

§ 93A-45. Purchaser's right to cancel; escrow; violation.

(a) A purchaser has the right to cancel the contract of sale until midnight of the fifth day after the later of the following events:

- (1) The purchaser's execution of the contract of sale.
- (2) The purchaser's receipt of the public offering statement pursuant to G.S. 93A-44 and all other documents required to be provided to the purchaser pursuant to G.S. 93A-44.

The purchaser may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void. No closing may occur until the cancellation period of the purchaser has expired.

(b) Any notice of cancellation shall be considered given on the date postmarked if mailed, or when transmitted if delivered by electronic means, so long as the notice is actually received by the developer or independent escrow agent. If given by means of a writing transmitted other than by mail, the notice of cancellation shall be considered given at the time of delivery at the place for receipt of notice provided by the developer.

(c) Cancellation under this section is without penalty, and the refund of all monies received by the developer or timeshare salesperson shall be made within 20 days of demand therefor by the purchaser or within five days after receipt of cleared funds from the purchaser, whichever is later.

(d) Prior to a purchaser's execution of a contract of sale, the developer shall establish an escrow account with an independent escrow agent for the purpose of protecting the funds of purchasers required to be escrowed by this subsection. Any funds received prior to closing by a developer or timeshare salesperson in connection with the sale of the timeshare shall be immediately deposited by the developer or salesperson in a trust or escrow account in a federally insured depository institution or a trust institution authorized to do business in this State and shall only be disbursed in accordance with subsection (f) of this section. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer. In lieu of escrow requirements, the Commission shall have the authority to accept, in its discretion, alternative financial assurances adequate to protect the purchaser's interest during the contract of sale cancellation period, including, but not limited to, a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow requirements or a financial assurance posted in another jurisdiction.

(e) A developer shall not be entitled to the release of any escrowed funds until the developer has provided the independent escrow agent with (i) an affidavit stating that the purchaser has defaulted under the contract of sale and the developer is entitled to the escrowed funds pursuant to the terms of the contract of sale or (ii) an affidavit that the developer has performed all of its obligations under the purchase contract, including completion of construction of all promised timeshare units and amenities or the posting of an alternate financial assurance acceptable to the Commission securing the completion of construction, and the developer and purchaser have closed on the contract of sale, together with evidence satisfactory to the independent escrow agent that the timeshare and the timeshare property is either free and clear of interests in or liens or encumbrances against the timeshare and timeshare property of any interest holder or the developer has met the requirements of G.S. 93A-57(a).

(f) An independent escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the independent escrow agent. The independent escrow agent shall have a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this section. The independent escrow agent shall retain all affidavits received pursuant to this section for a period of five years. Should the independent escrow agent receive conflicting demands for funds or other property

G.S. 93A-45

held in escrow that remain unresolved for more than 30 days, the independent escrow agent shall notify the Commission of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(g) If the contract of sale does not include the cancellation notice as required by G.S. 93A-44(a)(12), the owner, in addition to any rights to damages or other relief, is entitled to void the transfer and receive from the developer all funds paid for the timeshare together with an amount equal to ten percent (10%) of the sales price of the timeshare not to exceed three thousand dollars (\$3,000).

(h) A timeshare declaration or other instrument establishing or governing a timeshare program or an underlying timeshare property regime is not an encumbrance for purposes of this Chapter and does not create a requirement for a subordination and notice to creditors instrument for purposes of this section from any person.

(i) Any developer or independent escrow agent who intentionally fails to comply with the provisions of this Article concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom is guilty of a Class E felony. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this subsection. (1983, c. 814, s. 1; 1985, c. 578, s. 4; 2000-140, s. 19(b); 2001-487, s. 23(j); 2017-25, s. 1(I); 2021-163, s. 1(c); 2021-192, s. 5(a).)