



# VOASA

VACATION OWNERSHIP ASSOCIATION OF SOUTHERN AFRICA

## **APPLICATION FOR MEMBERSHIP**

### **BROKER MEMBER**

**APPLICATION FOR REGISTRATION AS BROKER MEMBER**

This form must be sent to :

**VACATION OWNERSHIP ASSOCIATION OF SOUTHERN AFRICA**

P.O. Box 2823, Durbanville, 7551

Tel : (021) 914 9693

Fax : (021) 914 5202

E-mail: [voasa@voasa.co.za](mailto:voasa@voasa.co.za)

Website: [www.voasa.co.za](http://www.voasa.co.za)

**APPLICATION FORM 2009**

Name of applicant: \_\_\_\_\_

Registered address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Postal Address: \_\_\_\_\_

If a Company or Close Corporation, state name, identity number, address and telephone number of each Director/Member:

(a) Name: \_\_\_\_\_ ID No: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Telephone No: \_( ) \_\_\_\_\_ Mobile No: \_\_\_\_\_  
Fidelity Fund Certificate No: \_\_\_\_\_

(b) Name: \_\_\_\_\_ ID No: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Telephone No: \_( ) \_\_\_\_\_ Mobile No: \_\_\_\_\_  
Fidelity Fund Certificate No: \_\_\_\_\_

(c) Name: \_\_\_\_\_ ID No: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Telephone No: \_( ) \_\_\_\_\_ Mobile No: \_\_\_\_\_  
Fidelity Fund Certificate No: \_\_\_\_\_

(d) Name: \_\_\_\_\_ ID No: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Telephone No: \_( ) \_\_\_\_\_ Mobile No: \_\_\_\_\_  
Fidelity Fund Certificate No: \_\_\_\_\_

(e) Name: \_\_\_\_\_ ID No: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Telephone No: \_(\_\_\_\_\_) \_\_\_\_\_ Mobile No: \_\_\_\_\_  
Fidelity Fund Certificate No: \_\_\_\_\_

1. INFORMATION REGARDING APPLICANT:

Date of Incorporation: \_\_\_\_\_  
Place of Incorporation: \_\_\_\_\_  
Company Register No: \_\_\_\_\_  
(Please attach a copy of Registration / Incorporation Certificate)  
Shareholders: \_\_\_\_\_

2. AUDITORS:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Tel: \_(\_\_\_\_\_) \_\_\_\_\_ Fax: \_(\_\_\_\_\_) \_\_\_\_\_  
Contact Name: \_\_\_\_\_

3. ATTORNEYS:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Code: \_\_\_\_\_  
Tel: \_(\_\_\_\_\_) \_\_\_\_\_ Fax: \_(\_\_\_\_\_) \_\_\_\_\_  
Contact Name: \_\_\_\_\_

4. BANKERS:

Bank: \_\_\_\_\_  
Branch: \_\_\_\_\_  
Tel: \_(\_\_\_\_\_) \_\_\_\_\_ Fax: \_(\_\_\_\_\_) \_\_\_\_\_

5. Has any Director / Member, Controller or Manager of the applicant within the last 5 years prior to the date of this application:

- |   |     |    |
|---|-----|----|
| (a) been convicted of a criminal offence (excluding motor offences)?  | YES | NO |
| (b) been interdicted by any Order of Court from undertaking the alienation of shared vacation ownership; and  | YES | NO |
| (c) been declared insolvent or disqualified in terms of the Companies Act or Estate Agents Act from acting as a Director or Estate Agent, respectively. | YES | NO |

If the answer to any of these questions is "YES", please give full details below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Names of Developers and Projects on whose behalf applicant is selling shared vacation ownership interests: (It is a requirement that all developer's on whose behalf the broker is selling shared vacation ownership interests, should in turn be members of VOASA).

| DEVELOPER | RESORT | NEW SALES | RESALES |
|-----------|--------|-----------|---------|
|           |        |           |         |
|           |        |           |         |
|           |        |           |         |
|           |        |           |         |

(a) Do you have a financial interest in any of the above mentioned companies or projects? If yes, please state:

