

# Timeshare Ownership: Regulation and Common Sense

By David A. Bowen\*

## I. Introduction

Vacation is a time to be free of the demands of a job, to enjoy family, and to rejuvenate.<sup>1</sup> In the United States vacations are a precious commodity as compared to many other countries. Only seventy-seven percent of American workers have access to paid vacations, and of those that do the average number of paid vacation days lags behind many other countries.<sup>2</sup> The average number of paid vacation days for American workers is 8.9 days after one year of service.<sup>3</sup> That number rises to 19.3 days after twenty-five years of service in the country's workforce.<sup>4</sup> By comparison, many European countries have mandated minimum paid vacation allotments for all their workers of twenty days or higher.<sup>5</sup> Therefore, an average American must labor for twenty-five years before even coming close to the amount of vacation time the average European enjoys in his or

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<sup>1</sup> Sylvia A. Allegretto, Economic Policy Institute, Economic Snapshots (Aug. 24, 2005), available at [http://www.epinet.org/content.cfm/webfeatures\\_snapshots\\_20050824](http://www.epinet.org/content.cfm/webfeatures_snapshots_20050824)

<sup>2</sup> U.S. Bureau of Labor Statistics, *National Compensation Survey: Employees Benefits in Private Industry in the United States, March 2005*, 22-23 (Aug. 2005), available at <http://www.bls.gov/ncs/ebs/sp/ebsm0003.pdf>.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> Allegretto, *supra* note 1 (indicating that Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, and the United Kingdom each have such a minimum vacation day requirement).

her first year of employment.<sup>6</sup> This gap highlights how precious and important vacation is to American workers.<sup>7</sup>

Many modern Americans choose to spend their valuable vacation time utilizing a timeshare. Generally, a timeshare is condominium property that is divided into legal estates, where the owner's right to occupy the property is limited to a number of days at specified or reserved times of the year.<sup>8</sup> Another timeshare form is a vacation club points system, which is contractual in nature and allows the owner to use the property for a certain amount of time each year for a specific number of years.<sup>9</sup> Approximately three million consumer households own 4.9 million timesharing weeks or the equivalent in vacation club points in the United States.<sup>10</sup> The average number of timeshare weeks owned by American households is growing by nine percent annually.<sup>11</sup> Consumers are purchasing weeks and points at the 1,590 U.S. resorts that offer a combined total of over 132,000 timeshare units.<sup>12</sup> Florida has the greatest number of timeshare resorts in the U.S., with California and South Carolina a distant second and third.<sup>13</sup>

This article will briefly discuss the history of the timeshare industry, provide a framework for defining the timeshare interest, and analyze the benefits and drawbacks of timeshare ownership. Additionally, the Florida Vacation and Timesharing Act will be explored to demonstrate statutory protections and remedies available to current or potential timeshare owners. Finally, the article offers some practical tips to consumers considering a timeshare purchase.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Ralph E. Stone, *The Federal Trade Commission and Timeshare Resale Companies*, 24 SUFFOLK U. L. REV. 49, 50-51 (1990).

<sup>9</sup> *Id.* at 51.

<sup>10</sup> RCI, *Resort Timesharing in the United States – 2003 Edition Summary Report* (2003), available at [http://www.rci.com/CDA/HTML/PDF\\_Conversion\\_Files/US\\_Timeshare\\_Industry\\_2003\\_Summary\\_Mar\\_31\\_03.pdf](http://www.rci.com/CDA/HTML/PDF_Conversion_Files/US_Timeshare_Industry_2003_Summary_Mar_31_03.pdf) [hereinafter RCI].

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## II. History of the Timeshare

Timeshares continue to grow in popularity as an alternative to the traditional vacation. Timeshares originated in the 1960s as a way for skiers in the French Alps to stay at the same resort every year without having to purchase the property outright.<sup>14</sup> The developer of the original timeshare resort marketed it with the slogan, “no need to rent a room, buy the hotel – it’s cheaper!”<sup>15</sup>

The timeshare concept spread to the United States during the 1970s, originating in Florida before expanding to other areas of the country.<sup>16</sup> The United States embraced the idea of timesharing largely on account of the 1973 oil crisis that shocked the global economy and forced many Americans to reevaluate their expenditures.<sup>17</sup> Because rising oil prices made travel more expensive, many Americans changed their vacation habits.<sup>18</sup> One such change was to curb the purchase of vacation property such as condominiums.<sup>19</sup> Because many Florida vacation condominium developers were stuck with unsold units,<sup>20</sup> they decided to utilize the timeshare to sell their units in a form that would be more palatable to those economically challenged by inflated gas prices.<sup>21</sup>

The first vacation exchange company, Resort Condominiums International (“RCI”), was established in 1975.<sup>22</sup> This provided a crucial element to the timesharing experience that would affect timesharing popularity in the decades to come. Exchange companies do not own resorts, however, they do arrange for approximately eighty percent of the timeshare vacations taken worldwide each year.<sup>23</sup> The exchange companies allow timeshare owners to trade in the weeks or points they own at their designated home resort for

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<sup>14</sup> *Timeshare Holidays*, THE ECONOMIST, Aug. 17, 1996, at 53.

