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STATEN VAN SINT MAARTEN

ZITTING 2015-2016

LANDSVERORDENING van

tot herziening van de burgerrechtelijke regels betreffende timeshare

(Timeshare Ordinance)

REACTIE OP HET ADVIES VAN DE RAAD VAN ADVIES

No. ..

I hereby have the honour in presenting the reaction to the advice of the Council of Advice, dated June 26th 2014, RvA no. SM/01-14-ILV, with regard to the initiative draft National Ordinance for the review of the civil-law rules with regard to timeshare (Timeshare Ordinance).

By letter of January 13th 2014, the Chairman of Parliament sent to the Advisory Council, the initiative draft National Ordinance, as submitted by member Petrus L. De Weever. The undersigned has taken up the initiative, thereby thanking the former member of Parliament and has requested Parliament to resume the discussion of the initiative National Ordinance.

In order to accommodate the remarks and points of criticism of the Council of Advice, on the occasion of this reaction an amended draft National Ordinance and an amended Explanatory Memorandum was made up.

I shall address these remarks and points of criticism below, point by point. The order and numbering of the reactions of the Council of Advice shall be followed.

As the Ordinance was originally written as an amendment to the Civil Code the numbering of the articles reflected its placement in Book 7 Title 1 Section 10 of that Code. Upon early advice the decision was taken to submit the Ordinance as a separate National Ordinance of Sint Maarten. Therefore, the numbering of the Articles has been amended to commence with Article 1 and continue through Article 25 in place of Articles 50a through 50y. All articles have maintained their order and the numbering substitution is consistent throughout.

1. General remarks

1.1 Inconsistencies with the language

The Council of Advice has ascertained that the presentation, the heading and Articles II through V (presently Articles II through VI) have been made up in the Dutch language. The undersigned arrived at this set-up through the application of Article 8 of the National Ordinance on publication and entering into force (Landsverordening bekendmaking en inwerkingtreding, AB 2010, GT no. 21), reading as follows (in Dutch):

‘Het formulier van bekendmaking van een landsverordening tot stand gekomen op initiatief van een of meer leden van de Staten luidt:

“In naam van de Koning!

De Gouverneur van Sint Maarten,

In overweging genomen hebbende:

(beweegredenen van de landsverordening)

Heeft, de Raad van Advies gehoord zijnde, op initiatief vanuit de Staten, vastgesteld de onderstaande landsverordening:

(de landsverordening),

Gegeven te Philipsburg,.....” .’

The reason that the Articles II and III have been made up in the Dutch language has to do with the fact that these Articles contain amendments of the Civil Code and the Permit Ordinance which have also been made up in the Dutch language. Article IV contains a transitional legal rule, Article IV gives the official title (Timeshare Ordinance) and Article V establishes that the time of entering into force shall be established by National Decree.

1.2 Collaboration with Judicial Affairs and Legislation

The Council of Advice recommends Parliament to make up drafts of National Ordinances in collaboration with the department of JZ&W, in order to produce qualitatively better drafts. The undersigned could agree to this advice, if one were to consider that the advice was given in 2014. In the meantime, however an interesting development has occurred.

Recently, an advertisement for personnel appeared in the media in which the Clerk of Parliament calls up candidates for the function of second acting Clerk. The candidate is expected to follow the two-year legislative course at the Academy for Legislation. The objective of the Clerk is to ensure that the Clerk’s office too shall accumulate sufficient legislative expertise to be able to assist the members of Parliament when making up initiative National Ordinances. The objective is that initiative National Ordinances shall no longer show technical shortcomings in the future. Involving the department of JZ&W shall then no longer be necessary.

It goes without saying that the intrinsic aspects of all initiative National Ordinances shall remain the responsibility of the presenters.

2. Policy analytical review

2.1 – 2.8 Legislation in the English language

On July 18th 2013, the Council of Advice responded by letter to the language issue. At that time, the Council of Advice, among others, from the point of view of legal certainty, advised Parliament to consider making up the English versions of the drafts completely in the Dutch language and thus to have these translated. Summarized briefly, the Council of Advice has serious doubts about the English-language legislation.

The undersigned is of the opinion that this is very important for Sint Maarten. That is why we have dealt with this issue at great length hereafter. The text has for the most part been concurrently included in the Dutch-language Reaction to the advice of the Council of Advice concerning the initiative Sint Maarten Timeshare Authority Ordinance.

The undersigned is of the opinion that at a certain moment in the future, all legislation of Sint Maarten shall have to be made up in the English language. That is more in keeping with the language which the majority of the population of Sint Maarten speaks. The undersigned is a great proponent of having the majority of a population properly understand the legislation and the judicial usage of the language. That language is English, and not Dutch.

The undersigned acknowledges, of course, that the transition from one language to the other shall be difficult and shall be attended by many adaptation problems. And that is why it is necessary to set aside quite some time for this.

However, at some point the legislator shall have to commence with that conversion, which is the firm belief of the undersigned. That first start shall have to be the Timeshare Ordinance, according to the undersigned.

The recommendation of the Council of Advice to make up the draft in the Dutch language shall not be acted on in the initiative Timeshare Ordinance.

The reasons are as follows.

Article 1, second paragraph of the Constitution reads (in English translation): ‘The official languages are Dutch and English.’ The undersigned is of the opinion that if legislation in the English language is precluded in its entirety, this provision from the Constitution is therefore not being taken seriously.

Sint Maarten does not have, as Aruba, a provision which prescribes that legislation must be made up in the Dutch language (See Article 5 of the Aruban Landsverordening houdende enige regels inzake het Papiamentu en het Nederlands als officiële taal, AB 2003 no. 38: ‘Wetgeving geschiedt in het Nederlands.’).

For that matter, if such a provision would be introduced in Sint Maarten, the constitutional question could be raised as to whether or not that provision is compatible with Article 1, second paragraph of the Constitution of Sint Maarten (the Constitution of Aruba is silent on official languages).

According to the legal history of the Sint Maarten National Ordinance Official Languages, the legislator consciously refrained from such a provision and he considered that legislation in the English language could possible though, according to the explanatory memorandum, on a limited scale.

In the draft National Ordinance, containing the enactment of the official languages of the Netherlands Antilles, (Staten van de Nederlandse Antillen 1986/1987-52, no. 2), Article 3, second and third paragraph, read as follows (in English translation):

“2. Publication of legislation shall be effected in the Dutch language, in which case, if desired, within a reasonable time, one shall ensure translation and publication of this legislation in the English and Papiamento languages.

3. Upon interpretation of a legal text the Dutch text is authentic.”

This draft was however withdrawn on September 29th 1997 (Staten van de Nederlandse Antillen 1997/1998-536, no. 4), together with the presentation on the same day of a new draft, in which a provision with regard to the language of legislation has been intentionally omitted. This draft has resulted in the National Ordinance Official Languages, which is still in effect, of March 28th 2007 (PB 2007, no. 20, AB 2013, GT no. 474). In the explanatory memorandum, the following has been observed (in English translation):

“The role of the Papiamento and the English languages in jurisprudence and legislation shall, in any event, remain limited, as long as a number of conditions for the use of these languages have not been satisfied, such as the establishment of the legal- and legislative terminology in the English and the Papiamento languages and the availability of a sufficient number of judges and lawyers, who master these languages as well court interpreters. Only after such conditions have been met, shall there be room for a frequent use of those languages in the judicial sector.”

This proves that there is some room, according to the then legislator, for legislation in the English language.

However, instruction 44 of the Instructions for regulation in Sint Maarten (AB 2013, no. 26) reads as follows (in English translation):

“1. Legal regulations are made up to the extent possible in the Dutch language. The use of another language is only possible if a word or expression in another language finds acceptance on Sint Maarten and:

- a. No Dutch equivalent of the word or expression is available; or
- b. The meaning is reflected more clearly than in the Dutch language.

2. This instruction does not apply to names and neither to the articles of legal regulations, which are provided in the text of an oath or pledge to be made”.

These Instructions, however, are a Regulation from the Prime Minister which allows deviation and in any event does not bind Parliament.

The undersigned emphasizes that she acknowledges that the transition to the English language shall have to be made gradually. The undersigned is of the opinion however that timeshare legislation assumes a special position and that the choice to start with this National Ordinance, is pre-eminently justified. In this case, given the field which and legal subjects who are addressed

in the Timeshare Ordinance, the use of the English language is more effective, practical and suitable. By doing so the undersigned, in this case, also gives more and just meaning to the legal principle 'nemo censetur ignorare legem'. Persons – in this case mainly or primarily English speaking tourists - can't know the law if it is not directly available in a language they understand.

An important factor which has bypassed the Council of Advice is the fact that the text of the draft Timeshare Ordinance, for the most part has been made up by English-speaking lawyers. International experts in the field of timeshare legislation of the American Resort Development Association Caribbean Committee have participated. See the explanatory memorandum, page 1: 'An ARDA Caribbean-SMTA Legislative Committee was created, including corporate counsel of international exchange companies RCI and Interval International, SMTA stakeholders and other legal experts from the membership of ARDA Caribbean with vast experience in representing government regulatory agencies, timeshare consumers and the timeshare industry.'

If the texts made up by these English speaking experts should be converted to the Dutch language, this will undoubtedly lead to uncertainties.

The undersigned is not denying that in the current situation, even though on a modest scale, there are certain objections to legislation in the English language. The Council of Advice has pointed this out insistently. In the case under discussion however, in the firm belief of the undersigned, the benefits far outweigh the disadvantages. That in a single case, reference is made to a regulation in the Dutch language (such as the National Ordinance Public Registers or the Civil Code) is unavoidable and not a great problem.

At any rate, deviation from the concordance principle anchored in Article 39 of the Charter of the Kingdom of the Netherlands is definitely possible, provided that there are good reasons for such. These good reasons are present, since timeshare is an important mainstay of the economy of Sint Maarten, the timeshare sector practically exclusively uses the English language and the Timeshare Ordinance was made up by English-speaking lawyers.

In a sense, there are precedents in the field of private law. Article 613 of Book 8 of the Civil Code reads as follows:

'The compensations, on a general average and the sustainable values of the general average contributory interests have moreover been established, taking into account the York-Antwerp Rules, as established by the Comité Maritime International, in the English-language text.'

And the current Article 1020, first paragraph, of the Code of Civil Procedure has established:

'Applicable to arbitration is the UNICITRAL Model Law on International Commercial Arbitration, hereafter to be called the Model Law, as recently established by the United Nations Commission on International Trade Law, in the English-language text.'

2.9-2.12

Translations

Since the undersigned continues to hold on to an authentic legal text in the English language, the views of interest of the Council of Advice, as regards the justified translation of the legal texts,

only become significant, if at a later time, an option should be made for a translation of the Timeshare Ordinance in the Dutch language.

3. Legal review

3.1-3.2

Delegation of regulatory authority and the Parliamentary involvement therein

The draft contains rules of civil law, therefore regulations with regard to rights and obligations of citizens towards each other. In accordance with instruction 17, heading and under f, of the Instructions for regulation in Sint Maarten (AB 2013, no. 26) these regulations should be taken up in a National Ordinance. There is no need for delegation to National Decrees, containing general measures. Even the very extensive Civil Code recognizes little delegation. It concerns, for the most part, adjustment of amounts or technical regulations with regard to registers.

3.3 The range of the Timeshare Ordinance

3.3.1 Timeshare Plans and travel clubs

The undersigned has reviewed Comment No. 3.3.1 and in the interest of clarity, and in deference to the concerns of the Council of Advice with respect to the drafting of Article 50a (now Article 1), present its clarification as set forth in the bill as adapted.

3.3.2 The term of the timeshare interest

The undersigned has reviewed Comment No. 3.3.2 and provides the clarification in the Explanatory Memorandum at Article 1, as adapted.

