



## Brant Point Courtyard

To all Interval Owners:

In September and October of 2010, the Massachusetts legislature and Governor Patrick approved major changes to Chapter 183B of the Massachusetts General Laws which substantially alter the methods of forfeiture of a time-share interval for non-payment of a mortgage and for non-payment of association assessments and fees. A summary of all changes are provided herein. The changes regarding foreclosure are found in Section 6. This new law takes effect on January 4, 2011.

We are pleased to report these changes in the law, since we believe that they will be beneficial to the operations and financial well-being of all time-share resorts in Massachusetts.

Sincerely,

Board of Trustees  
Brant Point Courtyard

**SUMMARY OF  
AMENDMENT TO THE TIMESHARE ACT  
(Chapter 183B of the General Laws)**

**Chapter 350 the Acts of 2010, as Approved on October 6, 2010**

**SECTION 1, 2 and 3**

Section 2 of chapter 183B was amended to adding and or changing the following definitions:

“Forfeiture”, full termination of any and all rights at law or in equity of a time-share owner, and of the heirs, executors, administrators, successors or assigns of the time-share owner in or arising out of the ownership of a time-share estate or a time-share license, including all rights of redemption or any other rights to cure.

“Forfeiture proceedings”, shall include the process of terminating or foreclosing the rights of a time-share owner, or exercising the rights of a secured party, under a mortgage, trust deed or other security instrument which encumbers a time-share pursuant to section 29A, or the process of foreclosing a lien for assessments on a time-share pursuant to section 29 or section 29B, or both.

“Recorded”, recorded or filed in the registry of deeds or land registration office for the county or registry district wherein the property is located.

“Registry of deeds”, the registry of deeds or land registration office for the county or registry district wherein the property is located.

“Time-share instrument”, 1 or more documents, by whatever name denominated, creating or governing time-shares including, without limitation, a declaration or plan establishing a time-share regime, articles of organization and by-laws of a time-share association, rules and regulations, offering materials, sales documents, and instruments of conveyance or transfer.

**SECTION 4**

Subsection (a) of section 20 was amended by striking out clause (8) and inserting a new clause setting forth charges for late payment of assessments.

## **SECTION 5.**

Section 29 was struck and in its place a new section was inserted which enhanced the ability of a time-share association to collect on its lien for any assessment levied against that time-share or fines imposed against its owner from the time the assessment or fine becomes due.

Unless the time-share instrument otherwise provides, fees, charges, late charges, fines, interest, collection agency fees and reasonable attorney's fees are covered by this lien.

The lien has priority over all other liens and encumbrances on a time-share except generally, prior recorded liens, mortgages or security interests, real estate taxes and other governmental assessments, liens for unpaid taxes under Chapter 62C, and liens for unpaid child support obligations.

The person making assessments for time-share expenses shall furnish a statement recordable in form setting forth the amount of unpaid assessments currently levied against the owner's time-share and may charge a reasonable fee for the preparation of such statement.

## **SECTION 6.**

Two New sections, 29A and 29B, were inserted after prior Section 29.

### **Section 29A:**

Section 29A provides for an additional forfeiture remedy for the holder of a mortgage on time-share interests in the event of default under the time-share mortgage.

The holder of the mortgage has the option to; (i) foreclose in the manner prescribed in the time-share instrument or, if not prescribed, in accordance with this section; or (ii) to sell, by public or private sale, conducted in accordance with Part 6 of Article 9 of Chapter 106. This is an alternative procedure from the current judicial foreclosure conducted pursuant to Chapter 244.

Upon default in payment of the mortgage the holder of a mortgage shall provide written notice of default to the time-share owner at the last known address thereof by certified and first class mail and shall provide a reasonable opportunity to cure of not less than 90 days from the date of the mailing of the notice letter.

Upon receipt of the required forfeiture notice under this new Section 29A, the time-share owner can assert an objection within the specified 90 day time period and request a judicial forfeiture proceeding pursuant to Chapter 244. However, failure of a time-share owner to object in a timely manner as required by this clause shall be deemed a waiver of the owner's right to a foreclosure pursuant to Chapter 244, and allow the mortgage holder to decide the method of the forfeiture proceeding.

After expiration of the 90-day period, if the time-share owner has not cured the default in the manner prescribed and the holder of the mortgage has determined in good faith and with

reasonable precaution that the time-share owner is not entitled to protection under the Service Members Civil Relief Act (in effect that the time-share owner is not in the active military), the holder of the mortgage may conduct a public auction sale.

Notice of the auction sale must be published once in a public newspaper with a general circulation in the town or county in which the time-share property is situated and not less than 30 days before the date of the sale.

At least 30 days prior to the date of sale, a written notice of the time, date and place of the auction shall be mailed by certified and first class mail to the time-share owner of record at their last known address and to all parties having a lien or other interest of record in the time-share estate junior to the mortgage that is the subject of forfeiture proceeding.

#### Section 29B:

The new Section 29B changes the method for forfeiture of a time-share owner's rights for non-payment of condominium fee assessments. The procedure is similar to the forfeiture by a mortgage holder in which the person or entity entitled to receive such payments shall have the option to: (i) foreclose in the manner prescribed in the time-share instrument or, if not prescribed, in accordance with this section; or (ii) sell by public or private sale, conducted in accordance with Part 6 of Article 9 of Chapter 106 of the General Laws.

As with the new mortgage forfeiture provisions under Section 29A, there are required notices to be sent and time periods to cure the breach.

Upon default in payment of condominium fee assessments, and after all applicable cure periods have expired, the association shall provide written notice of default in payment of assessments to the time-share owner at the last known address thereof by certified and first class mail and shall provide a reasonable opportunity to cure of not less than 90 days from the date of the mailing of the notice letter.

If, after the expiration of the 90-day period, the time-share owner has not cured the default in the manner prescribed and the time-share association has determined in good faith and with reasonable precaution that the time-share owner is not entitled to protection under the Service Members Civil Relief Act, the association shall conduct a public auction sale.

Notice of such sale shall be published once in a public newspaper with a general circulation in the town or county in which the time-share property is situated not less than 30 days before the date of the sale.

At least 30 days prior to the date of sale, a written notice of the time, date and place of the auction shall be mailed by certified and first class mail to the time-share owner of record, and all parties having a lien or other interest of record in the time-share estate or time-share license that is junior to the assessment lien and to any party holding a first mortgage or first security interest of record on the time-share estate or time-share license.

**SECTION 7.** Section 5 of Chapter 254 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 4 to 6, inclusive, the words “section six of chapter one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter one hundred and eighty-three B” and inserting in place thereof the following words:- or section 6 of chapter 183A.

**SECTION 8.** An association, organized pursuant to subsection a of section 19 of chapter 183B of the General Laws, shall provide a summary of this act within 60 days of the effective date of this act to time-share owners. The entire contents of this legislation shall be summarized in said letter. The notice shall be provided by: (i) first class mail sent to each unit owner's address; (ii) in the notice of an annual or special meeting of the owners; (iii) by posting said notice on the website of the applicable time-share plan; or (iv) by any owner communication used by the managing entity.

**SECTION 9.** In the case of a mortgage in which the term or the maturity date of the mortgage is stated, Section 33 of Chapter 260 of the General Laws prohibiting the exercise of a power of sale, entry, possession or commencement of foreclosure proceedings after 5 years from the expiration of the term or maturity date shall not apply to forfeiture proceedings executed within 36 months of the effective date of this act pursuant to Section 29A of Chapter 183B of the General Laws.