<sup>15</sup> RCI Affiliates, History of Timeshare, <http://www.rciaffiliates.com/industryOverview/timeshareHistory.asp?isWinIE=true> (last visited Mar. 3, 2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See Timeshare Holidays*, *supra* note 14, at 53.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See RCI Affiliates*, *supra* note 15.

<sup>23</sup> *See Timeshare Holidays*, *supra* note 14, at 53.

vacations at other destinations.<sup>24</sup> In essence, the timeshare owner's fractional interest in a timeshare property is converted into a liquid commodity.<sup>25</sup> For example, a family that owns a timeshare at a beach resort in Florida can exchange their week in Florida for a week of an equivalent value at a ski resort in Colorado.

During the 1980s, the "greed is good" movement created an atmosphere of growth for the timesharing industry.<sup>26</sup> With the increase in disposable income, more people were able to take vacations, and thereby realize the benefit of timeshares.<sup>27</sup> However, as the industry grew at breaking speed, questionable sales practices and hard sell techniques also flourished.<sup>28</sup> In response to the outcry of timeshare owners victimized by dubious practices in the timeshare industry, state legislatures began to pass consumer protection laws.<sup>29</sup> In 1983, the Florida legislature passed the state's first version of the Florida Timesharing Act.<sup>30</sup> The most notable part of the Florida Timesharing Act set forth a mandatory fourteen-day cooling off period, which allowed a timeshare purchaser to rescind the contract without forfeiting any money.<sup>31</sup>

By the beginning of the 1990s, there were 2,357 timeshare resort properties worldwide and over four million timeshare owners.<sup>32</sup> The timeshare industry continued to grow at a fast pace throughout the decade.<sup>33</sup> Because of the industry's potential for growth and profits, some of the world's largest hospitality companies entered the timeshare market, including Hilton, Sheraton, Ramada, Four Seasons, Hyatt, Westin, Ritz-Carlton, Radisson, and Disney.<sup>34</sup> As the industry became more global in nature, foreign nations

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<sup>24</sup> *See id.*

<sup>25</sup> *Id.*

<sup>26</sup> Holiday Concepts – Timeshare History, <http://www.holidayconcepts.com.au/home/history.aspx> (last visited Feb. 15, 2006).

<sup>27</sup> RCI Affiliates, *supra* note 15.

<sup>28</sup> *Timeshare Holidays*, *supra* note 14, at 53.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* *See also* FLA. STAT. §§ 721.01-721.32 (2000) (current version of the Florida Vacation Plan and Timesharing Act).

<sup>31</sup> *Timeshare Holidays*, *supra* note 14, at 53

<sup>32</sup> *See* RCI Affiliates, *supra* note 15.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

followed Florida's lead, enacting legislation to protect consumers.<sup>35</sup> For example, in 1997, the European Union enacted a consumer protection law similar to the Florida Timesharing Act.<sup>36</sup> The timesharing industry continues to grow in the new millennium and presents serious competition for the pay-as-you-go vacation. Today, there are approximately 5,400 resorts globally, with nearly 1,600 of those resorts located within the United States.<sup>37</sup> A report by ARDA International Foundation ("AIF") estimated that vacation ownership sales in the United States totaled \$7.9 billion in 2004.<sup>38</sup> These numbers are likely to grow in the future due to the fact that an estimated eighty-five percent of the potential market remains untapped; lending support to the conclusion that a large segment of the population is still unfamiliar with timeshare products.<sup>39</sup>

One such segment of the population—the baby boomers—enter retirement with a lust for life and a desire to enjoy the good years remaining in their lives.<sup>40</sup> This generation is not interested in wasting time planning vacations when instead they could spend that time with their families.<sup>41</sup> Timeshares are a good choice for baby boomers because they provide the space and flexibility needed to easily accommodate families or other larger groups traveling

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<sup>35</sup> *Timeshare Holidays*, *supra* note 14, at 53.

<sup>36</sup> *Id.*

<sup>37</sup> RCI Affiliates, *supra* note 15.

<sup>38</sup> Scott Berman, *Financial Performance Study 2005: Continued Industry Growth*, DEVELOPMENTS, Jan. 2006, at 24, [http://www.arda.org/AM/Template.cfm?Section=Developments\\_magazine\\_January\\_2006&Template=/CM/ContentDisplay.cfm&ContentID=4120](http://www.arda.org/AM/Template.cfm?Section=Developments_magazine_January_2006&Template=/CM/ContentDisplay.cfm&ContentID=4120). The American Resort Development Association ("ARDA") is a professional association representing the vacation ownership and resort development industries that promotes growth and development of the timeshare industry. About ARDA, [http://www.arda.org/AM/Template.cfm?Section=About\\_ARDA](http://www.arda.org/AM/Template.cfm?Section=About_ARDA) (last visited Feb. 27, 2006). ARDA's members include timeshare developers, timeshare resort management companies, and timeshare owner associations. *Id.*

<sup>39</sup> Kathy Mullan, *Future Watch: 2006 in Fast Forward*, DEVELOPMENTS, Jan. 2006, at 40, [http://www.arda.org/AM/Template.cfm?Section=Developments\\_magazine\\_January\\_2006&Template=/CM/ContentDisplay.cfm&ContentID=4121](http://www.arda.org/AM/Template.cfm?Section=Developments_magazine_January_2006&Template=/CM/ContentDisplay.cfm&ContentID=4121).