3.3.3 The scale of the financial liability

The undersigned has reviewed comment 3.3.3 and has provided further clarification in the adapted Explanatory Memorandum to Article 1 as requested by the Council of Advice. The undersigned further submits that there should be no further difficulty in determining the total financial obligation in connection with the timeshare right or interest.

3.3.4 Location of accommodations

The undersigned has reviewed Comment No. 3.3.4 and agrees with the Council of Advice. There is no need to reference a component site which is not covered by the Ordinance as already defined in Article 1.

3. Definitions of the Timeshare Ordinance

In principle there should be a connection between the meaning of the terms used in the Timeshare Ordinance and the terms as used in the Civil Code. However one has to take into account that the Timeshare Ordinance applies as a 'lex specialis' in relation to the general Civil Code. So 'hypotheek' serves as security for registered property (e.g. ownership of immovables). For other property (e.g. movables and claims) 'pand' may serve as security. It is possible to

utilize a timeshare right in rem, namely timeshare apartment right (Article 5:106 and following of the Civil Code), but this is rare in practice. Usually timeshare includes contractual entitlements. The undersigned expects the practice to cope without major problems. In practice, one also sees that widely deeds and contracts are written in English. This has yielded no significant problems.

See also above 2.1-2.8 on the language issue in response to the advice of the Council of Advice . The use of the English language has certain drawbacks, but these do not outweigh the benefits in this case.

3.4.1 Developer

The undersigned has provided further elucidation in the Explanatory Memorandum on the definition of Developer, as adapted, to address this point made by the Council of Advice.

3.4.2 Timeshare property

The undersigned has provided further clarification of the definition questioned by the Council of Advice in the adapted Explanatory Memorandum on Article 2.30

3.4.3 Single component site

The undersigned has provided further clarification in the adapted Explanatory Memorandum to Article 2.5

3.4.4 Timeshare plan and timeshare interest

The undersigned has provided further clarification of the timeshare interests queried by the Council of advice in the adapted Explanatory Memorandum to Articles 2.28 and 2.29. In the Ordinance Article 2.9 was amended to provide the Council of Advice's requested consistency. Article 2.15 has been amended in the Ordinance to use the term "Prospective purchaser" in place of "Purchaser" for enhanced clarity in response to the Council of Advice. The Council of Advice's recommendation was followed and article 2.25 was amended to remove "rights to".

The timeshare contract may have many forms. The current regulation in the Civil Code (Article 7:48a and following) has been taken up in the purchase title (Title 7.1), but that is unfortunate. In the Netherlands, the timeshare regulation, in the meantime has been taken up in a separate title, apart from the purchase title ('Titel 1a. Overeenkomsten betreffende het gebruik in deeltijd, vakantieproducten van lange duur, bijstand en uitwisseling').

It is conceivable that a contract contains features of purchase and of rental, but this does not mean automatically that the regulation in the Civil Code of the purchase or rental is applicable. The Timeshare Ordinance is effective as 'lex specialis' with regard to the Civil Code and therefore has precedence ('lex specialis derogate legi generali').

For issues, which are not regulated in the Timeshare Ordinance, the Civil Code could provide the solution. If a contract should fall under the description of purchase as rental, then article 6:215 of the Civil Code shall apply, which reads: 'Where a contract falls within the description of two or more types of contract specifically regulated by law, the rules applicable to each apply to the

contract concurrently, except to the extent that the provisions are not easily compatible or that their necessary implication, in relation to the nature of the contract, makes them inapplicable.'

3.4.5 Sale, transfer, disposition and assignment

The undersigned acknowledges the Council of Advice's concerns over the definition of "disposition" and elucidates in the adapted Explanatory Memorandum to Article 2.8 how the term can include actions such as sales, transfers, and assignments of timeshare interests. The uses of the terms "legal or equitable interest in a timeshare plan; "transfer, assignment or release" and; "a security interest ' are further clarified in this same notation.

3.4.6 Purchaser

The undersigned agrees with the Council of Advice's recommendation and references to "purchaser" have been replaced in the ordinance with "prospective purchaser, and usages of "user" has been made consistent throughout the ordinance.

3.4.7 User

With the adjustments mentioned in relation to the Council of Advice's point 3.4.6 above the term user is now consistent with the definition as provided in Article 2.16

3.4.8 Association

The undersigned has addressed this point in the adapted Explanatory Memorandum for Article 2.3

3.4.9 Exchange programs

The undersigned disagrees with the opinion of the Council of Advice. The designated amount of Three Thousand United States Dollars (US \$3,000.00) includes any initial amounts paid by the user in order to join an exchange program as well as any other obligatory costs or fees related to the exchange program. It is the intent of this provision to consider any exchange program that has obligatory costs in excess of US \$3,000 a timeshare plan of a multi-site nature. The exceptions provided in Article 2.33 sub a, b, and c are there because those costs cannot be considered obligatory as described.

3.5 Obligations of the developer

3.5.1 Article 50c (new article 3)

Article 3 in the Ordinance has been amended to remove the pleonasms as advised by the Council of Advice. The Explanatory Memorandum to this Article has been amended to provide the clarity of intent that indeed the undersigned intends to provide the protection to the users or a Timeshare license in the event of a bankruptcy or forced sale, which will require lenders to exercise the due caution that is considered normal in other jurisdictions with a well-developed timeshare industry. Regarding the other consideration, the Council of Advice points out in this section of when the developer may not be the owner of the property on which the timeshare usage rights are conferred, there is a requirement for submission of proof of authorization to so bind the owner of the property to the timeshare interests inserted in Article 5.

3.5.2 Article 50d (new article 4)

The undersigned has addressed the relationships between the first and second sentences of Article 4 as well as to whether or not there is a violation as recommended by the Council of Advice in amending the language. Article 4 establishes a broad responsibility for the developer. The developer is liable "for the actions of any other party Utilized by the developer in the promotional offering or selling or managing of such developer's timeshare plan, even if these 'other parties' can not be regarded as an auxillary person referred to in Article 6:76 of the Civil Code or as a subordinate as referred to in article 6: 170 of the Civil Code or an independent contractor under Article 6: 171 of the Civil Code. It moreover remembered that the Timeshare Ordinance applies as 'lex specialis' in relation to the general Civil Code. The undersigned has reviewed the third part of Comment No. 3.5.2, and, in deference to the concerns of the Council of Advice, replaces the terms "sales agent, marketing entity" with the defined term "timeshare salesman."

3.5.3 Article 50e (new article 5) and article 50h (new article 8)

The undersigned agrees with the opinion of the Council of Advice, and has inserted in article 5 (new) a reference to article 10 of the Vergunningslandsverordening (Permit Ordinance). The Minister will refuse the permit in case the necessary documents as stated in article 5 (new) were not filed. Further, the Council of Advice remarks that article 5 (new) will not be applicable to a (legal) person who is already in the possession of a hotel license. That is not a real issue, because in such a case the building will be already in conformity with the all the requirements, stipulated in chapter II of the Uitvoeringslandsverordening van de Vergunningslandsverordening (Implementation Ordinance of the Permit Ordinance), which is the most important aim of the Vergunningslandsverordening (Permit Ordinance).

3.6 Contract

3.6.1 Article 50i (new article 9) and 50j (new article 10): the contract and the pre-contractual obligation to provide information.

The Timeshare Ordinance aims to give a full independent regulation of the civil law aspects of timeshare. The consequence is that the regulation of timeshare in the Vestigingslandsverordening (Permit Ordinance), with annex, must be canceled. See the new Article III.

Following the comments of the Council of Advice is the first paragraph of Article 9 completed.

3.6.2 Dissolution

The third paragraph of Article 9 must be explained in such a way that even if the contract does not contain the right of dissolution within the time for reflection (which, for that matter, is difficult to imagine), this right does exist pursuant to the Timeshare Ordinance. The provision speaks of 'dissolution or rescission', which both terms, converted to the terminology of the Civil Code, mean 'ontbinding'; the current Article 7:48c of the Civil Code also speaks of 'ontbinding', as well as Article 7:2, second paragraph, of the Civil Code (time for reflection upon the purchase

of an immovable property) and Article 7:46 of the Civil Code (time for reflection upon distance purchase).

The period of five days has been taken over from the current Article 7:48c of the Civil Code, introduced for the former Netherlands Antilles by National Ordinance of April 27th 2005, P.B. 2005, no. 58, which took effect on December 1st 2005. The same term has been in effect since December 1st 2005 in Curacao, Bonaire, Sint Eustius and Saba and since November 1st 2012, also in Aruba (National Ordinance of June 18th, AB 2012, no. 27). The term has been in effect for eleven years already, in this country. There is no reason to make a change. Sint Maarten is not bound by rules of the European Union.

3.7 Managing Entity

3.7.1 Artikel 50k (artikel 11 nieuw) en 50l (artikel 12 nieuw) (budgetverplichting en maintenance fees)

The undersigned agrees with the Council of Advice first part of Comment No. 3.7.1 regarding Article 11 and, has replaced the term “operating expense” with the defined term “common expense.”

Regarding the second part of advice No. 3.7.1 on Article 12 by the Council of Advice, the undersigned has expanded the definition of “common expense” in Article 2.5, by reference to Article 12.

3.7.2 Article 50 m (new article 13) administration obligation

The administration and book keeping obligation laid down in Article 13, goes further than the general Article 2:15 of the Civil Code (in effect for all legal persons) and the more general Article 3:15i (in effect for any person who operates a business or independently exercises a profession). The Civil Code further presents a special administration obligation for trusts (Article 3:137, second paragraph) and for partnerships (Article 7:814). In this respect, one must remember, at any rate that the Timeshare Ordinance is in effect as ‘lex specialis’ with regard to the Civil Code. With regard to the compliance with fiscal obligations, there are special regulations to which the timeshare managing entity is of course bound.

3.8 Termination or suspension of the rights of a user of a timeshare license

3.8.1 Article 50r (new article 18): neglect to pay purchase price

The Timeshare Ordinance is a ‘lex specialis’ with regard to the general regulation in the Civil Code. This means that the Timeshare Ordinance has precedence (‘lex specialis derogate legi generali’). If a certain issue is not covered by the Timeshare Ordinance, the Civil Code may be applied. In the event of vagueness in the Timeshare Ordinance, it is also possible for the Civil Code to offer the solution.

That, as the occasion arises, the Timeshare Ordinance should present the same solution as would result from the Civil Code, is not a problem. The Timeshare Ordinance is contemplating presenting a complete regularization of the timeshare legal relation, without reference to the Civil Code. This serves the accessibility and legal certainty.

Articles 18 and 19 do not provide, as in the case of Article 6:271 of the Civil Code, for restitution of payments. At any rate, in general, Article 6:271 of the Civil Code, if applicable may be deviated from by parties in their contract.

3.8.2 Artikel 50s (artikel 19 nieuw): failure pay maintenance fees.

The undersigned agrees with the Council of Advice and Article 19.2 and 19.3 are clarified.

3.9 Travel Clubs

3.9.1 Article 50x (new article 24)

The undersigned has reviewed those parts of the Council of Advice's Comment No. 3.9.1 regarding Article 24 and the EU Directive, and disagrees. As consistently explained, the EU Directive has been rejected as the only model to adhere to in the Timeshare Ordinance, although some aspects of the EU Directive are used. Based on careful evaluation, the greatest source of consumer concerns regarding travel clubs arise from alleged misrepresentations in advertising.

The undersigned has reviewed that part of Comment No. 3.9.1 regarding Article 24 and Article 21 and disagrees with the Council of Advice's views. Given the importance of consumer protections in travel club advertising, we see no reason to remove the cross-references in each Article.

The undersigned has reviewed that part of Comment No. 3.9.1 regarding the application of Article 9 and Article 10 to travel clubs and disagree. We know of no jurisdiction, including the EU, that regulates travel clubs to the same extent as timeshare interests. The products and services are different so the contractual terms and disclosures are also different. For example, travel clubs do not offer accommodations in any recurring timeshare property nor require payment of annual maintenance fees. Travel club memberships often include other non-accommodation travel services, such as rental cars or airline packages.

