

## **Chapter 25**

### **Time-Share Ownership**

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**Part 1****Title, Effective Date, and Definitions****§25-101. Title.**

This Chapter shall be known and may be cited as the “Thornhurst Township Real Estate and Resort Time-Share Ownership Ordinance.”

(*Ord. 16, 4/14/1983, §1.101; as amended by Ord. 41, 11/10/2011*)

**§25-102. Effective Date and Applicability.**

This Chapter shall become effective 5 days after enactment and applies to time-share programs thereafter created, but not to time-share projects which have been offered for sale prior to the effective date. After such effective date no developer shall offer a new time-share interval to a purchaser unless the time-share program has been approved in accordance with this Chapter.

(*Ord. 16, 4/14/1983, §1.102*)

**§25-103. Definitions.**

The following words or phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Administrator*—the person designated by the Board of Supervisors to receive applications under this Chapter.

*Common expenses*—expenditures made or liabilities incurred by or on behalf of a purchaser, part of which is to be allocated to the payment of maintenance fees.

*Conversion or building conversion*—the use or tenancy of an existing structure for occupancy by a purchaser.

*Developer*—a person engaged in the business of creating or marketing of a time-share program.

*Development, project, property, or time-share project*—real property subject to a time-share program containing more than one unit, and the improvements thereto.

*Maintenance fees*—that portion of common expenses charges periodically by the maintenance organization to cover the costs of maintaining the buildings, common areas and other improvements related to a time-share project, including the expenses of replacing personal property, housekeeping functions, and other recurring costs of time share ownership over and above the initial purchase price.

*Maintenance organization*—the body, regardless of name or legal structure, designated to act on behalf of the developer or purchasers in matters concerning the payment of costs and expenses of time-share ownership, and the maintenance and care of buildings, common areas and other improvements.

*Person*—a person, corporation, partnership, limited partnership, association, trust, or other entity or any combination thereof.

*Project instrument*—one or more documents applicable to the time-share program by whatever name denominated, containing restrictions or covenants regulating the use, occupancy or disposition of time-share project, including any amendments to the document, but excluding any law, ordinance, or governmental regulation.

*Provided improvements*—those improvements to a time-share project which the developer proposes to make, but which are not mandated by law or ordinance.

*Purchaser*—a person who acquires a time-share interval from a developer regardless of whether the person acquires legal or equitable ownership of a time-share project or unit. The term “purchaser” shall be synonymous with fee owner, lessee, licensee, joint tenant, or other designation indicating an interest in land.

*Required improvements*—those improvements which are mandated under ordinances of the Township. Provided improvements and required improvements are sometimes collectively referred to herein as “improvements.”

*Time-share estate*—an interest in a time-share project consisting of either a time-share fee interest (for example, a tenancy in common, time span ownership, and interval ownership) or a time-share leasehold interest.

*Time-share interval*—a time-share estate or a time-share use.

*Time-share program*—any arrangement for time-share intervals whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates annually among purchasers of the time-share intervals according to a fixed or floating time schedule encompassing a period of time in excess of 3 years duration.

*Time-share use*—a contractual right of exclusive occupancy under a time-share program which does not fall within the definition of a time-share estate, including, without limitation, a vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation bond.

*Unit*—a portion of the time-share project designated for occupancy by any given purchaser, regardless of whether the purchaser acquires ownership thereof.

*Unit number*—a symbol that identifies a given unit within a time-share project.

(Ord. 16, 4/14/1983, §1.103)

#### **§25-104. Applicability of Other Ordinances.**

Except as otherwise provided herein, no ordinance or regulation of the Township shall be construed to impose any requirement upon a time-share program which it would not impose upon a similar development under a different form of ownership. To the extent that the Zoning [Chapter 27], Subdivision [Chapter 22] or other ordinances of the Township are in conflict with this Chapter, this Chapter shall apply to any time-share program, otherwise no provision of this Chapter invalidates or modifies any provision of any other ordinance.

(Ord. 16, 4/14/1983, §1.104)

#### **§25-105. Conflict with Statutes.**

To the extent this Chapter conflicts with any law of the Commonwealth of

Pennsylvania, the higher or more restrictive standard shall be applied, unless it clearly appears from such law that the Township is without jurisdiction to apply the higher standard.

*(Ord. 16, 4/14/1983, §1.105)*



**Part 2****Submission, Review, and Administration****§25-201. General Procedures.**

1. All requests for approval of a time-share program shall be treated as a conditional use application to be allowed or denied by the Board of Supervisors, after recommendation of the Township Planning Commission, pursuant to the standards and criteria set forth in this Chapter. The Board of Supervisors may deny an application only upon written notice of the manner in which the application fails to meet the standards and criteria of this Chapter, or other applicable ordinance of the Township. [Ord. 41]

2. Eight copies of all applications for time-share program approval and other required documents shall be submitted to the Administrator, who shall transmit copies thereof to the County Planning Commission, the Township Engineer, the Sewage Enforcement Officer, and the Township Planning Commission.

