



Timeshares

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Background

Timeshares are created when a developer purchases or builds one or more condominium type units and then completes the required legal steps to be allowed to sell week stays in these units. Some states consider some [TIMESHARE](#) arrangements to be actual pieces of real estate, making other real estate laws applicable to timeshare owners.

Types of Timeshare Ownerships

Deeded Timeshares

In this timeshare, the timeshare owner purchases an ownership interest in a particular piece of real estate. Usually, the buyer purchases a particular unit and a particular week in the year. That owner will always stay in that same unit on the same week of every year, unless an exchange is made through an exchange company. This arrangement is usually called Fixed Time or Fixed Unit.

Non-deeded Timeshare

In a non-deed timeshare, the timeshare owner purchases a [LEASE](#), license, or club membership to use the property for a specific amount of time each year for a stated number of years. This is sometimes called a Floating Time arrangement. The purchaser has to contact the resort to make reservations for the exact week required. Some resorts have limitations on how early units can be reserved. Seasonal Floating is the same as Floating Time except that the owner can only reserve time within a particular season

Considerations in Purchasing a Timeshare

Numerous factors should be taken into account prior to purchasing a timeshare. A review of the background of the seller, developer, and management company, along with a review of the current maintenance budget, will assist the prospective seller in making an informed decision. Local real estate agents, Better Business Bureaus, and [CONSUMER PROTECTION](#) offices also are good sources of information. While many

reputable builders do exist, purchasing an undeveloped property carries additional risks. One means of protection is to hold money in an [ESCROW](#) account in case the developer defaults. The commitment from the seller that the facilities will be finished as promised should be written into the purchase contract with a date certain.

Practical Factors

Timeshares provide the convenience of prearranged vacation facilities, however future circumstances may alter future planning ability. Timeshare plans typically do not include recession provisions for poor health or job loss. Vacationing tastes and favored activities may also change over time. These factors should be considered in evaluating a purchase.

Investment Potential

Timeshare resales usually are difficult and often sold at a loss to the seller. Therefore, timeshares are typically not considered an investment as a second or vacation home might be. There are many investment options in the property area, but investment should not be a major factor when purchasing a timeshare. Renting is also difficult and many timeshare owners pay advance fees to rental agencies which may not be able to find any renters for that time frame.

Total Costs

Total costs include [MORTGAGE](#) payments and expenses, as well as travel costs, annual maintenance fees and taxes, closing costs, broker commissions, and finance charges. Annual timeshare maintenance fees can be high depending on the amenities of the resort. The larger and more upscale the resort, the higher the fees. These fees cover all of the costs of operation but are typically several hundred dollars a year. These fees can and do rise over time. All of these expenses should be incorporated when determining the overall cost of purchasing a timeshare.

Document Review

Purchase documents for any type of real estate transaction are binding legal contracts and should be reviewed by an attorney. The contract may provide for, and some states require, a set "cooling-off" period during which the purchaser may cancel the contract and obtain a refund. The contract may include a non-disturbance clause and/or a non-performance clause. A non-disturbance provision ensures continued use of the unit in the event of [DEFAULT](#) and subsequent third party claims against the developer or management firm. A non-performance protection clause allows the purchaser to retain ownership rights, even if a third party is required to buy out the contract. All promises made by the salesperson should be written into the contract. If not, such provisions will almost certainly be unenforceable in a court of law.

Exchange Programs

These programs allow trades with other resort units in different locations for an additional fee. However, these trades usually cannot be guaranteed. There also may be some limits on exchange opportunities. Most developers are affiliated with large exchange companies. Two major companies are Resort Condominiums International (RCI) and Interval International (II). When a developer affiliates with the exchange company, the exchange company allows all of the buyers who purchase at that development to be able to join the exchange company. The developer pays an initial fee to the exchange company, and thereafter the individual timeshare owners are usually assessed an annual fee. The exchange company provides owners with a directory of hundreds of resorts. The exchange company is a huge computerized reservation system that is also licensed as a travel agency. An individual can deposit the week that they own and trade it for a week at another resort

anywhere in the world, provided that one is available. There is usually a fee for the exchange, and there are also size rules, which allow trades equal or down. In most exchanges, a two bedroom can exchange for a two bedroom, but a three bedroom would likely require additional charges. Both of the major exchange companies rate their resorts. Usually, one needs to be giving up a week at a top resort to get a week at another top resort. In RCI the top rated resorts are called Gold Crown. In II top resorts are known as Five Star. There are a number of smaller exchange companies that are available to timeshare owners. These smaller companies are often regionally based.

Foreign Properties

Timeshares and vacation club memberships in foreign countries are subject to the law of the [JURISDICTION](#) in which the timeshare is located. A contract outside the United States for a timeshare located in another country will not be protected under U. S. federal or state contract property laws.

Sales Incentives

Timeshare resorts sometimes offer free lodging to potential buyers in exchange for their attendance at a presentation about properties the developer has for sale. A free Vacation Certificate may be offered by telephone, mail, or from the Internet. Offers vary, but they are often for a three day, two night stay at the resort itself or a nearby hotel. Nearly all offers are subject to certain conditions, including age and income requirements. Both spouses must usually attend a sales presentation and upon arrival participants are often asked to provide proof of identity. Advance deposits, which may not be refundable, are often required to guarantee the time. Any charge termed a processing fee is probably nonrefundable. If deposit funds are actually called a deposit, refunds may be given at the location or at the end of the stay.

