Timeshare 101 for Attorneys

BY SHERI ANN FORBES, ESQ.

You can't walk through a Las Vegas casino without being approached by a timeshare salesman promising a free gift in exchange for attending a sales presentation. However, under Nevada law, any such offers must inform consumers the offer is part of a solicitation for a timeshare. NRS 119A.710(9); see also NRS 119A.700. NRS 119A.710(12) specifically applies the Nevada Deceptive Trade Practices Act (NDTPA), codified under NRS chapter 598, to timeshares.

Some of these solicitations are legitimate, but some give the timeshare market a bad rap with hard-sell or unscrupulous sales tactics. The allure of timeshare ownership attracts a diverse consumer base. According to MarketWatch.com, the American Resort Development Authority (ARDA) reports more than 40 percent of timeshare owners in the U.S. are minorities, the median age is 39, about 75 percent have college degrees and the median income is almost $95,000. *See* Daniel Goldstein, "6 things to know before you buy a timeshare," MarketWatch, October 31, 2016.

The concept of time-sharing a vacation property with other parties was initially developed in England. By the mid-1970s, the timeshare had been adopted by U.S. companies. It is important for consumers to understand the different types of ownership rights each type of timeshare affords to be in the best position to make an informed decision about purchasing a timeshare.

The rights to a timeshare fall into two categories: deeded ownership and a "right to use." With deeded ownership, the resort property is collectively owned by timeshare owners. The interest is considered real property. The consumer may rent, sell, exchange or pass on the unit to heirs. With right to use arrangements, the consumer buys a personal property interest. Typically, under a right to use contract, the consumer's ability to transfer, sell or relinquish the timeshare is more restrictive than a deeded timeshare ownership.

Timeshare arrangements fall into several different categories. In a fixed-week model, the consumer has the right to a unit during a specific week of the year. If the timeshare is deeded, a consumer may, for example, own a 1/52 interest in the vacation unit corresponding to the one week per year the consumer is entitled to use the unit. In a float-week timeshare, consumers can use the unit during a particular season of the year, reserving the time in advance. With fractional ownership, consumers purchase a large share of vacation ownership time, usually up to 26 weeks. Timeshare ownership can be either for the rest of a consumer's life, a number of years specified in the contract, or until sold if allowed by the contract, or end at death. *See* Beth Ross, "Buying a Timeshare: Pros, Cons, and Form of Ownership," https://www.nolo.com/legal-encyclopedia/buying-timeshare-pros-cons-form-ownership.html, visited January 15, 2020.

Many developers and resorts subsequently adopted a point-based timeshare model invented by Disney Resorts, sometimes called a "Vacation Club." Point systems are right to use timeshares in which consumers purchase points, rather than real property, that can be exchanged for the right to use a vacation unit. The number of points needed varies depending on the length of stay, location and popularity of the resort. The price of purchasing more points after initial costs and fees often surprises consumers when booking a vacation.

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In all timeshare models, owners are responsible for yearly maintenance fees, much like HOA fees, to keep up the property. In the case of deeded ownership, the fees pay property tax. Owners are obligated to pay the fees whether they use their yearly allotted vacation time. The maintenance fees can increase yearly, and in some cases, can outstrip the rate of inflation. The language in the contract regarding how the annual fees are determined is important to evaluating the relative value of the timeshare offering.

Unlike the stereotype timeshare sales pitch, timeshares are not likely to appreciate in value. More often than not, timeshares depreciate in value right after purchase. *See* Beth Ross, "Buying a Timeshare: Pros, Cons, and Form of Ownership." Some timeshare owners report not being able to even give away their timeshares. Developers and resorts build the cost of marketing and promotions to get consumers into the sales presentation into the cost of a timeshare offer. As much as 55 percent of the price of timeshares sold directly by the resort developer is the cost of getting potential buyers to attend the sales pitch. Daniel Goldstein, "6 things to know before you buy a timeshare," MarketWatch, October 31, 2016. Thus, timeshares make poor investments, and any promises or guarantees that timeshares will appreciate are not only overblown, but could violate NDTPA. NRS 598.092(5); NRS 598.0913(15).