<sup>40</sup> *Id.*

<sup>41</sup> AMERICAN RESORT DEVELOPMENT ASSOCIATION, A CONSUMER GUIDE TO VACATION OWNERSHIP 4 (2003), [http://www.arda.org/AM/Template.cfm?Section=Consumer\\_guide\\_PDF\\_](http://www.arda.org/AM/Template.cfm?Section=Consumer_guide_PDF_) [hereinafter ARDA].

together.<sup>42</sup> For the timeshare industry to attract this, and other segments of the population, the industry must continue to satisfy and exceed their customers' demands.<sup>43</sup> Timeshare companies must remain flexible and continue to offer the owners vacation options through timeshare exchange and a variety of timeshare types.<sup>44</sup> It is also important for the timeshare industry to maintain a strong reputation, which can be accomplished by establishing honest business practices and effective regulation to fairly and efficiently handle disgruntled timeshare purchasers.

### III. Defining a Timeshare

Although purchasing a timeshare can be relatively easy, consumers are often unaware of what they are actually purchasing.<sup>45</sup> A timeshare interest is an interest purchased in a timeshare plan that grants the purchaser occupancy and right of use to accommodations, facilities, or recreation sites.<sup>46</sup> A timeshare plan includes:

an interest purchased in any arrangement, plan, scheme, or similar device, but not including certain exchange programs, whereby a purchaser in exchange for consideration receives a timeshare interest for a specific period of time that is less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years.<sup>47</sup>

Knowledge of exactly what is being purchased is important for the consumer because legal rights and obligations can differ depending on the timeshare interest form.

The three most common forms of timeshare interests are: 1) fee simple ownership in the underlying real estate; 2) lease or license

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<sup>42</sup> *Id.*

<sup>43</sup> Mullan, *supra* note 39, at 43.

<sup>44</sup> *Id.*

<sup>45</sup> See Caroline K. Craig & Suzanne M. Luttman, *Taxation of Timeshares – Acquisition, Use, and Disposition Issues*, 27 J. REAL EST. TAX'N 301, 301-02 (Summer 2000).

<sup>46</sup> 11 U.S.C. § 101(53D). See also NTS AM. JUR. 2D. *Real Estate Time-Sharing* § 2 (2005) (discussing timeshare interest in the context of bankruptcy proceedings).

<sup>47</sup> 9C AM. JUR. 2D *Bankruptcy* § 2199 (2005); 11 U.S.C. § 101(53D) (2000).

arrangements permitting ownership rights for a specified period of time; and 3) point systems.<sup>48</sup> In a fee simple ownership arrangement the purchaser has an undivided interest in fee simple that gives the purchaser an exclusive right to occupy the premises during a designated time period.<sup>49</sup> The purchaser receives a deed to the property and the rights that accompany deeded ownership. Deeded ownership allows the timeshare owner to receive title to the property, as well as the right to rent, assign, sell, contribute, bequeath, or otherwise transfer the property to a third party.<sup>50</sup> Deeded ownership promotes free alienability of the property interest, thus facilitating the resale potential of the property interest. Free alienability becomes important when a timeshare owner experiences financial difficulties and selling the timeshare becomes a necessity. The fee simple timeshare ownership type is available to the purchaser as either a fixed or floating week.<sup>51</sup> A fixed week timeshare allows the owner to use the unit for a specific week during the year, while a floating week allows the owner to use the unit during a specific time period or season.<sup>52</sup> Both plans give the timeshare owner access to the property each year for a number of years.<sup>53</sup> The main benefit of a floating week timeshare is that it offers an owner more flexibility in timing a vacation, but will have to be booked each year.<sup>54</sup> Conversely, a fixed week timeshare is advantageous to an owner who desires guaranteed availability the same week each year and is not interested in flexible timing of vacations.<sup>55</sup>

In comparison, under a lease timeshare arrangement, otherwise known as a “right to use” arrangement, the timeshare purchaser does not obtain any ownership interest in the resort property, but rather receives the right to use the timeshare unit for a specified period of time, after which the title to the timeshare

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<sup>48</sup> Craig & Luttman, *supra* note 45, at 302.

<sup>49</sup> LEONARD I. REISER, AM. JUR. 2D *Bankruptcy* § 2199 (2005).

<sup>50</sup> Craig & Luttman, *supra* note 45, at 302.

<sup>51</sup> ARDA, *supra* note 41, at 9.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Jane Engle, *Timeshare Market is Booming, But They're Not for Everyone*, L.A. TIMES, May 16, 2004, at L3.