3. In addition, the Administrator may, in his or her own judgment, transmit copies thereof to the Pennsylvania Department of Environmental Protection, the County Conservation District, and the Township Solicitor. [Ord. 41]

4. The application and required documents shall be submitted to the Administrator at least 10 days in advance of the next regularly scheduled meeting of the Township Planning Commission which shall consider the submissions at its next regularly scheduled meeting, the date of which shall be considered the filing date of the application. The applicant or an authorized representative shall attend the Planning Commission meeting in order to present the application. [Ord. 41]

(Ord. 16, 4/14/1983, §2.100; as amended by Ord. 41, 11/10/2011)

**§25-202. Required Documents.**

The developer shall submit the following documents in connection with the request for approval of a time-share program:

A. Any document or plan required under the Township Zoning Ordinance [Chapter 27] or Subdivision and Land Development Ordinance [Chapter 22], or other applicable ordinances, including but not limited to a perimeter plan and a site plan of the time-sharing project. Such site plan shall depict all information required of a major subdivision plan under the Township Subdivision and Land Development Ordinance [Chapter 22]. The developer shall set forth on the site plan the units which are intended for occupancy by purchasers and adjacent parking and points of access to the nearest public roads. Roads and other improvements depicted on the plan shall meet the design standards of applicable Township ordinances. The site plan shall set forth a completion date for all improvements, which date shall not extend beyond 3 years from the date of final time-share program approval.

B. A floor plan, if more than one unit is located, or is to be located, within a single structure.

C. If the proposed project includes a building conversion, the supporting

documentation shall include a certification of a registered architect or engineer to the effect that the existing building is structurally sound and that the proposed alterations and improvements will not impair its structural soundness.

D. Copies of all sales documents or drafts thereof, all final drafts to be in substantially the same form as drafts previously submitted.

E. A narrative description of the manner in which responsibility for maintenance and care of the units and common areas will be assured, and a proposed operating budget for the maintenance organization. These documents should include an allocation of the common expenses that will be the responsibility of the maintenance organization.

F. A narrative description of the manner in which the developer proposes to assure maintenance and care of the units and common facilities during the period of time in which units are offered for sale, including any projected financial security or guarantee thereof.

(*Ord. 16, 4/14/1983, §2.101*)

#### **§25-203. Planning Commission Action.**

The Township Planning Commission shall, within 45 days of the filing date of the application, make its written recommendation to the Board of Supervisors. Upon receipt of such recommendation, the Board of Supervisors shall advertise for a public hearing to be held in connection with all new time-share programs.

(*Ord. 16, 4/14/1983, §2.102; as amended by Ord. 41, 11/10/2011*)

#### **§25-204. Criteria for Consideration.**

The application for time-share program approval shall be considered by the Board of Supervisors, at a public hearing, in accordance with the following standards and criteria:

A. Establishment of a proposed maintenance organization, and the submission of legal documentation for maintenance responsibility, in accordance with the standards of Part 3 of this Chapter.

B. Establishment of a guarantee of maintenance during the time-share project sales program.

C. Establishment of a central water supply, in accordance with applicable regulations of the Pennsylvania Department of Environmental Protection for public water supply facilities, for the units shown on the plans required pursuant to §25-202 hereof. [*Ord. 41*]

D. Establishment of waste disposal system, including areas designated as primary and replacement treatment locations, if applicable, in accordance with applicable regulations of the Pennsylvania Department of Environmental Protection for public sewer disposal facilities. [*Ord. 41*]

E. Compliance with the provisions of the Zoning [Chapter 27] and Subdivision and Land Development Ordinances [Chapter 22] of the Township.

F. Establishment of a road system and parking areas within the project area to service the anticipated traffic flow, including reasonable estimates for additional traffic during the sales program. All roads and parking areas shall meet the



minimum standards set forth in the Zoning [Chapter 27] and Subdivision and Land Development Ordinances [Chapter 22] of the Township. The Board of Supervisors may condition approval upon installation of temporary parking facilities to accommodate additional traffic during the sales program.

G. Assurance that purchasers of a time-share interval or time-share use will obtain a nondisturbance agreement from the holder of any lien on the time-share project.

H. Where the project includes the installation of improvements, the Board of Supervisors may condition approval upon installation of the improvements, or, in lieu of completion thereof, the Board of Supervisors shall require a performance guarantee, sufficient to assure completion of the improvements, as hereinafter set forth:

(1) The performance guarantee shall be in the form of a written instrument which shall provide for the deposit with the Township of financial security in an amount sufficient to cover the costs of any improvements or common amenities including, but not limited to, roads, parking facilities, stormwater detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be proposed or required.

