5, at 992. Before the power of sale may be exercised the developer or association must execute and record a *notice of default and election to sell the time share or cause its sale* in order to satisfy the assessment lien. In addition, the owner of the offending time share must have failed to pay the amount of the lien for 60 days following the day the notice of default and election to sell is recorded and a copy of the notice is mailed by certified mail to the owner or the successor in interest. In addition, the owner must be sent a notice of the time and place of the sale before the actual sale is made. Every sale made under this power of sale causes title of the time share to vest in the purchaser and the original owner has no equity or right of redemption. *Id.*

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furnished with the consent of the time share owner.⁶⁸ Furthermore, if the lien is filed against two or more time share owners, one owner may remove an affected time share from the lien by paying the lien or the percentage of the total sum that is attributable to the time share in question.⁶⁹

Chapter 401 requires that the developer file with the Division all amendments to the time share instrument, articles of incorporation, trust, or bylaws that adversely affect the interests of the time share owner.⁷⁰ In addition, the developer is not permitted to advertise or offer for sale any time share until the advertisement or offering has been approved by the Division.⁷¹

The administrator is empowered to issue orders directing the developer to cease unauthorized conduct or other activities violating Chapter 401.⁷² Upon receipt of this written order, the developer must desist from the described activity, but may file a verified petition for a hearing within thirty days.⁷³ The administrator must then bring an action in district court on the matter in controversy within ten days after receiving the petition, or the order must be rescinded.⁷⁴

An alternative method to enjoin prohibited conduct is also available to the administrator under Chapter 401.⁷⁵ In lieu of issuing an order to cease these activities, the administrator and developer may enter into a confidential agreement whereby the developer will (1) discontinue the non-complying activity,⁷⁶ (2) pay all costs incurred by the Division while conducting an investigation or hearings concerning the developer's conduct,⁷⁷ and (3) return to the purchasers any monies that were acquired through the offending conduct.⁷⁸

Rights and Restrictions of Purchasers

With the enactment of Chapter 401, the purchaser of a time share has an absolute right to cancel the contract for the purchase of the unit within five days after the execution of the contract or payment of the

68. *Id.* c. 401, §43.7, at 993 (unless the owner expressly consented to the furnishing of the services or materials).

69. *Id.*

70. *Id.* c. 401, §44(1), at 993.

71. *Id.* c. 401, §53(1), at 996. The Division must either approve or deny the advertisement or offer within thirty days. *Id.* c. 401, §53(4), at 996.

72. *Id.* c. 401, §48(1), at 994.

73. *Id.* c. 401, §48(2)-(3), at 994.

74. *Id.* c. 401, §48(4), at 994.

75. *See id.* c. 401, §48(5), at 994.

76. *Id.* c. 401, §48(5)(a), at 994.

77. *Id.* c. 401, §48(5)(b), at 994.

78. *Id.* c. 401, §48(5)(c), at 994.

purchase price.⁷⁹ In addition, each owner of a time share is a member of the association for the time share project.⁸⁰ Chapter 401 also provides that if a unit to which a time share owner is entitled is not available, the owner must be compensated by the developer with either the monetary value of the loss,⁸¹ or with a comparable unit.⁸²

Chapter 401 states that an owner does not hold an investment contract, nor may an interest be considered risk capital.⁸³ An exception may exist, however, if the income derived from the time share project accrues for the direct benefit of the time share owner rather than the association.⁸⁴

Unless provided in the time share instrument, Chapter 401 prohibits owners of time share units from maintaining an action for partition.⁸⁵ If, however, two or more persons own a single time share, one owner may bring an action for the judicial sale of the time share.⁸⁶ In addition, owners are permitted to use a provision for waiver or subordination of the right of partition, or any other right incidental to a tenancy in common.⁸⁷

Rights and Restrictions of Time Share Associations

Chapter 401 requires the association to adopt an annual budget for revenues, expenditures and reserves.⁸⁸ The association also must collect assessments from the time share owners to cover project expenses.⁸⁹ The Division must approve the initial budget developed by the association.⁹⁰ If no association exists, the developer is responsible for budget formulation.⁹¹ The developer must pay the assessments for unsold time share units to the association or enter into an alternative agreement that is approved by the Division.⁹²

79. *Id.* c. 401, §25(4), at 982 (the developer must return all payments made by the purchaser within 15 days after receiving written notice of cancellation); *see id.* c. 401, §25(3), at 982 (written notice must be by personal delivery or sent by certified mail or telegraph); *see id.* c. 401, §25(2), at 982 (any attempt by the developer to obtain a waiver results in a voidable contract).

80. *Id.* c. 401, §38, at 989 (the association may be incorporated).