The undersigned notes that part of Comment No. 3.9.1 regarding the nonexistent sections [4a] and [4b] in Article 24, part 2(c), and has corrected the cross-references

3.10 Sales and misleading advertising The undersigned has answered and dealt with the Council of Advice's commentary relating to its advice 3.3.1 and has amended the wording in Article 21.2 and Article 22.1 to reflect that it is the timeshare interest and the travel club membership referred to. As stated in Article 21, first paragraph, Articles 6:195 and 6:196 of the Civil Code also apply.

3.11 Resale Timeshare

3.11.1 Article 50y (new article 25) resale timeshare

The first paragraph of Article 25, is related to international cases. It gives conditions for the applicability of Article 25. If these conditions are not met, in accordance with the rules of

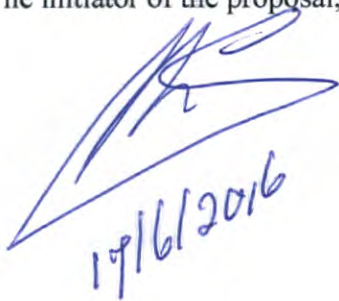
unwritten Sint Maarten international private law, on the resale the law of another country may be applicable, for example that of the French side (Saint Martin).

Perhaps – it all depends on the circumstances of the case – the law of Sint Maarten may still be applicable, but not Article 25 of the Timeshare Ordinance. In order to determine if an accommodation is ‘primarily located’ on Sint Maarten, one shall have to pay attention to all circumstances of the case. The judge shall have the final say.

It is conceivable that the resale does fall under Article 1, because the resale takes place in Sint Maarten, but not under Article 25.

As regards Articles 6:76, 6:170 and 6.171 of the Civil Code cited by the Council of Advice, reference is made to the reaction above at 3.5.2.

The initiator of the proposal,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke. Below the signature, the date "17/6/2016" is written in the same blue ink.

1 juni 2016

STATEN VAN SINT MAARTEN
ZITTING 2015-2016

LANDSVERORDENING van
tot herziening van de burgerrechtelijke regels betreffende timeshare
(Timeshare Ordinance)

ONTWERP ZOALS GEWIJZIGD NAAR AANLEIDING VAN HET ADVIES VAN DE
RAAD VAN ADVIES

No. ..

IN NAAM VAN DE KONING!

DE GOUVERNEUR van Sint Maarten;

In overweging genomen hebbende:

dat timeshare een belangrijke peiler is van de economie van Sint Maarten;

dat het wenselijk is de burgerrechtelijke regels ter zake van timeshare te herzien in het bijzonder ter verbetering van de consumentenbescherming;

dat het met het oog op de toepassing wenselijk is dat de herziene regeling, buiten het Burgerlijk Wetboek, in de Engelse taal in een Timeshare Ordinance wordt neergelegd;

Heeft, de Raad van Advies gehoord zijnde, op initiatief vanuit de Staten, vastgesteld onderstaande landsverordening:

ARTIKEL I

Section 1 General Provisions

Article 1

This Ordinance applies to all timeshare plans and any and all timeshare interests in any timeshare plan and to any travel club and all memberships in any travel club located, or offered for sale, in Sint Maarten, except that the Ordinance shall not apply to any of the following:

(a) a timeshare plan and any and all timeshare interests in a timeshare plan, whether or not said timeshare plan and any and all timeshare interests in a timeshare plan includes accommodations or component sites located in Sint Maarten,

- (i) where the term of any timeshare interest is no longer than three (3) years and the user may, at the will of the user, terminate his ownership of the interest within such three (3) year period, provided that, for purposes of determining the duration of the term, any period of automatic renewal shall be included unless the user receives written notice, not less than sixty (60) days, but not more than one hundred twenty (120) days, prior to the date of renewal, informing the user of the right to terminate at any time prior to the date of automatic renewal, or
- (ii) under which the prospective purchaser's total financial obligation will be equal to or less than Three Thousand and No/100 United States Dollars (\$3,000.00) during the entire term of the timeshare plan; or
- (b) component sites of specific timeshare interests that form part of multi-site timeshare plans which are neither located in nor offered for sale in Sint Maarten.

Article 2

As used in this Ordinance, the term:

1. "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle or other private or commercial structure, whether real or personal property and is designed and available, pursuant to applicable law, for overnight occupancy by one or more individuals.
2. "Maintenance Fee" means the proportionate share of the funds required for the payment of common expenses that is assessed from time to time against each timeshare interest and payable by the user of that timeshare interest.
3. "Association" means an organized body or entity created pursuant to the timeshare instrument whose members are users of timeshare interests in a timeshare property.
4. "Common expense(s)" means casualty and liability insurance premiums, and those expenses reasonably incurred for the maintenance, repair, refurbishing and operation of all accommodations and related amenities and facilities constituting the timeshare plan and any other expenses designated as common expenses by the timeshare instrument or disclosed to users in the budget as generally described in Article 12 below.
5. "Component site" means a specific geographic location where a timeshare property is located. Separate phases of a single timeshare property in a specific geographic location and under common management shall be deemed a single component site.
6. "Contract" means a purchase contract pursuant to which a person becomes legally obligated to sell, and a prospective purchaser becomes legally obligated to buy, a

timeshare interest, or any agreement conferring the rights and obligations of a timeshare plan on the prospective purchaser.

7. "Developer" means and includes any person or entity that creates a timeshare plan and is in the business of selling or transferring of timeshare interests, or employs agents or brokers to effect the disposition of timeshare interests, or any person or entity that succeeds to the interest of a developer by sale, lease, assignment, mortgage or other transfer, except that the term "developer" shall include only those persons who offer timeshare interests for disposition in the ordinary course of business. A person shall not be considered as a developer under this Ordinance if: (a) the person is an owner of a timeshare interest who has acquired the timeshare interest for the person's own use and occupancy and who later offers it for resale in a single or isolated transaction; or (b) the person is a managing entity or an association that is not otherwise a developer of a timeshare plan in its own right, solely while acting as an association or under a contract with an association to offer or sell a timeshare interest transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer, if such acts are performed in the regular course of, or as an incident to, the management of the association for its own account in the timeshare plan.
8. "Disposition" means a voluntary transfer or assignment of any legal or equitable interest in a timeshare interest, other than the transfer, assignment or release of a security interest.
9. "Facility" means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the users of a timeshare interest.
10. "Managing entity" means the management company set up by the developer, a successor company, or association or other person who undertakes the duties, responsibilities and obligations of the management of the timeshare property.
11. "Offer" means any inducement, solicitation, or other attempt, whether by marketing, advertisement, oral or written presentation or any other means, to encourage a person to acquire a timeshare interest in a timeshare plan, for gain or profit.
12. "One-to-one use right to use night ratio" means that for each accommodation subject to a timeshare plan the sum of the nights that users have an absolute contractual right to use in a given twelve (12)-month period shall not exceed the maximum number of nights available for occupancy in such accommodations during the same 12-month period. No individual timeshare unit may be counted as providing more than three hundred and sixty-five (365) use nights per twelve (12)-month period or more than three hundred and sixty-six (366) use nights per twelve (12)-month period that includes February 29. The use rights of each user

shall be counted without regard to whether the user's use rights have been suspended for failure to pay assessments or otherwise.

13. "Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity, or any combination thereof.
14. "Promotion" means a plan or scheme representing that a prospective purchaser may receive a vacation, discount, gift or prize in connection with the offering or disposition of a timeshare interest.
15. "Prospective purchaser" means any person who is offered a timeshare interest or a travel club membership for disposition.
16. "User" means any person, other than a developer, who voluntarily acquires a timeshare interest other than as security for an obligation.
17. "Reservation system" means the method, arrangement or procedure by which a user, is required to compete with other users in the same timeshare plan in order to reserve the use or occupancy of any accommodation, whether in a single-site timeshare plan or a multi-site timeshare plan, for one or more timeshare periods, regardless of the person responsible for the operation and maintenance of such system.
18. "Timeshare salesman" means any person employed or engaged by or on behalf of a developer, managing entity or sales and marketing company to participate in any activity relating to the offer, disposition, lease or rental of timeshare interests, for compensation or otherwise.
19. "Timeshare instrument" means one or more documents, however denominated, creating and/or governing the operation of a timeshare plan.
20. "Timeshare interest" means and includes either:
 21. A "Timeshare estate," which is the recurring right to occupy a timeshare property for a period of time less than a full year during any given calendar year, but not necessarily for consecutive calendar years, coupled with a right of apartment; or
 22. A "Timeshare license," which is the recurring right to occupy a timeshare property for a period of time less than a full year during any given calendar year, but not necessarily for consecutive calendar years, which right is not coupled with a right of apartment.
23. "Timeshare period" means the period or periods of time during which a user is afforded the opportunity to use the accommodations subject to a timeshare plan.

24. "Timeshare plan" means any arrangement, plan, scheme, or similar device, whether by a membership agreement, sale, lease, deed, license or right-to-use agreement, or any other means, whereby a user receives a timeshare interest. A timeshare plan may include:
25. A "Personal property timeshare plan" which grants to the user the right to occupy one or more accommodations located on or in or comprised of personal property that is not permanently affixed to real property.
26. A "Single-site timeshare plan" which means a timeshare plan with no more than one component site.
27. A "Multi-site timeshare plan," which means a timeshare plan with more than one component site. A multi-site timeshare plan may consist of:
28. "Specific timeshare interests," each of which grants a user, subject to a reservation system:
 - a. a priority right to reserve accommodations at a specific component site within the multi-site timeshare plan ; and
 - b. the right to reserve accommodations on a non-priority basis at other component sites that are part of that same multi-site timeshare plan; or
29. "Non-specific timeshare interests", each of which grants to a user through a reservation system, the right to reserve accommodations at any component site of the multi-site timeshare plan, with no priority right to reserve accommodations at any specific component site.
30. "Timeshare property" means accommodations subject to the same timeshare instrument, together with any other property or rights to use facilities appurtenant to those accommodations.
31. "Travel club" means a plan or other program of a duration of more than three years under which a consumer, for consideration, acquires primarily the right to obtain discounts or other benefits in respect of accommodations, in isolation from or together with travel or other services.
32. "Exchange company" means any person owning or operating, or owning and operating, an exchange program;
33. "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of timeshare interests or other property interests. The term does not include the assignment of the right to use and occupy accommodations to owners of timeshare interests within a single site timeshare plan. Any method, arrangement, or procedure that otherwise meets this definition in which the user's

total contractual financial obligation exceeds three thousand dollars (\$3,000) per any individual, recurring timeshare period, shall be regulated as a timeshare plan in accordance with this Ordinance. For purposes of determining the user's total contractual financial obligation, amounts to be paid as a result of renewals and options to renew shall be included except for the following: (a) the amounts to be paid as a result of any optional renewal that a user, in his or her sole discretion may elect to exercise; or (b) the amounts to be paid as a result of any automatic renewal in which the user has a right to terminate during the renewal period at any time and receive a proportionate refund for the remaining unexpired renewal term; or (c) amounts to be paid as a result of an automatic renewal wherein the user receives a written notice no less than 30 nor more than 90 days prior to the date of renewal informing the user of the right to terminate prior to the date of renewal. Notwithstanding these exceptions, if the contractual financial obligation exceeds three thousand dollars (\$3,000) for any three-year period of any renewal term, amounts to be paid as a result of that renewal shall be included in determining the user's total contractual financial obligation;

Section 2 Developer's Obligations

Article 3

In order to protect the rights of a user with a timeshare interest in the form of a timeshare license, which was or is conveyed prior to or after the effective date of this Ordinance, in the event of a sale or transfer of all or a portion of the timeshare property, the use rights granted to a timeshare user pursuant to a timeshare license shall not be affected or disturbed; provided, further, that in the event of a forced sale of the timeshare property by a mortgagee or other secured creditor, the use rights granted to a timeshare user shall not be affected or disturbed; provided, also, that in the event of the timeshare property being subject to a bankruptcy proceeding, a trustee may not exercise any authority to cancel a contract in such a manner so as to adversely affect or disturb a user's rights pursuant to the timeshare plan as long as in each foregoing situation, such timeshare user(s) complies with their obligations under their timeshare contract and other timeshare instruments. .