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7. Names of current sales agents / employees: \_\_\_\_\_

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**ACKNOWLEDGMENT**

- Constitution of VOASA
- The VOASA Code of Conduct
  1. And that upon acceptance as a member of VOASA I/we undertake to comply with all of the above. I/We also acknowledge that the above may be varied in terms of the particular constitution applying thereto.
  2. I/We further agree that I/we will as a member of the Vacation Ownership Association of South Africa (VOASA) agree to abide with the VOASA Code of Conduct.
  3. I/We enclose/will send payment/proof of payment in respect of the VOASA membership fee as per the attached TM001 (Annual Membership / Renewal Fee Form) to the value of R 2, 736.00 (Two thousand seven hundred and thirty six rand only) inclusive of VAT.
  4. I/We agree to abide with the rulings of the Standards Council and complaints procedures which may be changed from time to time and agree to pay any fines being levied against me/us.
  5. I/We further acknowledge and am aware that, in the event of me/us being black-flagged I/we agree to VOASA publishing my name as a black-flagged member.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2009

\_\_\_\_\_  
SIGNED: BY APPLICANT

\_\_\_\_\_  
FULL NAME OF SIGNATORY

\_\_\_\_\_  
CAPACITY OF SIGNATORY

*(A copy of the authorizing resolution may be requested by VOASA)*

\_\_\_\_\_  
WITNESS FOR APPLICANT

\_\_\_\_\_  
FULL NAME OF WITNESS

**VOASA RESERVES THE RIGHT TO REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION AS MAY BE  
REQUIRE FROM TIME TO TIME**

## Definition of a Broker

"estate agent" -

- (a) means any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instructions or on behalf of any other person -
- (i) sells or purchases immovable property or any interest in immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a seller or purchaser therefore, or
  - (ii) lets or hires immovable property or any interest in immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor therefore; or
  - (iii) collects or receives any moneys payable on account of a lease of immovable property or any business undertaking; or
  - (iv) renders any such other services as the Minister on the recommendation of the board may specify from time to time by notice in the *Gazette*;  
(Sub-para. (iv) substituted by s. 1 of Act No. 60 of 1978.)
- (b) for purposes of section 3 (2) (a), includes any director of a company or a member who is competent and entitled to take part in the running of the business and the management, or a manager who is an officer, of a close corporation which is an estate agent as defined in paragraph (a);  
(Para. (b) substituted by s.1 (b) of Act No. 10 of 1985.)

## Extract from the South African Property Practice and the Law - commissioned by the Estate Agents Board

- In defining an estate agent, the Act also contains a specific definition of "immovable property".<sup>5</sup> This includes:
  - any sectional title unit as well as any proposed unit;
  - any share in a share block company as well as any proposed share;
  - any time-sharing interest as well as any proposed time-sharing interest.

# RESALES

## GUIDE TO RESALES IN THE SHARED VACATION OWNERSHIP INDUSTRY

Resales have become a growing industry in the marketing of shared vacation ownership interests and many sales consultants are entering the market. However, there are certain matters which are unique or particular to the resale of a shared vacation ownership product. As a service to the industry VOASA will attempt to clarify some of these issues.

### DOCUMENTATION

There is a fallacy that the resale of a shared vacation ownership interest need not be documented. In fact a large number of sales occur by the seller simply signing a CM (share transfer) form. The resale of shared vacation ownership products, legally speaking, is no different from the sale of shared vacation ownership products in the first instance. One of the consequences is that the sale (and resale) of shared vacation ownership interests must be in writing. The Timeshare Act specifies this. What is more, if the shared vacation ownership interest relates to a share block company the Share blocks Control Act also stipulates that the agreement must be in writing. Really a double whammy! In addition the sale must also comply with the disclosure provisions of the Timeshare Act and in the case of a share block company, the Share blocks Act. With sectional title shared vacation ownership transfer, it goes without saying that the agreement must be in writing as sectional title is immovable property.

The documentation has three parts:

- The sale itself. This must record what is being sold, how much (the price) and any other terms which may apply to the sale;
- The Use Agreement must be ceded, (or more accurately assigned), to the new purchaser;
- The disclosure provisions.