<sup>55</sup> Stone, *supra* note 8, at 51.

property reverts to the developer.<sup>56</sup> The “right to use” form of ownership essentially conveys to the purchaser a license, lease, or similar type of contractual right governed by the terms of the timeshare agreement.<sup>57</sup>

A lease is both a conveyance of an interest in real property and a contract.<sup>58</sup> It is a conveyance because it transfers a possessory interest in the land, thereby creating property rights.<sup>59</sup> Moreover, a lease is also a contract because it contains promises between the tenant and landlord, such as the tenant promising to pay rent and the landlord promising to provide utilities.<sup>60</sup> The property and contractual rights inherent in a lease afford the timeshare purchaser greater options when choosing legal remedies.

A license is similar to a lease in that it does not transfer ownership rights to the purchaser.<sup>61</sup> However, a license is an “oral or written permission given by the occupant of real property allowing the licensee to do some act that otherwise would be trespass.”<sup>62</sup> In other words, a timeshare owner buying a license receives privileges to use the timeshare property.<sup>63</sup> Because a license in this context is not coupled with an ownership interest, it can be revoked by the developer or owner of the timeshare property.<sup>64</sup> The revocability of this form of timeshare is something a potential purchaser should carefully consider, because a developer or owner of timeshare property may exercise their right to revoke if they believe that more profitable uses for the property exist.

The third form of a timeshare interest is point systems, also referred to as “Vacation Clubs,” which give members access to different resorts within a defined resort group.<sup>65</sup> Point systems are

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<sup>56</sup> Laurance E. Kinsolving, *Timeshare Condominiums*, FL. CONDOMINIUM LAW AND PRACTICE § 6.1 (2003).

<sup>57</sup> *Id.*

<sup>58</sup> JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 457 (5th ed. 2002).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *See id.* at 790.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> ARDA, *supra* note 41, at 9. One of the most recognizable hospitality companies offering this type of timeshare form is Walt Disney World. *See*

similar to lease and license arrangements because they allow the purchaser to use the property or properties for a certain amount of time each year during a specified season for a stated number of years.<sup>66</sup> In point systems, owners purchase points that can be used to access various types of accommodations, resort locations, amenities, and other travel services.<sup>67</sup> Point systems are appealing because they afford purchasers the flexibility to design their own vacations.<sup>68</sup> Unlike a lease, this type of arrangement is purely contractual; therefore, property law remedies are unavailable to a point system purchaser.<sup>69</sup>

A common characteristic of all timeshare forms is that each requires payment of annual maintenance fees. Owners share both the use and the ongoing costs of upkeep of the timeshare resort property.<sup>70</sup> The timeshare owner does not have any input regarding the amount of maintenance fees charged. Yearly maintenance fees are established solely by the resort owners.<sup>71</sup> Maintenance fees help to maintain the quality of the property by paying for onsite management, unit upkeep, property refurbishment, utilities, and applicable real estate taxes.<sup>72</sup> Furthermore, depending on the resort or property, maintenance fees may include costs related to recreational facilities, such as pools, tennis courts, and golf courses.<sup>73</sup> The amount of yearly maintenance fees typically depends on the size of the property and the amenities it offers, with the fees ranging anywhere

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HolidayGroup.com, Why Timesharing, [http://www.holidaygroup.com/why\\_time.php](http://www.holidaygroup.com/why_time.php) (last visited Apr. 3, 2006). Members can use their points to stay in one of the seven Disney Vacation Club resorts, or through a timeshare exchange vacation at over 500 destinations worldwide. Disney Online, Disney Vacation Club FAQs, <http://dvc.disney.go.com/dvc/guest/contact/faq?id=GuestFAQPage#q1> (last visited Mar. 3, 2006). In addition to lodging, Disney offers Vacation Club members added benefits such as discounts on theme park tickets, golf, recreation, dining, and merchandise. *Id.*

<sup>66</sup> Stone, *supra* note 8, at 51.

<sup>67</sup> ARDA, *supra* note 41, at 9.

<sup>68</sup> *Id.*

<sup>69</sup> Stone, *supra* note 8, at 51.

<sup>70</sup> ARDA, *supra* note 41, at 10.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

from \$300 to \$1,000 annually.<sup>74</sup>

Maintenance fees should be a concern for potential timeshare purchasers because they must be paid even if the timeshare owner's financial or physical condition deteriorates in the future.<sup>75</sup> Additionally, tax laws disfavor timeshares by generally disallowing deductions for annual maintenance fees.<sup>76</sup> Property taxes may be deductible, but they must be paid separately and the timeshare must qualify as a second home for tax purposes.<sup>77</sup>

#### **IV. Pros and Cons to Timeshare Ownership**

Timeshare ownership and the lifestyle it represents can offer many benefits to the consumer. First, the buyer is guaranteed his or her vacation location of choice without having to make arrangements each year.<sup>78</sup> Second, a timeshare forces many busy people to take the desperately needed vacation they would not make time for otherwise.<sup>79</sup> Third, a timeshare is conceptually a prepaid vacation; therefore, costs are relatively fixed except for certain contingencies like maintenance fees and real estate taxes.<sup>80</sup> Fourth, a timeshare allows a segment of the population who could not otherwise afford a vacation home to become vacation property owners.<sup>81</sup> Finally, timeshares are considered a second home under the Internal Revenue Code so the owner may be able to deduct interest on outstanding indebtedness and real estate tax payments.<sup>82</sup>