(2) The financial security provided by the developer shall be in the form of an escrow or trust agreement, or other similar collateral or surety agreement, executed by the developer in a form acceptable to the Township and supported by collateral or security acceptable to the Township in the form of: (a) cash or certified check payable to the Township, (b) an unconditional guarantee by a corporate surety company acceptable to the Township and authorized and qualified to issue surety bonds in the Commonwealth of Pennsylvania, (c) an irrevocable unconditional letter of credit from a Federal or State chartered lending institution, or (d) a restrictive or escrow account in a Federal or State chartered lending institution.

(3) The performance guarantee shall provide for and secure to the public the completion of all improvements within 1 year of the completion date set forth on the site plan for the project.

(4) The amount of financial security provided by a performance guarantee shall be equal to 110 percent of the cost of the improvements for which financial security is being posted. The cost of the improvements shall be established by the submission to the Township of a bona fide bid or bids from the contractor or contractors chosen by the developer to complete the improvements. In the absence of such bona fide bids, the costs shall be established by an estimate prepared by the Township Engineer.

(5) If the developer requires more than 1 year from the date of posting of financial security to complete the improvements, the amount of financial security may be fixed, at the option of the Board of Supervisors, by either of the following methods:

(a) The amount of financial security shall be increased by an additional 10 percent for each 1-year period beyond the anniversary date of posting of financial security.

(b) The amount of financial security for the first 1-year period shall be established as set forth in subparagraph (4). On or about the expiration date of the preceding 1-year period, the developer shall submit to the Township a current bona fide bid or bids for the cost of completing the improvements, the amount of financial security for the upcoming 1-year period to be equal to 110 percent of the cost of completing the improvements.

(6) Where completion of the development is projected to require a period of years, the Board of Supervisors may authorize submission of final plans by sections or stages of development, subject to such requirements or guarantees as to improvements in future sections or stages as it finds essential for the protection of any finally approved section of the development.

(7) The developer may request from time to time, as work progresses, the release of such portions of the financial security necessary for payment to the contractor performing the work.

(a) All such requests shall be in writing, by certified mail, addressed to the Board of Supervisors with a copy thereof sent to the Township Engineer. The Board of Supervisors shall have 45 days from receipt of such request within which to direct and authorize the Township Engineer to inspect the work and certify, in writing, to the Board of Supervisors that such portion of the work upon the improvements has been completed in accordance with the approved plan and to act upon such request.

(b) Accompanying all requests for the release of financial security must be a certification to the Board of Supervisors from the developer's engineer that the subject portion of work has been completed in accordance with the approved plans and in accordance with Township standards. The certification must be specific in regards to type, amount, and actual location of work completed. The period of time allocated to the Township to inspect the improvements and take such action as it deems appropriate will not begin to run until such certification has been received by the Township.

(c) Upon the Township Engineer's certification, the Board of Supervisors shall authorize the release of an amount of financial security as estimated by the Township Engineer to fairly represent the value of the improvements completed. The Board of Supervisors may, prior to final release at the time of completion and certification by the Township Engineer, require retention of 10 percent of the estimated cost of the aforesaid improvements.

(d) Should the Board of Supervisors fail to act within said 45-day period, the Board of Supervisors shall be deemed to have approved the release of funds as requested.

(8) When the developer has completed all of the improvements, the developer shall notify the Board of Supervisors, in writing, by certified mail, of the completion thereof and provide a certificate as provided in subparagraph (7)(b) and shall send copies thereof to the Township Engineer. The Board of Supervisors shall, within 10 days after receipt of such notice and certificate,

direct and authorize the Township Engineer to inspect the aforesaid improvements. The Township Engineer shall thereupon file a report, in writing, with the Board of Supervisors and shall promptly mail a copy of the same to the developer by certified mail. The report shall be made and mailed within 30 days after receipt by the Township Engineer of the aforesaid authorization from the Board of Supervisors and said report shall be detailed and shall indicate approval or rejection of the improvements, either in whole or in part, and if the improvements, or any portion thereof, shall not be approved or shall be rejected by the Township Engineer, said report shall contain, by reference to appropriate Sections of this Chapter, a statement of reasons for such nonapproval or rejection. The Board of Supervisors shall notify the developer, in writing, by certified mail, of the action of said Board of Supervisors with relation thereto.

(9) If the Board of Supervisors or the Township Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guarantee.

(10) If any portion of the improvements are not approved or are rejected by the Board of Supervisors, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

(11) In the event that any improvements have not been installed as provided in this Chapter or in accord with the approved time-share program, the Board of Supervisors may enforce any corporate bond, or other security by appropriate remedies. If proceeds of such bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the Board of Supervisors may, at its sole option, install part of such improvements in all or part of the project and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer, or both, shall be used solely for the installation of the improvements covered by such security and not for any other municipal purposes.