Article 4

For each timeshare plan offered in Sint Maarten, the developer shall be responsible for the actions of any other party utilized by the developer in the offering or promotional selling or managing of such developer's timeshare plan. Any violation of this Ordinance by a timeshare salesman or Managing entity which occurs while acting on behalf of a developer shall be a violation by the developer as well..

Article 5

1. A developer who sells, offers to sell, or attempts to solicit prospective purchasers in Sint Maarten to purchase a timeshare interest, or any person who creates a timeshare plan with an accommodation in the territory, shall file with the Minister of Economic Affairs, as part of its

application for a hotel license in accordance with the Vergunningslandsverordening (Permit Ordinance), a statement including the Developer's name, the date the timeshare plan began, the location, term, number of units currently in the Resort, and form of ownership of the timeshare plan, and the name of the initial managing entity. The Developer must be authorised to sell the timeshare interests for the period during which these timeshare interests can be enjoyed and as proof of that the developer shall submit written documentation to the Minister of Economic Affairs, which will serve to establish his authority irrespective of the type of business license. If a hotel license has been granted to the Developer without the submission of this information then the Developer will have three months from the date of enactment of this Ordinance to provide such documentation to the Minister of Economic Affairs.

Article 6

A timeshare plan shall comply with the one-to-one use right to use night ratio, as defined in this Ordinance.

Article 7

Before the first sale of a timeshare interest, the developer shall create or provide for a managing entity, which shall be the developer, a separate manager or management firm, the board of directors of an owners' association, or some combination thereof who undertakes the duties, responsibilities and obligations of the management of the timeshare property.

Article 8

1. The developer or the managing entity who collects maintenance fees shall maintain a separate account for maintenance fees, in which also the maintenance fees required of the developer, if any, are deposited and which fees may not be commingled with any other funds of the developer.
2. A developer or managing entity which manages a multisite timeshare plan may deposit maintenance fees collected from users of one timeshare property into a common account with maintenance fees collected from users of other timeshare properties participating in the same multisite timeshare plan only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan.
3. Nothing in this section shall be construed to allow a developer or managing entity to commingle maintenance fees of a multisite timeshare plan with the maintenance fees of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan.

Section 3 Contract

Article 9

1. The developer shall enter into a written agreement or contract with a person for the enjoyment of a timeshare interest, herein defined as the user. If a prospective purchaser was shown information prior to purchase that is different from that contained in the written agreement or contract, there is an obligation to inform the prospective purchaser of those differences and the reasons.
2. The agreement referenced in Article 9(1) above, shall be made up in the English language. At the request of the prospective purchaser a certified translation of the agreement into another language mutually agreed upon by the developer and the prospective purchaser may also be provided. This agreement shall contain at least the following provisions:
 - a. The name and place of residence or place of establishment of parties and the legal form of the developer.
 - b. In the event the developer is not the owner of the timeshare property, also the name, place of residence or place of establishment of the owner and, if an entity, the legal form of such owner entity.
 - c. An accurate description of the nature and content of the timeshare interest, including whether any interest in real property or personal property is being conveyed.
 - d. An accurate description of the timeshare property and its location, according to article 20, first paragraph, of the Landsverordening openbare registers (National Ordinance on public registers).
 - e. An accurate description of the accommodation to which the user has a right and its location, or, in the event the timeshare right is not linked to a certain accommodation, as accurate as possible, a description of the nature and location of the accommodation.
 - f. In the case of a personal property timeshare plan in which accommodations are located on a vessel, the name, vehicle registration number, title certificate number, or any other identifying registration number or code assigned to the vessel by a state, federal, or international governmental agency.
 - g. In the case of a personal property timeshare plan in which accommodations are located on a vessel, a statement that describes the user's access to the certificates of classification and that the certificate of classification will be made available to prospective purchasers on request.
 - h. The duration of the timeshare plan and the timeshare interest.
 - i. The period during which the timeshare interest may be enjoyed.
 - j. The price to be paid by the user for making use of the timeshare interest.

- k. A description of the method by which users' use of the accommodations is scheduled.
 - l. A description of the public services to be made available to the user, such as lighting, water, collection of household garbage and the conditions under which these services shall be made available.
 - m. A description of the public services to be made available to the user, such as swimming pool, tennis court, golf course and garden and the conditions, under which those services are made available.
 - n. The rules in effect for the maintenance, the administration and the management of the timeshare property including whether and how consumers may influence and participate in decisions regarding these issues.
 - o. An obligation by the developer to provide and maintain insurance in accordance with Article 20.
 - p. A provision that, except as disclosed in the agreement, no other costs, burdens or obligations related to the acquisition of the timeshare interest shall be charged to the user by the developer.
 - q. A description of financing to be offered by the developer, if any.
 - r. The obligation of the developer to inform the user, if a request for a suspension of payment or bankruptcy has been submitted.
 - s. A description of any attachments or liens or restrictive covenants , which have been placed on the timeshare resort or the accommodation, such as any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest.
 - t. Date and place of signing by parties.
3. The agreement or contract shall also contain the following provisions regarding dissolution:
- a. The right of the user to dissolve or rescind the agreement or contract without giving reasons, within a period of at least five (5) days from the the date of signature of the agreement. In the event the agreement or contract does not contain all the information required to be delivered to the prospective purchaser by this Ordinance, the term of dissolution or rescission shall be extended by the time passed as of the date of the signing the incomplete agreement until all missing information has been delivered to the user in writing; provided, however, that the term of dissolution or rescission shall not be extended more than three months.
 - b. Dissolution or rescission must be delivered in writing to the developer.

- c. In the event the user properly dissolves or rescinds the contract or agreement in accordance with subparagraph 3(a) above, no compensation shall be due to the developer from the user.
 - d. Within the period of dissolution or rescission, any payment toward the purchase of the timeshare interest by the user may be considered as an advance payment. If the user exercises the right of dissolution or rescission in accordance with subparagraph 3(a) above, advance payments made within the dissolution or rescission period shall be refunded to the user within seven (7) days of receipt of the written notice of dissolution. Dissolution or rescission of the agreement or contract in accordance with the immediately preceding paragraphs shall also constitute, for legal purposes and without a fine being imposed on the user, the dissolution or rescission of any agreement for financing or loan of the purchase price to be paid by the user for the timeshare interest.
4. The laws of Sint Maarten shall be applicable to the agreement.

Section 4 Disclosures

Article 10

A statement of disclosures shall be delivered to the prospective purchaser including:

1. In the event a developer outsources the timeshare management or sales and marketing functions to a managing entity, or timeshare salesman, a statement evidencing that the managing entity or the timeshare salesman has the authority to sell the timeshare right(s).
2. In the event the developer is not the owner of the timeshare property, a statement evidencing that the developer has the authority to sell the timeshare rights(s)
3. In the event the timeshare interests to be conveyed provides for accommodations or facilities that depend upon one or more immovable properties to be constructed:
 - a. the degree of completion of the accommodation;
 - b. a reliable estimate of the period required for the completion of the accommodation;
 - c. the number of the building permit, requested by the applicable public authority of Sint Maarten;
 - d. the degree of completion of the public services required for the use of the accommodation (electricity, water, cable, telephone);
 - e. the extent to which financial arrangements have been provided for the completion of all promised accommodations and amenities that are committed to be built at the timeshare property.

4. A reliable estimate of the amounts which must be paid by the user for the use of the public services and facilities and for the maintenance, the administration and the management, specified in accordance with described types of costs.
5. Motivation obligation in the event of amendment of the purchase agreement.
6. Mention of the burdens (taxes, rights) prescribed by the law which are currently placed on the accommodation for the user and mention of the basis for the calculation of the amounts involved with these burdens.
7. Method for calculation of maintenance fees;
8. Mention as to whether or not the developer (or another (legal) entity involved with the timeshare resort) shall bear part of the maintenance cost and if so, what part or what amount and under which conditions.
9. A disclosure that the user has the right of perusal of the budget established by the developer in accordance with good business sense, with a specified summary of the revenues and expenses of the amounts and costs meant as defined as maintenance costs in Section 5.
10. A description of the insurance policies which have been contracted with respect to the accommodations.
11. The possibility of participation in a system of exchange or resale of the timeshare right, and if such possibility exists, who shall manage this system and the costs of participation, if any, and a description of the name and address of the exchange company and the method by which a user accesses the exchange program.
12. A statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities.
13. In the case of a personal property timeshare plan in which accommodations are located on a vessel, a disclosure in conspicuous type in substantially the following form:

“The laws of Sint Maarten govern the offering of this personal property timeshare plan. There are inherent risks in purchasing a timeshare interest in this personal property timeshare plan because the accommodations and facilities of the personal property timeshare plan are located on a vessel that will sail into international waters and into waters governed by many different jurisdictions. Therefore, the laws of Sint Maarten cannot fully protect your purchase of an interest in this personal property timeshare plan. Specifically, management and operational issues may need to be addressed in the jurisdiction in which the vessel is

registered, which is (insert jurisdiction in which vessel is registered). Concerns of Purchasers may be sent to (insert name of applicable regulatory agency and address).”

Section 5 Managing Entity

Article 11

Each fiscal year of a timeshare plan the managing entity shall prepare a budget for the common expenses and maintenance fees of the timeshare plan for the immediately following fiscal year. This budget shall be prepared with the billing of the annual maintenance fees. The managing entity shall send a letter to each user with the initial billing notification that the budget is available to any user requesting a copy, or included with the billing. Upon notification from a user that such user wants a copy of the budget; the managing entity shall promptly send such user a copy. The budget shall be prepared on the basis of the timeshare plan’s common expenses and maintenance fees (as provided in Article 12 below) for the current fiscal year, and a reasonable projection with respect to common expenses and maintenance fees for the following fiscal year. Timeshare users’ share of the annual common expenses and maintenance fees will be calculated and billed on the basis of a pro-rata share of the nights available to the users for use on an annual basis plus a pro-rata share of any nights set aside under the timeshare plan exclusively for maintenance of the accommodations during such fiscal year. Expenses for any nights that are not set aside for the use of the timeshare users or covered by the users’ pro-rata share of nights set aside under the timeshare plan exclusively for maintenance of the accommodations during such fiscal year shall be for the account of the developer. No user may be excused from paying its share of the annual common expense unless all users are likewise excused. The developer may elect to guarantee to each user a specific amount that will not increase for a stated period of time. In such case, the developer is obligated to pay all expenses incurred during the stated period of time that exceed the amount collected.

Article 12

Maintenance fees shall include and cover the actual costs of operation and management of the timeshare plan in addition to all costs related to providing services incidental to the use of the timeshare plan, including, without limitation and as applicable, building maintenance, flatware, kitchenware, linen and towels, electricity, water, sewerage, cable/television, repair and replacement of furniture and appliances, repainting and refurbishing of the accommodations as required, security personnel, property taxes if imposed, insurance, and any other necessary expenses to maintain in good condition and operate the accommodations and the immediately surrounding areas. Common area services such as outdoor lighting, gardening and landscaping, walkways, and other such services shall be included in the annual maintenance fees. The inclusion or exclusion of reserves for deferred maintenance or capital expenditures in the maintenance fees shall be disclosed to the users as provided in Article 15 below. Nothing set forth herein shall mean that a managing entity is prohibited from charging on-site usage fees and taxes that are not included in the maintenance fees such as timeshare tax, utility surcharges, telephone usage fees, WIFI charges, room service charges as long as such fees and taxes are disclosed to the users in the budget.