As with most large consumer purchases, timeshares present some disadvantages to potential owners. Absent an agreement to the contrary, a timeshare developer can raise annual maintenance fees

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<sup>74</sup> Karen E. Klein, *Time to Sell Your Share? New Sales of Timeshares are Booming – But Just Try Unloading Your Old One*, L.A. TIMES, Apr. 4, 2004, at K1.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Paul Barron, *The Louisiana Timesharing Act: An Analysis and Assessment*, 58 TUL. L. REV. 863, 866 (1984).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> 26 U.S.C §§ 163(h)(3), 164(a)(1) (2000).

any time after the timeshare units are sold.<sup>83</sup> Additionally, the level of services offered on the timeshare property and the standard of maintenance may decline in the future.<sup>84</sup> There are also hidden costs associated with timeshare ownership.<sup>85</sup> When initially purchased, the price of a timeshare only reflects lodging costs; however, transportation, food, sightseeing, and entertainment costs must be factored in to reach the true cost of a timeshare vacation.<sup>86</sup> Finally, potential timeshare purchasers must often endure “hard sale” and other unscrupulous sales tactics when shopping for a timeshare.<sup>87</sup> Timeshare promoters frequently use “same-day” pressure tactics to get consumers to spend thousands on the spot, because the promoters believe that the chance of a sale diminishes significantly once the consumer walks away.<sup>88</sup> Finally, unloading a timeshare can be burdensome, if not nearly impossible for some owners.<sup>89</sup> Owners experience difficulty selling their timeshares primarily because the supply eclipses the demand.<sup>90</sup> Many pay hundreds of dollars to resale companies to find buyers, but relatively few successful sales occur.<sup>91</sup> Therefore, consumers must carefully weigh the advantages and disadvantages before reaching a decision regarding a timeshare purchase. An educated consumer with realistic expectations regarding timeshare ownership is much more likely to make a wise decision and be satisfied with his or her timeshare purchase.

## V. State Regulation: The Florida Vacation and Timesharing Act

A consumer can obtain protection from the abuses of the

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<sup>83</sup> Ed Perkins, *If You Can't Stand the Pressure Stay Away from the Timeshares*, CHI. TRIB., Jan. 27, 2002 at C9.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Perkins, *supra* note 83.

<sup>89</sup> Bruce Mohl, *Sensible Traveler: Unloading a Timeshare Can Be Burdensome Task*, THE BOSTON GLOBE, Sept. 28, 2003, at M6. *See infra* Part V(B).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

timeshare industry by looking to state timeshare regulation. Any consumer considering the purchase of a timeshare should familiarize himself with the relevant state timeshare legislation. This section will discuss key consumer protection provisions of the Florida Vacation and Timesharing Act (“the Timesharing Act”) as the majority of U.S. timeshares are located in Florida.<sup>92</sup>

The main purpose of the Timesharing Act is to establish procedures and disclosure requirements for the creation, sale, exchange, promotion, and operation of timeshare plans.<sup>93</sup> The Timesharing Act is broad and applies to “all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the facilities and accommodations are located [within Florida].”<sup>94</sup>

The Timesharing Act covers sales of timeshare interests,<sup>95</sup> which includes both timeshare estates and timeshare licenses.<sup>96</sup> In Florida, a timeshare estate is a parcel of real estate in that includes the “right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specific portion of the property.”<sup>97</sup> Comparatively, a timeshare license, such as a point system or vacation club, is defined by the Timesharing Act as a right to occupy a timeshare unit but is not considered real estate.<sup>98</sup> Timeshare estates, with respect to a timeshare unit, can only be created pursuant to provisions in the Timesharing Act expressly permitting the creation of such estates.<sup>99</sup> A timeshare unit is a single accommodation that is part of a property or properties included in a timeshare plan and divided into timeshare periods.<sup>100</sup>

A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights

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<sup>92</sup> See RCI, *supra* note 10, at 2.

<sup>93</sup> 10 FLA. JUR. 2D. *Condominiums and Cooperative Apartments* § 221 (2006). See also FLA. STAT. § 721.02 (2005).

<sup>94</sup> FLA. STAT. § 721.03 (2005).

<sup>95</sup> FLA. STAT. § 721.02 (2005).

<sup>96</sup> Kinsolving, *supra* note 56, at 5.

<sup>97</sup> FLA. STAT. § 721.05(34) (2005).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* § 718.1045.

<sup>100</sup> *Id.* § 721.05(41).

in, or a right to use, accommodations and facilities.<sup>101</sup> A purchaser of a timeshare plan receives usage rights for less than a full year in any given year, but not necessarily the right to use the facilities in consecutive years.<sup>102</sup> A timeshare plan, as defined by the Timesharing Act, includes fee simple ownership in the underlying real estate, lease or license.<sup>103</sup> However, exchange systems, such as Resort Condominiums International (“RCI”) and Interval International,<sup>104</sup> are expressly excluded from the definition of a timeshare plan.<sup>105</sup>