(*Ord. 16, 4/14/1983, §2.103; as amended by Ord. 41, 11/10/2011*)

#### **§25-205. Conditional Use Hearing.**

Within 45 days of the filing date of the application, the Township Planning Commission shall make its recommendation to the Board of Supervisors. Such recommendation, in writing, shall be that the time-share program be approved, approved with modifications, or disapproved. Failure on the part of the Planning Commission to make its recommendation within 45 days shall be construed as a favorable recommendation. Upon receipt of the Planning Commission's recommendations, or after 45 days from the filing of the application, the Board of Supervisors shall schedule a public hearing for consideration of the conditional use application. The Board of Supervisors shall act upon the application and shall render its decision no later than 90 days following the date of the regular meeting of the Planning Commis-

sion next following the date the application was filed, provided that should the first regular meeting of the Planning Commission occur more than 30 days following the filing of the application, the 90-day period shall be measured from the thirtieth day following the day the application was filed. The decision of the Board of Supervisors shall be communicated in writing to the applicant not more than 15 days following the date of rendering of the said decision. [*Ord. 41*]

A. The hearing on the conditional use application shall be advertised once a week for 2 successive weeks in a newspaper of general circulation within the Township. The first publication shall be no more than 30 days nor less than 14 days from the date of the hearing. The procedure at the hearing shall be in accordance with subsections (4) through (8) of §908 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10908(4), (8).

B. The application must be approved if it meets the criteria and standards set forth in this Chapter, and, in the event it does not meet those criteria and standards, the Board of Supervisors must specify in writing to what extent it is deficient and give the developer an opportunity to correct the deficiencies within 30 days from the date of written notification that approval has been denied.

(*Ord. 16*, 4/14/1983, §2.104; as amended by *Ord. 41*, 11/10/2011)

**Part 3****Maintenance Organization****§25-301. General Requirement.**

Maintenance of a time-share project shall be vested in a manager, who may be the developer or a person designated by the developer, appointed prior to the first offer of a unit for sale.

(*Ord. 16, 4/14/1983, §3.100*)

**§25-302. Upkeep of Time-Share Project.**

1. The manager shall be responsible for maintenance, repair and replacement of the units, common areas and other improvements related to the time-share project, and, if applicable, the expense of maintaining personal property, including furniture, fixtures and equipment located within the units.

2. The maintenance organization shall be required to keep and maintain insurance in an amount sufficient to replace the units, common areas and other improvements to the project, and personal property, in the event of fire or other insurable casualty. The maintenance organization shall also be required to keep and maintain comprehensive general liability insurance.

3. Where applicable, the maintenance organization shall be responsible for the collection of the purchaser's pro rata share of real estate taxes, and the remittance of such taxes to the local tax collector on a timely basis.

4. The sales documents and, where applicable, the project instruments shall specify the expenses which the maintenance organization may incur and collect from the purchaser as a maintenance fee. Unless otherwise provided in the sales documents, the developer shall pay the maintenance fee for all unsold time-share intervals of completed units.

5. Upon request of the Board of Supervisors, the maintenance organization shall provide evidence that the provisions of this section are currently being met.

(*Ord. 16, 4/14/1983, §3.101*)

**§25-303. Township's Remedy in the Event of Maintenance Organization Default.**

In the event the maintenance organization defaults on its responsibilities as provided for in §25-302 above, the ownership may, but shall not be required, to take such action as it deems necessary, and the reasonable cost of such action shall be made a lien upon the time-share project.

(*Ord. 16, 4/14/1983, §3.102*)



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**Part 4****Penalties and Remedies****§25-401. Enforcement Penalties.**

1. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [*Ord. 41*]

2. Each day that a violation exists shall constitute a separate offense. All fines collected for the violation of this Chapter shall be paid over to the Township.

(*Ord. 16, 4/14/1983, §4.100; as amended by Ord. 41, 11/10/2011*)

**§25-402. Enforcement Remedies.**

In addition to the enforcement penalties as provided for in §25-401 above, the Board of Supervisors may institute in the name of the Township any appropriate action or proceeding to prevent, restrain, correct, or abate the use or occupancy of any building or structure or the operation of any business in violation of this Chapter.

(*Ord. 16, 4/14/1983, §4.101*)





**Part 5****Fees****§25-501. Fees.**

Any developer seeking approval of a time-share program under this Chapter shall pay a fee in such amount as may be established by resolution duly adopted by the Board of Supervisors of the Township. The Supervisors may provide for the inspection of improvements during and after construction to insure their satisfactory completion, and the developer shall be required to pay the cost of any such inspection. All of the above fees shall be due and payable to the Township.

*(Ord. 16, 4/14/1983, §5.100)*