81. *Id.* c. 401, §40(2), at 990.

82. *Id.* c. 401, §40(1), at 990.

83. *Id.* c. 401, §42.5, at 991 (not an investment contract or risk capital since the income derived from the time share project reduces the assessment for time share expenses if the income inures directly to the benefit of the association).

84. *See id.*

85. *Id.* c. 401, §50, at 995.

86. *Id.*

87. *Id.*

88. *Id.* c. 401, §41(1), at 990.

89. *Id.*

90. *Id.*

91. *Id.* c. 401, §41(2), at 990.

92. *Id.* c. 401, §41(3), at 990. The alternate agreement requires that the developer pay the

With the enactment of Chapter 401, an association must maintain (1) property insurance on the time share project and any personal property available for use by the owners,⁹³ (2) liability insurance in an amount not less than \$1,000,000 per occurrence,⁹⁴ (3) insurance to cover the costs of temporary housing for the owners, and (4) insurance to cover other commonly insured against losses.⁹⁵ Every insurance policy must provide that each time share owner is an insured person under the policy, and that the insurer waives its right to subrogation under the policy against any owner or members of the owner's household.⁹⁶ Furthermore, a policy must provide that no act or omission by an owner who is not acting under the authority of the association will result in the interests of other owners being voided.⁹⁷

*Rights and Restrictions of the Administrator
and Division of Real Estate*

The Division may draft and adopt any regulations deemed necessary to carry out the provisions of Chapter 401.⁹⁸ In addition, the Division may exempt any sale, transfer, or disposition of a time share from these provisions if the enforcement is not necessary to serve the public interest or to protect purchasers.⁹⁹ Within thirty days after receiving an application for a permit to sell time shares, the Division must issue an order notifying the developer of its decision.¹⁰⁰ This order must include notification of all determinations concerning (1) the issuance of a preliminary permit, including a list of all deficiencies that must be corrected as a prerequisite to the issuance of a permit,¹⁰¹ or (2) the denial of the application and the reasons for that decision.¹⁰² Within forty-five days after receiving evidence that all deficiencies have been cured by the developer, the Division must either issue a permit or deny the application and explain the reasons for the denial.¹⁰³ If a preliminary permit was issued, the Division must issue a permit to the developer

difference between the actual expenses of the association and the amounts payable as assessments by the owners. *Id.*

93. *Id.* c. 401, §42(1)(a), at 990.

94. *Id.* c. 401, §42(1)(b), at 990.

95. *Id.* c. 401, §42(1)(c), at 990.

96. *Id.* c. 401, §§42(2)(a),(b), at 990.

97. *Id.* c. 401, §42(2)(c), at 990.

98. *Id.* c. 401, §13(1), at 978. The division may retain legal counsel, investigators and professional consultants to carry out the provisions. *Id.* c. 401, §13(2), at 978.

99. *Id.* c. 401, §14(2), at 978.

100. *Id.* c. 401, §21(1), at 981.

101. *Id.* c. 401, §21(1)(a), at 981.

102. *Id.* c. 401, §21(1)(b), at 981.

103. *Id.* c. 401, §21(2)(a), at 981.

within forty-five days.¹⁰⁴

Under Chapter 401, the developer must submit an application setting forth specified information.¹⁰⁵ The administrator must then issue a permit and public offering statement to sell time shares not otherwise prohibited by the provisions of Chapter 401.¹⁰⁶ In addition, the administrator must register an applicant as a representative¹⁰⁷ if that applicant has paid the necessary fees and has a proven reputation for honesty, trustworthiness, and competence.¹⁰⁸

The administrator may appoint a hearing officer from the staff of the Department of Commerce to act as an agent for conducting any hearing or investigation that is being held pursuant to the provisions of Chapter 401.¹⁰⁹ The administrator or the hearing officer may take testimony or other evidence, administer oaths, certify all official acts, and if cause exists, issue subpoenas for attendance of witnesses and the production of books and papers.¹¹⁰

Chapter 401 extends the rights of the Real Estate Commission under existing law¹¹¹ to take action against any project broker who is dilatory in supervising sales agents and representatives employed by the project.¹¹² In addition, the administrator is permitted to bring an action in district court to enjoin any person from violating Chapter 401.¹¹³ The administrator may also intervene in any action concerning a time share property, project, or unit if in the public interest or if necessary to pro-

104. *Id.* c. 401, §21(2)(b), at 981.