Timeshare sales meetings are notorious for high-pressure sales tactics. Consumers and former sales agents have reported incidents where one agent after another sits with potential buyers applying hard-sell techniques to get to yes, and then rush buyers through the paperwork and signatures, claiming any "discounts" arrived at are "today-only" pricing. Arguably, such techniques, depending on severity, could constitute a violation of the NDTPA. *See* NRS 598.0918(2). Fortunately, Nevada and federal law provide a cooling-off period for certain consumer sales. Where the sale occurs in a place other than the seller's place of business (e.g., a presentation hall or conference room), the consumer has a short period of time in which to rescind the contract in full. NRS 598.180 and NRS 598.230; 16 CFR § 429; *see also* the Federal Trade Commission website discussing the FTC cooling-off rule. Many times, the timeshare contract will itself contain a slightly longer cancellation period. In either case, the seller is obligated to inform consumers of their rights to rescind and not hinder attempts to do so. NRS 598.280(1); *see also* NRS 598.250; NRS 598.092(8); 16 CFR § 429.1(b). Once a remorseful buyer decides to rescind a timeshare contract, it is imperative s/he act fast and follow the requirements of NRS 598.230 and the rescission terms of the contract.

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Because deeded timeshares are real property, ostensibly they could be resold. But the chances of making a profit are slim. In fact, consumers in the market to buy a timeshare should look at any of the reputable timeshare resale sites before committing to purchasing from a resort or developer. Owners who no longer have need for their timeshares may be willing to transfer title for the cost of the transfer taxes just to be relieved from paying maintenance fees.

Right to use timeshares may be tricky to unload. In some cases, the timeshare contract does not provide for, or outright prohibits, transfer of ownership to another party. The contract term may only end with the death of the timeshare owner. Some timeshare companies will allow owners to relinquish their timeshare back to the resort. Whether the resort will pay anything to the timeshare owner for relinquishing is questionable, but it is not likely to be close to the purchase price. Often, with conditions such as paying off any loans and being current on all fees, the company may allow relinquishment. *See* Christopher Elliott, "Trapped in a timeshare? Here's how to escape," USA Today, Dec. 26, 2018.

This problem has created a market for companies that claim to be timeshare exit companies or timeshare resale companies. Unfortunately, some of these companies are not legitimate and may demand upfront fees, supposedly to pay annual maintenance fees while representing the consumer, only to disappear into the ether. While legitimate resale companies do exist, owners should start with the contract language and first inquire with the timeshare company about relinquishment programs. Examples to look out for include:

- Resale scammer solicits timeshare owner claiming they have an extensive list of agents and buyers for a hefty fee in advance. Many times the contract will reveal that the scammers have only agreed to advertise the property.
- Scammer claims to have a buyer for the timeshare owner's week. A bogus copy of a sales agreement may be provided. Scammer requires the owner send a copy of the deed, and bank account and routing numbers. Now that the scammer has the owner's bank account information, the scammer is in a position to raid the account.
- A scammer claims to the timeshare owner s/he is a broker. The scammer claims to have a renter for the owner's week. The broker requires a finder's fee with the promise that at the end of the rental period, s/he will send a check.

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- A scammer claims the maintenance fees on the timeshare are going to increase, and to avoid it, the owner should immediately sell the timeshare. The scammer requires a large, upfront fee, but never contacts the owner again. Other times, the scammer advises the owner to stop paying maintenance fees, causing the owner to go into default on the agreement.

Whether a timeshare makes economic sense for your clients depends on their individual goals and needs. In order for consumers to make informed decisions, it is important they thoroughly understand the true costs, rights and duties of the product they are being offered. An attorney's careful review of timeshare sales contracts is invaluable to any client.

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