For the Timesharing Act to apply to a given project offered as a timeshare, the project must include a timeshare plan containing timeshare periods as well as accommodations or facilities, as opposed to undeveloped land.<sup>106</sup> The Timesharing Act defines a timeshare period as the period or periods of time when a purchaser of a timeshare interest is afforded the opportunity to use the accommodations or a time share plan.<sup>107</sup> The timeshare period can be a fixed or floating week, or, in the case of a point system, restricted to certain times of the year.<sup>108</sup>

#### A. Purchaser Remedies

A key provision of the Timesharing Act allows the purchaser of a timeshare interest to initiate a private action against an entity or person in violation of the Act.<sup>109</sup> A purchaser who brings a cause of action pursuant to the Timesharing Act may seek redress in the form of damages, injunctive relief, or declaratory relief against a seller,

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<sup>101</sup> FLA. STAT. § 721.05(39) (2005).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> RCI and Interval International are the two major timeshare exchange programs. More information regarding these programs can be found on their respective websites at [www.rci.com](http://www.rci.com) and [www.intervalworld.com](http://www.intervalworld.com).

<sup>105</sup> FLA. STAT. § 721.05(39) (2005).

<sup>106</sup> *See* All Seasons Resorts, Inc. v. Dep’t of Bus. Regulation, Div. of Land Sales, Condos. & Mobile Homes, 455 So. 2d 544, 547-48 (Fla. Dist. Ct. App. 1984) (finding that a campsite did not fit the definition of accommodation, which requires a structure suitable for occupancy).

<sup>107</sup> FLA. STAT. § 721.05(38) (2005).

<sup>108</sup> *See supra* Part III.

<sup>109</sup> Kinsolving, *supra* note 56, at 17.

developer, escrow agent, or managing entity.<sup>110</sup> Additionally, the purchaser may recover reasonable attorney's fees if the suit is successful.<sup>111</sup> In *Bell v. RDI Resort Servs. Corp.*, the Florida District Court of Appeals interpreted the Timesharing Act to afford timeshare purchasers a cause of action against a managing entity for breach of contract based on oral representations made by the original developer, even though the managing entity did not have any affiliation with the original developer.<sup>112</sup> The court reasoned that in enacting this portion of the Timesharing Act the Florida Legislature intended to "protect purchasers of timeshare units from all third party participants in the operation of those units."<sup>113</sup>

However, purchasers' remedies to recover damages and injunctive relief are limited to situations where the seller has acted in bad faith.<sup>114</sup> The Florida District Court of Appeals defined bad faith as "the opposite of 'good faith,' generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive."<sup>115</sup> Where the seller has failed to close on a timeshare deal, in the absence of a showing of bad faith, the court may only require the seller to return the deposit plus pay any accrued interest.<sup>116</sup> The court may also require the seller to pay any actual profit they make on the resale of the timeshare interest at issue.<sup>117</sup> However, if the purchaser does establish that the seller acted in bad faith, the purchaser may recover loss of bargain damages from the seller, which constitutes the difference between the contract price and the value of real property on the closing date.<sup>118</sup>

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<sup>110</sup> *Id.* at 37.

<sup>111</sup> FLA. STAT. § 721.21 (2005).

<sup>112</sup> *Bell v. R.D.I. Resort Servs. Corp.*, 637 So. 2d 960, 962 (Fla. Dist. Ct. App. 1994).

<sup>113</sup> *Id.*

<sup>114</sup> *Kinsolving*, *supra* note 56, at 37.

<sup>115</sup> *Port Largo Club, Inc. v. Warren*, 476 So. 2d. 1330, 1333-34 (Fla. Dist. Ct. App. 1985) (citing BLACK'S LAW DICTIONARY 127 (5th ed. 1979)).

<sup>116</sup> *Shakesober v. Florida Resort Dev. Corp.*, 492 So. 2d. 816, 817 (Fla. Dist. Ct. App. 1986).

<sup>117</sup> *Id.*

<sup>118</sup> *Port Largo Club, Inc.*, 476 So. 2d at 1334.

**B. Mandatory Disclosure in Connection to Timeshare Sales**

The Timesharing Act requires that certain provisions and disclosures be included in contracts for the sale and purchase of timeshare interests.<sup>119</sup> The disclosure provisions are important because a consumer requires all relevant information in order to make an educated decision regarding a timeshare purchase.

Specifically, the Timesharing Act requires the seller of a timeshare plan to give a “fully completed and executed” copy of the purchase contract to each purchaser of a timeshare interest.<sup>120</sup> All contracts for the purchase of timeshare interest must include several provisions in conspicuous type before the space designated for the purchaser’s signature.<sup>121</sup> To be conspicuous, type should be in upper and lower case letters two point sizes larger than other type on the page, excluding headings, but never smaller than 10-point type.<sup>122</sup> The conspicuous type must be separated on all sides from other type and print and can only be used when the Timesharing Act prescribes its use.<sup>123</sup>

The following provisions are required to be in conspicuous type by the Timesharing Act in the purchase contract: (1) a statement that the contract may be cancelled without any penalty or obligation within either the later of ten calendar days after the date the purchaser signs the contract or the date the purchaser receives the last of all documents the Timesharing Act requires the seller give to the purchaser; (2) a statement that the purchaser must notify the seller in writing if they intend to cancel the purchase contract; (3) a statement that any attempt to obtain a waiver of the purchaser’s cancellation right is void and of no effect; and (4) while the purchaser may execute all closing documents in advance of the closing, actually closing on the timeshare before expiration of the ten day cancellation period is strictly prohibited.<sup>124</sup> Additionally, the Timesharing Act also requires that the purchase contract include a statement that, upon cancellation of the contract by a purchaser, the deposit will be refunded to the purchaser the later of within twenty days of the notice

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<sup>119</sup> Kinsolving, *supra* note 56, at 17.