105. *See id.* c. 401, §19(1), at 979. The information includes (1) the name and address of the project broker, (2) a preliminary title report for the project and copies of any documents listed as exceptions in the report, (3) a copy of the time share instrument, (4) copies of other documents relating to the project or sale of the time shares, (5) copies of instructions for escrow, deeds, or sales contracts, (6) a copy of any proposed trust agreement establishing a trust for the project, (7) documents indicating current assessments for property taxes on the project, (8) documents indicating compliance with local zoning regulations, (9) documents showing that the present use of the unit is in compliance with the instruments that created the community ownership, (10) copies of any documents that will be given to the purchasers who are interested in participating in an exchange of occupancy program, as well as the documents that indicate that the project has been accepted in that program, (11) a copy of the budget or a projection of the operating expenses of the association, (12) a financial statement of the developer, and (13) any other information that might be required by regulations later adopted by the Division pursuant to its powers under Chapter 401. *Id.* c. 401, §19(1)(a)-(m), at 979-80.

106. *Id.* c. 401, §19, at 979.

107. *Id.* c. 401, §9, at 978 (definition of representative).

108. *Id.* c. 401, §34(1)-(3), at 985.

109. *Id.* c. 401, §45, at 994.

110. *Id.* c. 401, §46(1)-(4), at 994. The district court is empowered to compel the attendance of witnesses, the giving of testimony and the production of books and papers as requested by any subpoena issued by the administrator. Failure of the witness to obey such an order may result in the individual being held in contempt of court. *Id.* c. 401, §49(1)-(3), at 995.

111. *See* NEV. REV. STAT. §645.030.

112. 1983 Nev. Stat. c. 401, §44.7, at 994.

113. *Id.* c. 401, §47(1), at 994.

teet purchasers.¹¹⁴

*Rights and Restrictions of Project Brokers,
Sales Agents and Representatives*

Chapter 401 permits a sales agent to work for only one project broker at a time.¹¹⁵ If a sales agent changes employment to another project, the project broker must notify the association of the change within ten days.¹¹⁶ In the event of a change in association, the project broker is required to submit the agent's license to the Division.¹¹⁷ The agent then must apply to the Division for reissuance of the license for the remainder of its term.¹¹⁸ Sales agents are restricted to working at those projects where the supervising project broker will certify to the agent's honesty, trustworthiness, and competence.¹¹⁹

In accordance with the provisions of Chapter 401, time share representatives are not permitted to make any representations relating to the value or merits of a project, nor may those representatives take part in negotiations.¹²⁰ The representative's sole responsibility is to induce and solicit prospective customers to attend promotional meetings for the sale of time shares and to distribute information that has been previously approved by the Division.¹²¹ Both representatives and sales agents must comply with the standards set forth in existing statutes regulating the conduct and licensing of real estate brokers and sales agents.¹²²

Under the provisions of Chapter 401, the administrator of the Division is permitted to suspend, revoke, and reissue a sales agent's license if the issuance was based upon a fraudulent application or other misrepresentation.¹²³ The same penalties apply if the sales agent is found guilty of (1) making a material misrepresentation,¹²⁴ (2) making a false promise that is likely to influence the promisee,¹²⁵ (3) engaging in any oppressive or misleading tactics,¹²⁶ (4) accepting compensation for acts governed by Chapter 401 from anyone other than the licensed project

114. *Id.* c. 401, §47(2), at 994.

115. *Id.* c. 401, §33, at 985.

116. *Id.* c. 401, §33.5(1), at 985.

117. *Id.* c. 401, §33.5(2), at 985.

118. *Id.* c. 401, §33.5(3), at 985.

119. *Id.* c. 401, §33.5(4), at 985.

120. *Id.* c. 401, §34.5, at 985.

121. *Id.*

122. *Id.* See NEV. REV. STAT. §§645.230-.770.

123. 1983 Nev. Stat. c. 401, §44.3(1), at 993.

124. *Id.* c. 401, §44.3(1)(a), at 993.

125. *Id.* c. 401, §44.3(1)(b), at 993.

126. *Id.* c. 401, §44.3(1)(c), at 993.

broker or developer with whom the agent is working,¹²⁷ or (5) failing to remit to the project broker, within a reasonable time, any money received that belongs to others.¹²⁸

Under Chapter 401, it is unlawful for anyone to use false or misleading information in advertising the sale of time shares.¹²⁹ Furthermore, it is a misdemeanor to (1) act as a project broker or sales agent without being licensed either under the provisions of this act or existing law,¹³⁰ (2) act as a representative without being registered by the Division,¹³¹ (3) intentionally submit materially false or misleading information in applying for a permit to sell time shares,¹³² or (4) intentionally fail to submit an annual report on a program for the exchange of occupancy rights among the time share owners.¹³³ Chapter 401 also sets forth an extensive list of requirements that apply to developers and companies offering exchange of occupancy rights.¹³⁴

Additional Rights and Restrictions

Any time share or time share project subject to the provisions of Chapter 401 also may be subject to local government licensing regulations only for revenue purposes.¹³⁵ Developers of a time share project in existence prior to the enactment of Chapter 401 may continue to sell the time shares in that project after applying for a permit, until notification of the denial of the permit by the Division.¹³⁶ To be affected by

127. *Id.* c. 401, §44.3(1)(d), at 993.