Article 13

1. The managing entity shall keep detailed financial records directly related to the operation of the timeshare plan. All financial and other records directly relating to the operation of the timeshare plan, with limitations with respect to the release of personal and/or private information, shall be made reasonably available for examination by any user, or the authorized agent of such user, so long as the user is requesting such financial or other records for a proper purpose. For purposes of this section, a balance sheet, a copy of the Statement of Income and Loss referred to in Article 14 below which are both independently reviewed by a certified public accounting firm together with a copy of the budget shall satisfy the requirement under this section for delivery of detailed financial records. For purposes of this section, "proper purpose" shall not include (a) a request for a membership list or any part thereof, (b) information to be used in order to solicit money or property, (c) information to be used for any commercial purpose, or (d) information to be sold to or purchased by any person.
2. The managing entity may charge the user a reasonable fee for photocopying or otherwise reproducing any requested information from the detailed financial records directly related to the operation of the timeshare plan.

Article 14

The managing entity shall prepare and complete a statement of income and loss with respect to maintenance fees expenses and any unspent maintenance fees no later than nine (9) months following the end of the fiscal year for the timeshare plan. This statement of income and loss with respect to maintenance fees shall be made reasonably available for examination by any user, or the authorized agent of such user. The managing entity may charge the user a reasonable fee for photocopying or otherwise reproducing any requested information from the statement of income and loss with respect to maintenance fees of the timeshare plan.

Article 15

1. Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a timeshare plan, whether expensed annually or accumulated over years, if any, shall be disclosed to the timeshare user in the estimated annual operating budget for the timeshare plan and the timeshare user's disclosure statement.
2. If such reserves are maintained, the estimated operating budget shall disclose the methodology of how the reserves are calculated, and such reserves shall be deposited and maintained in an account separate from any other account provided that the reserves are intended to be carried over from year to year, otherwise they may be held in the maintenance fee account.

3. If such reserves are maintained a reserve study should be updated by the managing entity annually based upon the expected life span of the furnishings, amenities, moveable property and immovable property that are part of the reserves. This study will be available to users or their authorized agents upon request. Should the study show that there is a surplus of such reserves in any given fiscal year of the timeshare plan, the managing entity will apply or credit such surplus against the maintenance fees for the following fiscal year of the timeshare plan.
4. A developer or managing entity which manages a multisite timeshare plan may deposit reserves collected from users of one timeshare property into a common account with reserves collected from users of other timeshare properties participating in the same multisite timeshare plan only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan.
5. Nothing in this section shall be construed to allow a developer or managing entity to commingle reserves of a multisite timeshare plan with the reserves of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan
6. If a timeshare plan does not require or otherwise provide for such reserves, the following statement shall appear in both the estimated operating budget and the disclosure statement:

“The estimated operating budget for this timeshare plan does not include reserves for deferred maintenance or capital expenditures; each timeshare interest may be subject to substantial special assessments from time to time because no such reserves exist.”

Article 16

The managing entity shall cause the maintenance fees to be held in an account separate from any other account until disbursed for payment of maintenance expenses or to the reserve account; all in accordance with Article 8.

Article 17

Should a managing entity be found in violation of rules, regulations or laws applicable to the timeshare plan, and such violation has occurred as a result of the actions and/or determinations of said managing entity and not as a result of a decision of the association, if any, the resulting fines for such violation should not be included in the maintenance fees to be collected from the timeshare users.

Section 6 Termination or Suspension of the Rights of a User of a Timeshare license

Article 18

1. Failure to pay within fifteen (15) days following the due date of the purchase price payment (or installment) to the developer or his assigns shall be considered a default, and the defaulting user's usage rights and exchange privileges can be suspended;
2. Defaulting user shall have thirty (30) days to cure the default by paying all due amounts and delinquent fees pursuant to and as provided in the corresponding purchase agreement;
3. In the event that developer elects to terminate (following the expiration of the thirty (30)-day cure period), the developer or his assigns shall send a registered letter or a confirmed receipt e-mail to the defaulting user notifying the cancellation of the defaulting user's usage rights and exchange privileges if the defaulting user fails to cure the default by paying before the expiration of an additional fifteen (15) days (total forty-five (45)-day cure period) all due amounts and delinquent fees pursuant to and as provided in the corresponding purchase agreement;
4. In the alternative, developer or his assigns, at its option, shall be entitled to contract the services of a collection agency, and to recover from the defaulting user said collection agency's fees and costs in addition to any purchase price owed.

Article 19

1. Failure to pay maintenance fees within fifteen (15) days following the due date of the payment of the maintenance fee shall be considered a default, and the defaulting user's usage rights and exchange privileges can be suspended on the date of default or the actual date of usage;
2. Defaulting user shall have sixty (60) days to cure the default, provided that during said cure period late fees may accrue pursuant to and as provided in the terms of the corresponding timeshare instrument ;
3. In the event that developer elects to terminate (following the expiration of the sixty (60)-day cure period), the developer or his assigns shall send a registered letter or a confirmed receipt e-mail to the defaulting user notifying the cancellation of the defaulting user's usage rights and exchange privileges if the defaulting user fails to cure the default by paying before the expiration of an additional thirty (30) days (total ninety (90)-day cure period) all due amounts and delinquent fees pursuant to and as provided in the corresponding timeshare instrument;
4. Developer or managing entity, at its option, shall be entitled to contract the services of a collection agency, and to recover from the defaulting user said collection agency's fees and costs in addition to any maintenance fees owed.

Section 7 Insurance of a Timeshare Plan

Article 20

1. In addition to all other insurance required to be maintained by the developer in accordance with the timeshare agreement, all developers of a timeshare project, or managing entities that have been delegated the obligation to maintain insurance in a management or operating agreement with respect to a timeshare project, shall obtain and maintain comprehensive general liability insurance and adequate property and casualty insurance covering the timeshare property, provided that such insurance coverage is available at a commercially viable rate.
2. Any insurance proceeds received for damage in excess of repairs to restore the premises to their condition prior to the damage shall be applied to the maintenance fee operating budget. If it is determined that it is unfeasible to repair the property, all timeshare users who are current in their obligations under the timeshare agreement shall receive a pro-rata share of the insurance proceeds; provided, that if a timeshare user has an unpaid purchase money loan obligation with a lender, or is not current with respect to any maintenance fee obligation under the timeshare agreement, such timeshare user's pro-rata share of the insurance proceeds shall be paid first to such lender to be applied against any unpaid purchase price and related interest due, and the remaining balance, if any, shall be applied against any outstanding maintenance fees owed by said timeshare user.
3. The timeshare agreement shall include a provision (i) indicating that the timeshare property is covered by insurance as required, and (ii) disclosing the person responsible for insuring the timeshare property.
4. A description of the insurance carried with respect to the timeshare property shall be made available to all timeshare users and included in the disclosure statement.

Section 8 Advertising and Sales

Article 21

1. The unlawful practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable under Section 4 of Title 3 of Book 6 of the Civil Code.
2. A developer or other person offering a timeshare interest, or a reseller of a timeshare interest, or a seller of a travel club shall not :
 - a. Make as a material part of the sales presentation statements that the timeshare interest or travel club membership will or could increase in value over a period of time, excluding bona fide pending price increases by the developer;

- b. Materially misrepresent the qualities or characteristics of accommodations or the amenities available to the occupant of those accommodations;
- c. Materially misrepresent the length of time accommodations or amenities will be available to the prospective purchaser of a timeshare interest or travel club; or
- d. Materially misrepresent the conditions under which a prospective purchaser of a timeshare interest may exchange the right of the prospective purchaser's occupancy for the right to occupy in other accommodations.
- e. Materially misrepresent the availability of a resale or rental program or resale or rental opportunity.
- f. Materially misrepresent that a facility is available for the exclusive use of prospective purchasers if the facility will actually be shared by others or by the general public.
- g. Misrepresent the value of any prize, gift, or other item to be awarded in connection with any prize and gift promotional offer
- h. Except for handwritten modifications agreed to by the parties the agreement must not contain any asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact.
- i. Sell more timeshare usage rights than are available on a one-to-one right to use night ratio.

Article 22

1. As used herein, the term "prize and gift promotional offer" means any advertising material wherein a prospective purchaser may receive goods or services other than the timeshare interest or the travel club membership itself, either free or at a discount, including, but not limited to, the use of any prize, gift, award, premium, or lodging or vacation certificate.
2. A game promotion, such as a contest of chance, gift enterprise, scratch card, or sweepstakes, in which the elements of chance and prize are present may not be used in connection with the offering or sale of timeshare interests or travel club memberships, except for promotions in which all promoted prizes are actually awarded and the chances of winning a specific prize are clearly stated.
3. Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day she or he appears to claim it, whether or not she or he purchases a timeshare interest or travel club membership.

4. A developer or other person using a promotion in connection with the offering of a timeshare interest or travel club shall clearly disclose all of the following:
5. That the purpose of the promotion is to sell timeshare interests or travel club memberships, which shall appear on all promotional materials;
6. That any person whose name or address is obtained during the promotion may be solicited to purchase a timeshare interest or travel club membership;
7. The name of each developer or other person trying to sell a timeshare interest or travel club membership through the promotion, and the name of each person paying for the promotion if different from the developer or travel club;
8. The details of participation in the promotion;
9. The method of awarding premiums or other benefits under the promotion;
10. A detailed description of each premium or benefit under the promotion;
11. The quantity of each premium to be awarded or conferred;
12. The date by which each premium or benefit will be awarded or conferred; and if a person represents that a premium or benefit will be awarded in connection with a promotion, the premium or benefit shall be awarded or conferred in the manner represented, and on or before the date represented for awarding or conferring the premium or benefit.

Section 9 Disclosure by developer with respect to exchange programs

Article 23

1. If a prospective purchaser is offered the opportunity to subscribe to an exchange program, the seller shall deliver to the prospective purchaser, together with the prospective purchaser public offering statement, and prior to the offering or execution of any contract between the prospective purchaser and the company offering the exchange program, written information regarding such exchange program; or, if the exchange company is dealing directly with the prospective purchaser, the exchange company shall deliver to the prospective purchaser, prior to the initial offering or execution of any contract between the prospective purchaser and the company offering the exchange program, written information regarding such exchange program. In either case, the prospective purchaser shall certify in writing to the receipt of such information. Such information shall include, but is not limited to, the following information:
 - a. The name and address of the exchange company.
 - b. The names of all officers, directors, and shareholders of the exchange company.
 - c. Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer, seller, or managing entity for any timeshare

- plan participating in the exchange program and, if so, the name and location of the timeshare plan and the nature of the interest.
- d. Unless otherwise stated, a statement that the prospective purchaser's contract with the exchange company is a contract separate and distinct from the prospective purchaser's contract with the seller of the timeshare interest
 - e. Whether the prospective purchaser's participation in the exchange program is dependent upon the continued affiliation of the timeshare plan with the exchange program.
 - f. A statement that the prospective purchaser's participation in the exchange program is voluntary. This statement is not required to be given by the seller or managing entity of a multisite timeshare plan to prospective purchasers in the multisite timeshare plan.
 - g. A complete and accurate description of the terms and conditions, including rights of termination, of the prospective purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made.
 - h. A complete and accurate description of the procedure to qualify for and effectuate exchanges.
 - i. A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, timeshare unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied.
 - j. Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program.
 - k. Whether and under what circumstances a prospective purchaser, in dealing with the exchange program, may lose the use and occupancy of her or his timeshare period in any properly applied for exchange without her or his being provided with substitute accommodations by the exchange program.
 - l. The fees or range of fees for membership or participation in the exchange program by prospective purchasers, including any conversion or other fees payable to third parties, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made.
 - m. The name and address of the site of each timeshare plan participating in the exchange program.
 - n. The number of the timeshare units in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5; 6-10; 11-20; 21-50; and 51 and over.
 - o. The number of currently enrolled users for each timeshare plan participating in the exchange program, expressed within the following numerical groupings: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those users who are currently enrolled with the exchange program.