### FIDELITY FUND

If you are reselling any shared vacation ownership product on behalf of an existing owner you act as an Estate Agent in terms of the Estate Agents Act. That means you must comply with the Act and most important of all, be in possession of a Fidelity Fund Certificate.

If you do not do so you are not entitled to commission in terms of the Act.

### UNDISCLOSED COMMISSION OR SECRET PROFIT

As we have seen in the selling, or reselling of shared vacation ownership interests, the sales consultant acts as an Estate Agent. In terms of the Code of Conduct issued by the Estate Agents Board, and indeed in terms of common law, no agent may make a secret profit and the full commission must always be disclosed to the client or principal. On the resale of shared vacation ownership interests the commission, (or profit) must be stated up front. Consequently the practice whereby a sales consultant advises the client that he will receive, say, R20 000 on the resale for his shared vacation ownership interest, and the sales consultant thereafter sells the interest for, say, R30 000, and pockets the difference, is illegal.

In fact there is case law to the effect that on any profit an agent makes by virtue of him acting as an agent that profit must be accounted for and is for the benefit of the principal. The R10 000 profit in our example must therefore be handed over to the client. Bear in mind that the relationship between a principal, (your client), and the agent, (you), is a fiduciary one, requiring good faith and full disclosure.

However, what is legal, is if the sales consultant purchases the shared vacation ownership interest in his own name, (or the name of the firm), and pays the client an agreed purchase price. In other words, the sales consultant now buys the shared vacation ownership interest, and does not put himself out as an agent. Whatever profit the sales consultant makes thereafter he is entitled to. Care must be taken to ensure that the sales consultant is a purchaser of the shared vacation ownership interest, and does not act in any capacity as an agent. In particular he cannot put himself out as an agent, and simply go through the motions of buying the shared vacation ownership interest. The sale must actually take place.

### LISTING FEE

The practice has arisen in the Shared Vacation Ownership industry of organisation's advising the public that for a relatively nominal sum, usually between R200-R300, they will place the name of the client on a "list". The organisation does not promise necessarily to be able to resell that shared vacation ownership interest but invariably promises to use its best endeavours to publicise and/or arrange rentals and/or market the shared vacation ownership interest.

What invariably happens is that the organisation makes no attempt whatever to resell the shared vacation ownership interest and simply pockets that listing fee.

Where no attempt is made to resell the shared vacation ownership interest it constitutes fraud and is contrary to VOASA's Code of Conduct. Breaches of this provision will be dealt with very severely by VOASA's Standards Council.

### VAT

Remember that VAT is payable on your commission. If you quote a price on your commission it is inclusive of VAT. You can, for example, break it up and say that commission is R100, VAT, R14 and the total R114. However, if you quote R100, you cannot afterwards add on VAT. The VAT is then payable by you.

*If there is anything further you would like to know about resale's, please contact VOASA on +27 (0)21 914 9693 or email [voasa@voasa.co.za](mailto:voasa@voasa.co.za) or visit our website at [www.voasa.co.za](http://www.voasa.co.za)*

## **Sale of shared vacation ownership products to non-residents**

We have been investigating issues regarding the sale of shared vacation ownership interests to non-residents and have received the following in this regard:

1. Terms of the current South African Reserve Bank Rulings. There is no restriction on non-residents investing in South Africa. All non-residents who wish to disinvest may, in terms of the current South African Reserve Bank Rulings, transfer the disinvestment proceeds abroad also without restriction provided suitable documentation is produced as proof that the funds were introduced from abroad for investment in the Republic, and further documentation from the appropriate authorities confirming that the non-residents has now disinvested e.g. an auditors representation letter, letter from attorneys, etc.
2. Any funds introduced into the Republic for purchase of property / shared vacation ownership interests etc. must be introduced via an Authorised Dealer (i.e. an Authorised Bank). Records of the transactions should be kept with the appropriate investor or his/her representative in the Republic as this information will be required should the investor wish to disinvest.
3. All Share Certificates purchased by non-residents must be stamped "non-resident" by the Authorised Dealer who handled the conversion of foreign currency to Rands for the purpose stated.