State Regulation

Most states now regulate timesharing, either under existing state land sale laws or under laws that were specifically enacted for timesharing. The regulating authority is usually the Real Estate Commission in the state where the timeshare property is located.

FLORIDA: Under the Florida Vacation Plan and Timesharing Act, purchasers may cancel Timeshare contracts within 10 calendar days after the date the contract is signed if the seller is notified of the cancellation in writing. Any attempt by the seller to obtain a [WAIVER](#) of the cancellation right is void and of no effect. While closing documents may be executed, the closing cannot actually take place until the 10 day cancellation period has expired.

HAWAII: Hawaii state law requires the purchaser to have a seven-day right of rescission of any timesharing sales contract. Hawaii law also outlines specific guidelines for developers, acquisition agents, and sales agents of timeshare units, providing that failure to fully disclose certain actions as sales solicitations constitutes unfair and deceptive business practices. The law is also quite severe with respect to seller misrepresentations.

MARYLAND: A time-share purchaser shall have the right to cancel the sales contract until midnight of the tenth calendar day following, the contract date, or the day on which the time-share purchaser received the last of all documents required to be provided as part of the public offering statement, which ever is latest. This right of cancellation cannot be waived by the purchaser or by any other person. Although documents may be signed in advance, closing cannot occur until the purchaser's cancellation period has expired. Any false

Encyclopedia of Everyday Law: Timeshares

representation made by or on behalf of a developer that a purchaser may not exercise the right of cancellation or any attempt to obtain a waiver of the purchaser's cancellation rights or a closing prior to the expiration of the cancellation period shall be unlawful, and the transaction is voidable at the option of the purchaser for a period of one year after the expiration of the cancellation period.

MASSACHUSETTS: In Massachusetts, timeshares are considered real estate. Notices of assessments and bills for taxes are required to be furnished to and paid by the managing entity or if there is no managing entity, to each timeshare owner. The managing entity is required by law to give notice of such [ASSESSMENT](#) to the timeshare owners.

NEVADA: In Nevada, the purchaser of a timeshare may cancel, by written notice, the contract of sale until midnight of the fifth calendar day following the date of [EXECUTION](#) of the contract. The contract of sale must include a statement of this right. This right of cancellation may not be waived. Any attempt by the developer to obtain a waiver results in a contract that is voidable by the purchaser. The notice of cancellation may be delivered personally to the developer or sent by certified mail or telegraph to the business address of the developer. The developer shall, within 15 days after receipt of the notice of cancellation, return all payments made by the purchaser.

NEW MEXICO: The contract of sale is voidable by the purchaser within seven days after execution of the contract of sale. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. An instrument transferring a timeshare shall not be recorded until seven days after the execution of the contract of sale. Advertisements which include the offer of a prize or other inducement must fully comply with the provisions of the Unfair Practices Act.

NEW HAMPSHIRE: The law requires that buyers' deposits must be held in escrow until the closing. Some projects must present a public offering statement to each buyer before or at the time of purchase. In addition, under the law buyers usually may cancel their purchase within five days after signing the purchase contract or five days after receiving the public offering statement whichever is later.

OREGON: A seller offering an exchange program to a purchaser in conjunction with a timeshare plan must provide specific written information to the purchaser about the exchange program, including whether participation is voluntary. A purchaser from a developer may cancel, for any reason, any contract, agreement or other [EVIDENCE](#) of indebtedness associated with the sale of the timeshare within five calendar days from the date the purchaser signs the first written offer or contract to purchase. A notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the purchaser's intent not to be bound by the contract or evidence of indebtedness. Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid. Upon receipt of a timely notice of cancellation, the developer shall immediately return any payment received from the purchaser. If the payment was made by check, the developer shall not be required to return the payment to the purchaser until the check is finally paid. Upon return of all payments the purchaser shall immediately transfer any rights the purchaser may have acquired in the timeshare to the developer, not subject to any encumbrance created or suffered by the purchaser. No act of a purchaser shall be effective to waive the right of cancellation.

SOUTH CAROLINA: Contracts must inform the purchaser of the right to cancel the contract within four days, not including Sunday if that is the fourth day, from the date of the contract. Additionally, the purchaser may cancel at any time if the accommodations or facilities are no longer available as provided in the contract. Cancellation notice must be sent to the seller by certified mail, return receipt requested.

TEXAS: Under the Texas Timeshare Act, a purchaser may cancel a contract to purchase a timeshare interest before the sixth day after the date the contract is signed. If a purchaser does not receive a copy of the contract

at the time the contract is signed, the purchaser may cancel the contract to purchase the timeshare interest before the sixth day after the date the contract is received by the purchaser. A purchaser may not waive the right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

Additional Resources

Blaggers: Adventures inside the Sun-Kissed but Murky World of Holiday Timeshare. Ley, Barry, Mainstream Publishing, 2001.

Setting up Home in Florida: How to Buy, Rent or Timeshare Residential Property in the Sunshine State. Ray, Michael, Trans-Atlantic Publications, 1996.

Organizations

American Resort Development Association

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Phone: (202) 371-6700
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URL: <http://www.arda.org>

Federal Trade Commission

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