- p. The disposition made by the exchange company of timeshare periods deposited with the exchange program by users enrolled in the exchange program and not used by the exchange company in effecting exchanges.
 - q. The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the Generally Accepted Accounting Practices and reported annually:
 - i. The number of users currently enrolled in the exchange program.
 - ii. The number of accommodations and facilities that have current written affiliation agreements with the exchange program.
 - iii. The percentage of confirmed exchanges, which is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for.
 - iv. The number of timeshare periods for which the exchange program has an outstanding obligation to provide an exchange to a user who relinquished a timeshare period during the year in exchange for a timeshare period in any future year.
 - v. The number of exchanges confirmed by the exchange program during the year.
 - vi. A statement to the effect that the percentage described in subparagraph (q)3. is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate the probabilities of a user's being confirmed to any specific choice or range of choices.
2. The exchange company shall be responsible to update the disclosures in section 1 on an annual basis and make this information reasonably available to the developer and user.
3. No developer shall have any liability with respect to any violation of this chapter arising out of the publication by the developer of information provided to it by an exchange company pursuant to this section. No exchange company shall have any liability with respect to any violation of this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company. The failure of an exchange company to observe the requirements of this section, or the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this chapter.

Section 10 Travel Clubs

Article 24

- 1. Travel clubs are subject to all Articles contained within Section 8 on Advertising and Sales.
- 2. The agreement or contract by and between the prospective purchaser and the seller of a travel club shall also contain the following provisions:

- a. The right of the user to dissolve or rescind the agreement or contract without giving reasons, within a period of at least five (5) days as of the date of signature of the agreement.
- b. Dissolution or rescission must be delivered in writing to the Travel Club seller.
- c. In the event of dissolution or rescission of the contract or agreement as provided in paragraphs [2a] and [2b], no compensation shall be due to the seller from the user.
- d. Within the period of dissolution or rescission, any payment toward the purchase of the travel club usage by the user may be considered as an advance payment. If the user exercises the right of dissolution or rescission, advance payments made within the dissolution or rescission period shall be refunded to the user within seven (7) days of receipt of the written notice of dissolution. Dissolution or rescission of the agreement or contract in accordance with the immediately preceding paragraphs shall also constitute, for legal purposes and without a fine being imposed on the user, the dissolution or rescission of any agreement for financing or loan of the purchase price to be paid by the user for the timeshare interest.
- e. a disclosure that the Travel Club inform the user that the Travel Club does not own any property and relies on securing accommodations from other hospitality companies and that availability and quality of the accommodations may be beyond their control.
- f. The laws of Sint Maarten shall be applicable to the agreement.

Section 11 Timeshare Resale

Article 25

1. For purposes of this Article, "resale timeshare" means any timeshare interest that has previously been acquired for personal, family or household use and: (i) is owned by an individual resident in Sint Maarten; or (ii) the accommodations and other facilities available for use through the timeshare interest are primarily located in Sint Maarten.
2. In connection with the transfer or attempt to transfer a resale timeshare, a person shall not, in the course of such person's business, vocation, or occupation:
 - a. knowingly misrepresent the value of any resale timeshare;
 - b. make false or misleading statements, including, but not limited to, statements concerning: (i) the existence of offers to buy or rent the resale timeshare; (ii) the likelihood of, or the time necessary to complete, any transfer of the resale timeshare;

- (iii) the current or future costs of owning the resale timeshare, including but not limited to assessments, maintenance fees or taxes; or (iv) the terms and conditions upon which the person will provide services in connection with the transfer of the resale timeshare;
- c. provide services intended to assist in the transfer of any resale timeshare in exchange for consideration, or accept any consideration for such services, without first providing the owner of the resale timeshare a written notice stating the following: (i) the name and physical address of the person and any agent or contractor who will perform some or all of such services; (ii) a detailed description of the services to be provided, including the period of duration of each service; (iii) the fees to be charged for such services on an itemized basis; (iv) a description of any additional obligatory costs payable by the owner of the resale timeshare; (v) the time at which all such fees and costs will become owing; (vi) that the user of the resale timeshare may dissolve or rescind any agreement with, or obligation to, the person, without giving reasons, by delivering a written notice of dissolution or rescission to the person within five (5) days of receiving a written notice that complies with this subsection; (vii) the person will refund any and all amounts received from the owner of the resale timeshare within thirty (30) days of receiving timely written notice of dissolution or rescission; and (viii) when a timely written notice of dissolution or rescission has been delivered to the person, that the owner of the resale timeshare shall not bear any cost, or be liable for any value, in connection with services performed prior to the dissolution or rescission;
- d. fail to honor a written notice of dissolution or rescission timely delivered, or to refund any and all amounts received from the owner of the resale timeshare within thirty (30) days of receiving such notice of dissolution or rescission;
- e. charge any costs not described in the written notice required in subsection (3) above.
3. A person subject to the foregoing requirements shall have responsibility for any actions of any other party utilized by that person in connection with the solicitation or performance of services related to the transfer of a resale timeshare, and any actions constituting a violation of this Article by that party shall also be a violation by the person. The unlawful practices listed in this Article are in addition to, and do not limit, the types of unfair trade practices actionable under the Civil Code.

ARTIKEL II

Boek 7 van het Burgerlijk Wetboek wordt als volgt gewijzigd:

A

Artikel 2, vijfde lid, komt te luiden:

5. Het eerste tot en met vierde lid zijn niet van toepassing op de koop op een openbare veiling ten overstaan van een notaris en een onderhandse verkoop als bedoeld in artikel

268, tweede lid, van Boek 3. Zij zijn evenmin van toepassing, wanneer de overeenkomst tevens voldoet aan de omschrijving van een overeenkomst betreffende een timeshare plan of travel club als bedoeld in de Timeshare Ordinance.

B

Artikel 26, zesde lid, komt te luiden:

6. De tweede volzin van het tweede lid en het vierde en vijfde lid zijn niet van toepassing, wanneer de overeenkomst tevens voldoet aan de omschrijving van een overeenkomst betreffende een timeshare plan of travel club als bedoeld in de Timeshare Ordinance.

C

Afdeling 10A van titel I vervalt.

ARTIKEL III

De Vergunningslandsverordening wordt als volgt gewijzigd:

A

In artikel 1 vervallen de definities van ‘timeshare resort’ en van ‘timeshare recht’.

B

De artikelen 44a tot en met 44d vervallen.

C

In artikel 57, eerste lid, vervalt ‘44a, 44b, artikel 44c, artikel 44d,’.

D

De toegevoegde ‘Bijlage bij artikel 44a van de Vergunningslandsverordening’ vervalt.

ARTIKEL IV

Deze landsverordening is niet van toepassing op overeenkomsten die vóór zijn inwerkingtreden zijn gesloten.

ARTIKEL V

Deze landsverordening wordt aangehaald als: Timeshare Ordinance.

ARTIKEL VI

Deze landsverordening treedt in werking op een bij landsbesluit te bepalen tijdstip.

Gegeven te Philipsburg,

1 juni 2016

STATEN VAN SINT MAARTEN
ZITTING 2015-2016

LANDSVERORDENING van
tot herziening van de burgerrechtelijke regels betreffende timeshare
(Timeshare Ordinance)

MEMORIE VAN TOELICHTING ZOALS GEWIJZIGD NAAR
AANLEIDING VAN HET ADVIES VAN DE RAAD VAN ADVIES

No. ..

Introduction

In the meeting of the Parliament of Sint Maarten of June 30, 2011 a Motion presented by Member of Parliament Petrus L. De Weever with respect to the need to improve existing timeshare consumer protection legislation and to create a regulatory body to monitor the timeshare industry was unanimously passed. Pursuant to said Motion, the Parliament requested the services of Professor Jan de Boer, member of the Joint Court of Justice and of the Constitutional Court of Sint Maarten, for the preparation of proposed changes to the legislation in line with the concerns of Parliament addressed in the Motion, with instructions to consult industry stakeholders in the process of preparation of such proposed changes. Upon Professor de Boer's consultation with the Sint Maarten Timeshare Association (the "Association") in July 2011, Professor de Boer requested a draft of such proposed changes from the Association.

In August 2011, the Association convened an all-members meeting to discuss Professor de Boer's request. The American Resort Development Association Caribbean Committee ("ARDA Caribbean") was invited and participated in said meeting. The Association proposed to establish a committee of international experts on timeshare legislation. An ARDA Caribbean-SMTA Legislative Committee was created, including corporate counsel of international exchange companies RCI and Interval International, SMTA stakeholders and other legal experts from the membership of ARDA Caribbean with vast experience in representing government regulatory agencies, timeshare consumers and the timeshare industry.

The ARDA Caribbean-SMTA Legislative Committee convened on September 9, 2011. The Committee established the objective of bringing the Sint Maarten revised timeshare legislation in line with current standards prevalent in the United States and Europe. The Committee prepared an agenda, organized subcommittees, produced drafts of the proposed revised timeshare legislation and discussed such Committee drafts in regularly scheduled weekly teleconferences. Regular updates and consultations were presented to Professor de Boer throughout the process. Following Professor de Boer's initial review of the proposed timeshare legislation submitted by the Committee, a meeting of Professor de Boer and Committee representatives was held in Sint Maarten in early May of 2012.

In light of the fact that most of the developers and the consumers of the timeshare product in Sint Maarten are fluent in the English language, and not in the Dutch language, it was determined, upon the recommendation of Professor de Boer, by the Minister of Justice that the revised timeshare legislation provisions would be written, in a special State Ordinance, in the English language, as permitted by the Constitution of Sint Maarten. See paragraph 2 of Article 1 of the Constitution: "The official languages are Dutch and English." See for an extensive explanation of this choice of the English language the Reaction to the advice of the Council of Advice.

The primary objective of this Ordinance is to elevate the levels of consumer protection of the various contractual rights that are provided by the timeshare industry in Sint Maarten to be on a par with those inherently provided by the 1/52nd right of apartment. Timeshare concepts initially evolved from the selling of specific weekly ownership in a specific holiday home or apartment to a more flexible right of usage of annual, bi-annual or even quadric-annual weekly use of non-specific accommodations at a timeshare property to an increasingly popular right of usage that can be broken down into nightly usage on a recurring basis. The terms vacation ownership and vacation points are often used to describe this more flexible product. Most commonly, these plans utilize a "currency" denominated in points. In a points-based system, a user may acquire a seven-day use period in mid-range time which is equal to, say, 1,000 points. These points can be used in a variety of ways. For example, rather than utilizing all 1,000 points for a seven continuous day stay in a one bedroom unit, the user may instead choose to divide his stay into a three-day period and a later four-day period or may choose to upgrade to a two bedroom unit for a five-day period. Again, the points are merely utilized as a currency with the underlying product generally being recorded internally by the developer in seven-day increments in order to control inventory, but sometimes broken down by the day. This leads us to the necessity of updating the definition of timeshare rights. While consumers have welcomed this increasing flexibility, regulations based upon rigid systems of weekly ownership cannot keep pace with the evolving timeshare market.

Another type of timeshare product is commonly called a "fractional" or "private residence club". This product is usually sold in increments of several weeks ranging from four to six weeks or more depending upon the particular plan. This type of product is usually marketed to much higher income customers than traditional timesharing. The product usually has substantially more amenities and is substantially more expensive. While traditional timesharing differs from fractional products in the amenities package provided and the cost and the demographics of the buyers, from a legal standpoint all jurisdictions, at least in the US and EU, regulate the product in the same manner. Both are usually covered under statutes designed for timesharing and should be so treated in Sint Maarten.