<sup>120</sup> FLA. STAT. § 721.06(1) (2005).

<sup>121</sup> Kinsolving, *supra* note 56, at 17.

<sup>122</sup> FLA. STAT. § 721.05(8)(a) (2005).

<sup>123</sup> *Id.* § 721.05(8).

<sup>124</sup> *Id.* § 721.06(1)(g).

of cancellation or within five days after the seller has received the deposit funds from the purchaser.<sup>125</sup>

The Timesharing Act also requires additional disclosures if the timeshare interest purchased is a resale.<sup>126</sup> These disclosures help the purchaser identify all the relevant parties involved with the operation of the timeshare and define the purchaser's obligations as a timeshare owner of a particular property. A resale purchase contract must contain in conspicuous type the name and address of the timeshare plan and the name of the managing entity.<sup>127</sup> The resale purchase contract must also include the amount of monthly maintenance fees and specify any amount that is outstanding on the timeshare unit as of the date of purchase.<sup>128</sup> The Timesharing Act affords further protection to purchasers of a resold timeshare interest by allowing the purchaser to void the purchase contract up to a year after the closing if the reseller does not comply with these provisions.<sup>129</sup>

### C. Cancellation Rights

The Timesharing Act's real "teeth" lie in its provision affording the purchaser of a timeshare interest mandatory cancellation rights. Under the Timesharing Act, a purchaser of a timeshare interest has the right to cancel the purchase contract until midnight ten days after the later of the execution date of the contract or the date when the purchaser received the last of the documents that the Timesharing Act requires the developer to deliver.<sup>130</sup> Because of the importance of this right to the consumer, it must also be in conspicuous type in the purchase contract.<sup>131</sup> Moreover, the Timesharing Act expressly provides that the right to cancellation extends beyond the closing date, although the seller may execute the

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<sup>125</sup> *Id.* § 721.06(1)(i).

<sup>126</sup> *Id.* § 721.06(1)(m).

<sup>127</sup> FLA. STAT. § 721.065(2)(a) (2005).

<sup>128</sup> *Id.* § 721.065(2)(b).

<sup>129</sup> *Id.* § 721.065(3).

<sup>130</sup> *See id.* § 721.10(1) (stating that the notice of cancellation must be in writing). *See also* FLA. STAT. § 721.10(2) (2005) (stating that mailed notices are considered effective upon the day of the postmark date, and that if the notice is given by any other means then it is effective upon actual delivery to the seller's place of business).

<sup>131</sup> *See supra* Part V(B).

closing documents in advance of the closing for delivery after the ten day cancellation period has expired.<sup>132</sup> In other words, the seller cannot avoid the cancellation right by closing on the deal early. This situation could arise when a developer fails to provide all of the documentation required by the Timesharing Act and holds the closing anyway.<sup>133</sup>

Furthermore, the Timesharing Act specifically forbids the seller from obtaining a waiver of the purchaser's cancellation rights.<sup>134</sup> Any attempt to obtain such a waiver or to close on the deal before the expiration of the ten day cancellation period renders the closing voidable at the option of the purchaser up to one year after the expiration of the cancellation period.<sup>135</sup> This is a powerful weapon for the consumer against a disreputable timeshare seller.

## VI. Tips for a Potential Timeshare Consumer

Although the Florida Vacation and Timesharing Act is a significant weapon for the timeshare interest consumer, there is no substitute for knowledge and common sense. An educated consumer is more likely to know what they are purchasing, be satisfied with the product they receive, and avoid the pitfalls of the abuses occurring in the timeshare industry. In fact, most timeshare purchasers report that they are satisfied with their timeshare purchase.<sup>136</sup> In order for a potential timeshare purchaser to become one of the many satisfied timeshare owners, there are a number of tips to remember when purchasing or reselling a timeshare.

When considering a timeshare purchase, the consumer should reflect on a number of factors in order to complete the necessary groundwork. First, as a consumer is unlikely to recoup his or her investment, a timeshare purchase should be viewed as an investment

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<sup>132</sup> FLA. STAT. § 721.10(1)(a) (2005).

<sup>133</sup> Robert S. Swain, Florida Real Property Litigation § 6.37 (FL Bar Ass'n 2005).

<sup>134</sup> FLA. STAT. § 721.10(1)(b) (2005).