128. *Id.* c. 401, §44.3(1)(e), at 993.

129. *Id.* c. 401, §52(1), at 996.

130. *Id.* c. 401, §51(2)(a), at 995.

131. *Id.* c. 401, §51(2)(b), at 995.

132. *Id.* c. 401, §51(1), at 995.

133. *Id.* c. 401, §55(1), at 996. *Id.* c. 401, §55(2), at 996 (exempts programs for the exchange of occupancy rights among time share owners from existing law regulating securities).

134. *See id.* c. 401, §37(1),(4), at 986. These requirements include (1) the name and address of the company offering the program, (2) a statement that the purchaser's contract with the company is separate and distinct from the contract to purchase the time share, unless the company and developer are affiliates, (3) a statement explaining whether or not membership in the program is voluntary or mandatory, (4) all limitations, restrictions and priorities of the program, (5) a statement indicating whether the exchanges are made on the basis of available space and whether there are any guarantees of fulfilling specific requests for an exchange, (6) outline of charges made by the company for their services and the circumstances under which such fees may be charged to the owner, (7) an annual report completed by July 1 of the following year that must be independently certified by an accounting firm or certified public accountant, and the report must include a listing of the number of owners involved in the program, the number of time shares included in the program categorized by those units that are the subject of contracts with the developer and those that are the subject of contracts directly with the individual owners, and the percentage of confirmed exchanges (presented in a ratio of confirmed exchanges by the number of exchanges properly applied for). All this information must be provided for the prospective purchaser before executing any contract to purchase the time share. *Id.* *See also id.* c. 401, §§37.3, 37.5, 37.7, at 988-989 (regulating companies which offer time share exchange programs).

135. *Id.* c. 401, §54, at 996.

136. *Id.* c. 401, §57(1), at 997.

this provision, at least thirteen time shares must have been sold to purchasers who are not affiliated with the developer.¹³⁷ In addition, the provisions governing the closing of escrow do not apply to any project that has sold or offered to sell time shares as of April 1, 1983, if the project developer submits a report¹³⁸ to the Division within ninety days of the effective date of Chapter 401.¹³⁹ Furthermore, the Division has the discretion to exempt any project from compliance with Chapter 401 that has substantially met the requirements of existing law governing the licensing and regulation of land sales on or before the effective date of Chapter 401.¹⁴⁰

Finally, anyone acting as a sales agent prior to enactment of these provisions who is not licensed pursuant to existing law must submit an application for licensing.¹⁴¹ These agents, however, may continue to work in this capacity until notified by the Division that their application has been denied.¹⁴² If a salesperson is already licensed under existing regulations, a new application for a license is not necessary.¹⁴³

Conclusion

With the enactment of Chapter 401, the Nevada legislature has filled regulatory gaps that have existed since the Nevada Supreme Court ruled that certain types of time shares are neither leaseholds nor licenses.¹⁴⁴ Restrictions on developers, project brokers and sales agents are enumerated to afford protection to time share purchasers.¹⁴⁵ Finally, penalties may be imposed by the Division to insure the effectiveness of Chapter 401.¹⁴⁶

137. *Id.* c. 401, §57(2), at 997.

138. *Id.* c. 401, §58(1), at 997 (report must be supported with adequate proof and include (1) a description of the location of the time share project, (2) the number of units and the number of time shares sold within each unit, (3) the nature and extent of the developer's promotional plan, and (4) the nature and extent of the financing committed to the project as of April 1, 1983).

139. *Id.*

140. *Id.* c. 401, §59(2), at 997. *See generally* NEV. REV. STAT. §§119.014-.340 (licencing and regulation of land sales).

141. 1983 Nev. Stat. c. 401, §60, at 997.

142. *Id.*

143. *Id.*

144. *See State Dep't of Commerce v. Carriage House*, 94 Nev. 707, 585 P.2d 1337 (1978); 1983 Nev. Stat. c. 401, §§2-61, at 977-98.

145. *See* 1983 Nev. Stat. c. 401, §§2-61, at 977-98.

146. *Id.* c. 401, §§44.3, 44.7, 47, 48, 51, 52, at 993-96.