We have also seen timesharing applied to the usage of boats, from sailing catamarans to cruise ships, and airplanes. New products are being invented all the time. These timeshare products are operated on moveable assets that might be based in Sint Maarten or not. Little can be done about the long-term operational legislation of these products as they can be easily moved beyond our jurisdiction. The applicable portion of our laws should then relate to the operational practices solely while they are based in Sint Maarten. Sales practices and required information disclosures to prospective purchasers of the operational requirements are covered by the legislation.

Timeshare can be best considered as a partial pre-purchase of recurring rental holiday accommodations in that a user is responsible for both an upfront fee and a continuing payment based upon rights of usage in the form of maintenance fees.

Articles

Article 1

The scope of the Ordinance is purposefully broad, with the intention that it be flexible enough to address the continuing evolution of the timeshare model and the types of accommodations to which the model may be applied. However, the purpose of the Ordinance is to establish protections applicable to a consumer's long-term relationship with a commercial entity that has control of the accommodations which are part of a timeshare property. It is not our intent to regulate other relationships in which a group of persons decide, collectively, to purchase accommodations (i.e. an apartment, a condominium unit, or a vessel) and then determine how to divide the use of such asset among themselves.

Consideration was given to adapting the time periods from the EU Directive on timeshare, which applies to products of greater than one year duration, to conform to the US standards, which contemplate a product duration of greater than three years as the standard. The intent of the law is to establish consumer protections where a long term relationship is developed with the consumer. Having examined the standards and practices prevailing in the industry in the United States and other jurisdictions in which timeshare is a mature industry, while being mindful of the need for protection of the consumer in the context of longer-term obligations, a term of three years or longer was considered a prudent and reasonable threshold for the applicability of the Ordinance to rights and/or interests in timeshare plans. Examples of the use of similar thresholds in other jurisdictions include (a) the California Vacation Ownership and Time-share Act, which does not apply to time-share plans the use of which extends over any period of **three years or less** (*see* section 11211.5(b), California Business and Professions Code), and (b) the Florida Vacation Plan and Timeshare Act, which applies to timeshare plans with a duration “of at least three years...” (*see* section 721.03 (1), Florida Statutes (2014)).

With respect to taking into account any “automatic renewal periods” for purposes of determining the less-than-three-year term of the timeshare interest, it is reasonable to presume that if a user is provided with a timely notice of said user’s right not to renew the timeshare right or interest reasonably in advance of the date of such automatic renewal, there would be no circumvention of the less- than-three-year exemption provided in the Ordinance. Given that the Ordinance includes such prior notice provisions of a user’s right to terminate, to be provided to the user two to four months before the automatic renewal date, the automatic renewal period should not serve to extend the less-than-three-year threshold for the applicability of the Ordinance.

(*See* Declaratory Statement of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, in the matter of staySky Vacation Membership Club Development, LLC, filed on December 10, 2010, at page 7: “[A] plan which provides for automatic renewals, as staySKY’s plan does, may exceed the three year threshold if certain notice requirements are not met. In this case, staySKY has provided for compliance with all notice requirements in that it intends to provide the user with a notice of no less than thirty (30) days and no more than sixty (60) days prior to the date of renewal informing staySKY users of the right to terminate at any time prior to the date of automatic renewal. Thus, the automatic renewal provision does not serve to extend staySKY’s 35 month plan over the three year threshold.”) The Florida ruling is cited in light of that jurisdiction’s extensive experience with, and stringent regulation of, the timeshare industry.

It is preferable to have Sint Maarten's regulation of the timeshare industry more aligned with prevalent practices in the U.S. and/or Canada, where most timeshare users are domiciled, than with the EU Directive, as was set forth with respect to timeshare in the 2004-2005 revision of the Civil Code numbered 2903. The general notes in the Explanatory memorandum of the update 3. 3 and 3.4 cover this topic as it relates to deviations from the EU here and in other Articles of this Ordinance:

"3.3 The reflection period with all that is related thereto is regulated in articles 7:48c through 7:48e. The draft in question deviates in some respects from that which is in effect for the European Union. In the Netherlands Antilles, timeshare is to be found mainly on Sint Maarten. The Sint Maarten Timeshare Association has pointed out that currently Sint Maarten has more than 66.000 timeshare holders, mainly originating from the United States of America. In the hotel market, more than 75% of the stay-over tourism has been realised through timeshare. The average timeshare holder has an income of \$ 90.000.00. The latter generally knows very well what he is doing and the number of cancellations is very small (1-2%). In more than 80% of the cases the timeshare week is paid for immediately by credit card. The customer is on the island and wants to conclude the purchase. The timeshare sector would like to maintain this practice, since collection in any form is time consuming and expensive in the United States. In a great number of cases, the buyer is already a timeshare holder and it concerns an upgrade or the purchase of an extra week.

3.4 These circumstances have led to the following deviations of what is in force in the European Union – including Holland. The reflection period has been set at five days (instead of ten), without the General Terms federal ordinance being applicable (the timeshare industry does not recognize holidays). Advance payment is not excluded, but in that case the seller must provide a guarantee that, in the event the buyer makes use of his reflection period, immediate reimbursement follows. Dissolution within the reflection period must, in view of legal security, be done in writing. It may be stipulated that the buyer, in the event of dissolution, is liable for 3% of the price as compensation (the average price of a timeshare week is \$ 10.000, meaning that the maximum compensation amounts to \$ 300.). No regulations have been given with regard to advertising and with regard to information to be given to (accidentally) passing consumers (cf. Article 7:48f of the Dutch CC). Consumer protection must remain within reasonable bounds. Furthermore, it is difficult to impose a sanction on these sorts of regulations in the Civil Code. Neither is the language in which the contract must be written prescribed. It is crucial that the buyer understands that language. If not, then in the absence of consensus ad idem, no agreement is concluded. In practice, the language is English."

It can be envisioned that an enterprising hotelier may wish to offer a holiday package whereby the consumer may book a hotel room this year and receive a discount for the following year. Under the EU definitions the scope of greater than one year inadvertently may capture too many possibilities to be considered as needing the advanced form of controls and requirements as set forth in this Ordinance, which exceed those of the EU directive in many areas. It is therefore considered as desirable for Sint Maarten to be more aligned with practices more common to the actual consumers as was stated in the 2005 revision of the Civil Code with respect to timeshare. Sub article ii.: The threshold amount of US\$ 3,000.00 for the total amount of the prospective buyer's financial obligation should include the total purchase price, any annual fees or any other fees which are not of a completely optional nature. As a matter of reasonable public policy, timeshare plans requiring a total financial obligation of US\$3,000.00 or less should not be considered substantial enough to warrant regulation under this ordinance. The timeshare laws of jurisdictions such as California

and Florida, which rigorously regulate the industry, expressly set forth the inapplicability of such laws to timeshare plans that require a total financial obligation of US\$3,000 or less.

Article 2

Article 2.3 defines the term “association”. If the timeshare interest is in the form of a Timeshare estate then the civil code already prescribes the formation of such an association. If the timeshare interest is in the form of a timeshare license then there is no required similarity or confluence between an “Association” of timeshare users, under the Ordinance, and the Civil Code definition of an association of owners of apartment rights. Nearly all users of timeshare interests in Sint Maarten do not own the Timeshare Estate form with apartment rights. The Timeshare license is the predominant form in Sint Maarten.

Accordingly, the term “Association” is used in the Ordinance primarily for disclosure purposes as in Article 9.2.n and Article 10.11 for what, if any, type of Association a user can expect the Timeshare plan to adhere to.

Article 2.5 The term “single timeshare property” is generally used in the industry to refer to one “timeshare property,” subject to one and the same set of governing documents (collectively defined as “timeshare instrument”), whether developed all at once or in phases, so long as all of the timeshare accommodations and facilities comprising such timeshare property and each phase thereof are located in a specific geographic location and are operated under common management. The element of “common management” is significant, as it calls for and enables one managing entity to manage and operate the entire “single timeshare property,” and uniformly enforce the applicable contractual provisions and regulations with respect to use, collection of purchase money and/or agreed maintenance or other fees, throughout the “single timeshare property.” According to industry practice, such a “single timeshare property,” notwithstanding its being developed in separate phases, constitutes a “single component site.”

Article 2.7 The definition of “developer” includes persons who sell “timeshare interests” even if the “timeshare plan” has not yet been created. The common practice is to sell timeshare interests after the timeshare plan is created. However, the definition is intended to broaden the scope of the Ordinance to include developers who may pre-sell “timeshare interests” in order to determine if there is sufficient consumer interest to create a timeshare plan. Such pre-sold consumers are entitled to equal protection under the Ordinance as those consumers who are offered timeshare interests in created timeshare plans. A timeshare plan will be created when it meets the definition of a “timeshare plan” under the Ordinance.

The “developer” does not necessarily have to be the owner of the immovable property upon which the timeshare plan is based and upon which accommodations are offered for occupancy. Considering the definition of “timeshare plan” and “timeshare interest,” which both include a wide range of arrangements that are not necessarily based on a deed to immovable property. The broad scope of these definitions is beneficial to protect a wide range of consumers.

Article 2.8 Disposition is a purposely broad definition that includes such concepts as sale and other forms of assignment or transfer. A disposition can be different than a sale in that a transfer of timeshare interests can occur even when there is no sale, such as between one individual and another when a gift is made i.e. from a parent to a child, or as an incentive for various purposes.

The term “disposition” is intended to regulate transactions with consumers, not transactions by lenders to consumers. Given that timeshare plans can take many forms, the process by which a timeshare interest in a timeshare plan is transferred to a consumer can also follow many paths. The definition of “disposition” is similarly intended to be as broad as possible. For example, the transfer may occur through a contractual membership agreement, which would be a form of “legal interest.” Or, for example, the transfer may occur through the issuance of an interest in a trust, which would be a form of “equitable interest.” Conversely, transfers to a lender which holds a “security interest” in a timeshare interest are excluded from regulation on several grounds. For example, if a secured lender acquired a collateral assignment of the timeshare interest as part of purchase money financing, this assignment would not be a regulated “disposition.” Similar, if a consumer transferred the timeshare interest to his or her secured lender in exchange for the release of a security interest, such transfer would not be a “disposition” and would not be regulated. The term “security interest” is generally understood to mean any lien, pledge or other collateral assignment taken by a lender as security for a loan.

Articles 2.28 and 2.29 provide conceptual distinctions between the types of multisite timeshare plans and the interests that are sold or conveyed to users.

Those users who acquire a specific timeshare interest have the right to use accommodations at a specific timeshare property, together with the right to use accommodations at other timeshare properties created by or acquired through the timeshare plan’s reservation system. An owner of a specific timeshare interest purchases a timeshare interest in a specific timeshare property, and has the right to use accommodations at that property.

Owners of timeshare interests in the specific timeshare property have priority over other timeshare interest owners in the other properties in making reservations for use of that specific timeshare property for a period of time each year when reservations may be made for occupancy in the specific timeshare property. When the reservation priority period expires, timeshare interest owners in the specific timeshare property must compete with timeshare interest owners in all the other time-share properties for occupancy in the specific timeshare property and all other component timeshare properties that are part of the reservations system.

A “non-specific timeshare interest” means the right to use accommodations at more than one component property created by or acquired through the timeshare plan’s reservation system, but no specific right to use any

Article 2.30 The concept of “timeshare property” is widely used and understood in the industry as a defined term to include not merely the single or multiple accommodation units to be occupied by the user during the agreed interval or use period, but also to include whatever related property areas and/or facilities are designated in the governing documents (“timeshare instrument”) as accessible for the use and enjoyment of the user.

The definition of “timeshare property” in this ordinance mirrors the generalized use of such term in the industry, as reflected in many similar statutory definitions in other jurisdictions, including Florida. A “timeshare property” is often statutorily defined as one (or more) accommodations which is (or are) subject to the same governing document or “timeshare instrument,” and incorporates within its defined meaning any related property (such as patio or garden areas near the accommodations) and/or the right to use facilities (such as swimming pools, sports centers or beach clubs) which are developed, constructed and destined for the use and enjoyment of the user of the timeshare particular accommodations. The reservation system established in the timeshare instrument controls the arrangements for use of the component sites.

Article 2.33 The United States dollar figure of three thousand (US \$3,000.00) includes any initial amounts to make use of an exchange program and obligatory costs for any other fees. It is the intent to consider any exchange program that has obligatory costs in excess of US \$3,000 a timeshare plan of a multi-site nature.

Article 3

Under the present law a timeshare-user may have some protection under the law on lease and hire. See the present article 7A:1593 Civil Code (i.e. the proposed new article 7:226). But there may be uncertainty whether the timeshare can be qualified as lease/hire. See the decisions of the Supreme Court of the 26th of December 2007, LJN: BB4204, NJ 2008, 282 (*Bloch-Heineman v. Kura Hulanda*) and of the 11th of February 2011, LJN: BO9673, NJ 2012, 73 (*Schena v. Akgi Royal Palm*). Furthermore, even if the timeshare qualifies as lease/hire, the mortgagee may be able to invoke a stipulation in the instrument of mortgage (article 3:264 Civil Code) and in case of bankruptcy the trustee may be able to terminate the timeshare contract (Supreme Court 3th of November 2006, LJN: AX8838, NJ 2007, 155 (*Nebula*)). Therefore a specific provision on non-disturbance is introduced in article 3.

There has been a growing tendency in the industry (and in the statutes regulating the timeshare activity and industry) to protect the timeshare buyers/users from the consequences of economic distress and the exercise of related lender's rights that may affect the control and continuing operation of the timeshare property in which the timeshare users are contractually entitled to occupy the agreed accommodation during the acquired interval or period. In that vein, this Article has been included in the ordinance, for purposes of protecting any existing timeshare rights in a scenario of the "sale upon distress" of a timeshare property, whether or not it can be considered as a lease, or if the timeshare property should be affected by a bankrupt developer/owner. In such a context, the terms "affected," "disturbed" and "to adversely affect" refer to the impeding or "disturbance" of the timeshare user's right to occupy and enjoy the timeshare property as agreed in the corresponding timeshare purchase agreement. The purpose of this Article is to extend protection to the timeshare rights of the user from such adverse effects.

It is the intent of this article to extend to all forms of timeshare interests the same level of protection from a bankruptcy or seizure of property due to indebtedness by the developer that has been extended to the holder of a 1/52nd right of apartment or a leaseholder. This provision is intended to deter any timeshare lender from failing to exercise proper caution in the performance of adequate due diligence.

Article 10

If a prospective purchaser was shown information prior to purchase that is different from that contained in the contract or in the final disclosure statements, there is an obligation to inform the prospective purchaser of those differences and the reasons (See the second sentence of the first paragraph of Article 10).

The developer may elect to bear some of the costs that would normally be the obligation of the user as further described in Article 11. This may be for a limited time or for the life of the timeshare plan. If this is the case, the developer must include a full description of the amounts and the duration of the costs borne by the developer.

Article 11

In addition to describing the financial obligations of the user for the maintenance of a timeshare property, this article describes the financial obligations of the developer for the costs of operating a timeshare property that are not for the account of the user. An example of this calculation allocates the user's share based on the user's percentage multiplied by the annual operating expenses when the percentage is based upon usage. The percentage is the total unit nights available for that user divided into the total unit nights available at the project (excluding nights set aside for maintenance). For example, in a project of ten identical units and assuming an annual operating expense of \$500,000, there are 3,650 unit nights available annually. A user who purchases eight nights of usage annually shall be responsible for an individual share of the annual operating expense equal to $8/3,650$ or \$1,095.89. If the plan sets aside nights that are for maintenance of the units and in the example above each unit would have five nights set aside for maintenance, the user's share of those nights above would be $8/3600$ times \$500,000 equals \$1,111.11. After subtracting all the expenses that are calculated as the total share of the expenses that all the project's users are responsible for, the remainder of the expenses are for the account of the developer.

The above example uses identical accommodation units for the calculations. In practice, many timeshare properties have different sizes and types of units. The differences may be in the number of square meters, the number of bedrooms or bathrooms, and the type of kitchen facilities for example. The developer shall be responsible to create a methodology for the calculation of the pro-rata shares of maintenance costs for all users; taking into consideration if there exists or plans to exist differing timeshare unit configurations. This methodology shall be disclosed as required in Article 10 par. 6.

It is not practical, in all cases, for a developer to transfer funds into the maintenance fee account. For a prime example, consider a timeshare property just beginning sales or in its first years of sales. Most of the available inventory is in the control of the developer who is financially obligated for the unsold inventory. In this case the developer is making funds available primarily from his enterprise and such funds are far greater than those received from the users in the form of maintenance fees. The property may also be a multi-use facility wherein hotel rooms, timeshare accommodations and rights of apartment are all developed and managed by one entity.

Article 12

Many consumers are concerned over rising maintenance fees and have expressed a wish to impose a cap on those fees. Any artificial construct, such as limiting maintenance fee increases to a certain price index can lead to catastrophic shortfalls in operational funds. For many years the cost of electricity and water has risen far faster than price indices, and these two items taken together currently comprise the second largest expense to operating a timeshare property in Sint Maarten. Indices also cannot accurately predict wage increases, particularly given that workers have the rights to organize and bargain collectively. This article uses the actual costs of operating the property as the guideline for maintenance fees. Unreasonable costs can be successfully challenged in court or by mediation.

Article 13

Independent audited financial statements on the operational expenses of a timeshare plan can result in large additional costs to operational expenses; thus, independent audited financial statements are optional. The consumer has the ability to verify the costs being assessed and can do this both effectively and economically in comparison to an independent audit. Private information such as the names and addresses of other users or individual payroll data shall be kept confidential for privacy protection.

Article 15

Reserve funds for capital expenditures for rights of apartments are mandated by the law as of 2005. Article 5:126, first paragraph, second sentence, of the Civil Code reads: "The association shall maintain a reserve fund for covering costs other than the regular annual costs." A three year time period was given to allow properties divided into rights of apartment to establish such funds if none existed. It is left up to each association to determine the nature and amounts of required reserves.

Timeshare developers in Sint Maarten have not made use of the provision that allows for the creation of 1/52nd rights of apartment, and in fact the consumer is more interested in the flexible use rights of other types of timeshare plans. Therefore, the timeshare managing entities, whether controlled by a developer or an association, have not been bound by the current Civil Code to provide a standing reserve fund account.

Where the managing entity is a commercial enterprise, any such standing reserve fund accounts in the opinion of many tax experts can be subjected to profit tax, thereby substantially reducing the funds available for reserves or requiring ever increasing amounts to fund the tax liabilities. This has led many aging timeshare projects to develop a system of reserve funding, where the amounts collected for what would be other than annual expenses for apartments are actually spent yearly on capital replacement items, such as roofs, generators, cooling plants, wastewater plants, and other major replacements that would not normally be considered as annual expenses.

If a managing entity or association uses this means of reserve funding and continuing annual major replacements or repairs as opposed to creating a standing account that carries over from year to year the annual maintenance fees can be managed with little or no need for major variation in assessments. Under such a plan there is no need to provide a large fund to be tapped in future years as the property is in a continual state of renewal. Whichever method of reserve funding is used, the user is not faced with unexpected demands for funds as this article calls for an annual updating of a reserve fund expenditure plan.

If a new project or an older project does not provide for reserve funding using either a standing reserve fund account or an annual replacement plan that provides for relatively stable maintenance fees, a disclosure to a prospective purchaser or to existing users must be made that substantial future costs may be assessed in the maintenance fees.

Tax legislation should be looked at to prevent standing reserve funds that are held by commercial managing entities are not subjected to profit tax to allow a new project to build up a reserve fund to prevent large future assessments or substantial future increases in maintenance fees, a primary area of consumer concern.

Articles 18 and 19

These articles establish minimum standards for curing a default arising out of a failure to pay the purchase price or to comply with maintenance fee obligations. A developer or

managing entity may provide for longer cure periods in practice. A developer may not require shorter cure periods than those set forth herein. The provisions are not meant to be applicable in the case of a time share right of apartment.

Due to the flexible nature of the usage rights there is a lot of difficulty in establishing an absolute market value for these rights on the part of the user or a managing entity. It is similarly difficult to establish value for a 1/52nd right of apartment. For this reason, this legislation forbids the representation by either a seller or reseller of timeshare rights as an investment similar to that of full-time real property.

Older timeshare properties, which are no longer in active sales and marketing, are primarily concerned with a steady flow of maintenance fees in addition to rental of unsold inventory on a hotel basis to ensure continued operations and are no longer in the business of making substantial profits from sales. Termination of a timeshare license due to default on the part of the user with no monies returned to the user is therefore not a case of undue enrichment.

Article 20

Given Sint Maarten's location in a hurricane belt and its coastal nature with timeshare properties located primarily along the shoreline, it is impossible to make absolute predictions on what types of casualty insurance will be available in the future and at what cost. In the aftermath of Hurricane Luis in 1995, Fatum Insurances withdrew its sale of coverage for hurricane damage in Sint Maarten. Many smaller insurance companies were severely stressed at the time where adequate re-insurance was not provided in the case of large scale damage claims.

It is possible that full replacement value insurance may not be economically feasible for either the developer or the timeshare user at some point in time. It is already uneconomical to provide this without a large deductible. Some portion of risk must be assumed by parties at all times in order for insurance coverage to be commercially viable. This article sets forth the minimum standards of insurance that must be maintained in addition to what is set forth in the contract. Also established are procedures for the distribution of insurance funds should it not be feasible to rebuild a timeshare property that has been severely damaged.

Article 22

Scratch cards (See par. 2) have been in use in Sint Maarten for the purpose of attracting prospective purchasers to attend a timeshare or travel club sales presentation. These cards are marked subtly so that a sales person giving out the cards knows in advance which cards, when the covered symbols are scratched into view, are "winners." The possible prizes are listed on the cards, often with a large cash prize on the list that is either never given out or honored at the sole discretion of the sales company, as well as any other prizes on the list. It is the intent of this article to make illegal the use of a rigged contest and to restrict the use of any contest or similar promotion to one that is transparent in its operation with no possibility of deception.

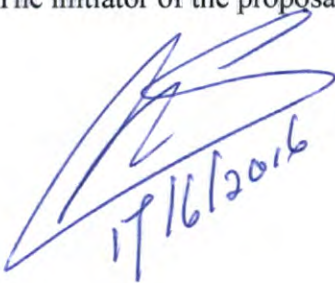
Article 25

There is a growing demand for resale services with respect to timeshare rights on Sint Maarten. Accompanying this demand is a growth of businesses that seek to meet this demand. Most countries and states that have a viable timeshare industry have recognized the need to regulate the timeshare resale industry.

By describing a fair practice for this industry and requiring a level of business standards on a par with the rest of the timeshare industry, we seek to extend the levels of consumer protection to the timeshare users who seek to sell their timeshare rights or to purchase timeshare rights from an existing timeshare user rather than from a developer, management company or owners association.

The key areas of consumer protection involve truthful representation to a timeshare user of expectations as to sales price and possibility of a resale of a timeshare right, a method to protect the funds of buyers and sellers from misuse by a timeshare reseller, granting rights of full disclosure and a cancellation period to buyers of timeshare rights through resale, and timely delivery of promised services.

The initiator of the proposal,

A handwritten signature in blue ink, followed by the date "17/6/2016" written below it.