<sup>135</sup> *Id.*

<sup>136</sup> *See* RCI, *supra* note 10. An estimated eighty-four percent of timeshare owners have reported being satisfied with their purchase. *Id.* As proof of their satisfaction, a high percentage of the timeshare owners make repeat timeshare purchases. *Id.* (noting that more than 500,000 timeshare owners would like to buy more time in the area of their current timeshares and more than 600,000 timeshare owners plan to buy time in a different resort area).

in future vacations rather than a financial investment.<sup>137</sup> It is more accurate to categorize a timeshare purchase as an investment in future vacations.<sup>138</sup> Second, the consumer should visit the timeshare property before completing the purchase,<sup>139</sup> speak with existing owners regarding their experience, determine if the property is being managed efficiently, and discover whether the property has been properly maintained.<sup>140</sup> Third, a potential purchaser should always be sure to get copies of the relevant documents and read them carefully.<sup>141</sup> By doing so, he or she knows exactly what is being purchased and avoids any unexpected surprises.<sup>142</sup> Fourth, it is also extremely important for a purchaser interested in vacationing at a number of different destinations, as opposed to staying at one resort each year, to inquire into whether the timeshare plan is part of an exchange network.<sup>143</sup> Furthermore, the fees that exchange companies charge vary, so it is wise to determine what they will be upfront.<sup>144</sup> Finally, financing should be considered if the purchaser cannot afford to buy the interest outright.<sup>145</sup> Interest rates for loans given for timeshare purchases can be sixteen percent or higher, which is significantly higher than the rates for loans given on home purchases.<sup>146</sup> This added cost should be factored into the total cost of the purchase. Also, it is not a good idea to simply default on finance or maintenance fee payments.<sup>147</sup> Such behavior can damage a timeshare owner's ability to obtain credit for other purchases.<sup>148</sup>

Additionally, reselling a timeshare can be problematic. The timeshare owner must realize that it is unlikely they will recoup their

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<sup>137</sup> Ed Perkins, *Timeshares: Pros and Cons of Buying*, NEW ORLEANS TIMES PICAYUNE, Jul. 19, 1998, at D3.

<sup>138</sup> ARDA, *supra* note 41, at 13.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Engle, *supra* note 54, at L3.

<sup>143</sup> ARDA, *supra* note 41, at 13.

<sup>144</sup> Engle, *supra* note 54, at L3.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

investment.<sup>149</sup> Again, a timeshare purchase is really a vacation purchase and not an investment, and the market for resale is fragmented and saturated with others trying to unload their timeshares.<sup>150</sup> Unfortunately, many owners trying to resell their timeshares are desperate to get rid of them because their financial condition has weakened, making them easy targets for unscrupulous scammers in the resale industry.<sup>151</sup> The most widespread scam is to require hundreds of dollars upfront for appraisal and brokerage fees and then fail to come through on promises to sell the timeshare within a certain period of time.<sup>152</sup>

Abuses prevalent in the timeshare resale industry can amount to substantial harm when the victims are considered in the aggregate. One Florida resale company victimized 38,000 timeshare owners, taking in more than thirteen million dollars from the \$395 upfront fee charged to timeshare owners.<sup>153</sup> In exchange for the fee, owners expected the reseller to list their timeshare individually in *USA Today*.<sup>154</sup> However, the reseller merely placed a generic advertisement for its own resale business.<sup>155</sup> Furthermore, the reseller made representations regarding the level of buyer activity in the areas where the owners' timeshares were located and made false promises that the timeshares would be resold within thirty to sixty days;<sup>156</sup> neither of which were true.<sup>157</sup> Unfortunately, this type of behavior is not an isolated incident in the timeshare resale industry.<sup>158</sup>

Nevertheless, there are certain measures that a timeshare owner can take to lessen the risks inherent in the resale market. For

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<sup>149</sup> Perkins, *supra* note 137, at D3.

<sup>150</sup> Klein, *supra* note 74, at K1.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Resort Timeshare Resales, Inc. v. Florida*, 766 So. 2d. 382, 383 (Fla. Dist. Ct. App. 2000).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *See Resort Sales Inc. v. Fla. Dep't of Bus. & Prof'l Regulation, Div. of Fla. Land Sales, Condos. & Mobile Homes*, 795 So. 2d. 1040, 1041 (Fla. Dist. Ct. App. 2001) (finding that a timeshare resale company violated the Florida Vacation Plan and Timesharing Act by collecting advance fees for listing timeshare resales).

instance, during the initial purchase of the timeshare interest, the purchaser should consider the factors that affect resale such as season, location, unit size, age, and availability of new product in the area.<sup>159</sup> A prospective purchaser should ask whether the developer or the management company offers a resale program<sup>160</sup> and should research local brokers in the area of the timeshare to determine whether they have sold similar units.<sup>161</sup> Additionally, the purchaser should make sure that any broker used is licensed<sup>162</sup> but should also seriously consider selling the timeshares themselves rather than using a broker or a resale company.<sup>163</sup> Some options include running classified ads in local and national newspapers, travel or leisure publications, or listing the timeshare interest on the internet.<sup>164</sup>

## VII. Conclusion

The timeshare industry has evolved over the years and today offers more choices than ever before in its short history. However, the number of choices can complicate a timeshare purchase for the consumer and also present opportunities for unscrupulous sellers and third party dealers in the industry to abuse the system and prey on the unsuspecting. The Florida Vacation and Timesharing Act, and other similar legislation, provide the potential timeshare owner and current timeshare owners with a powerful weapon against abuses in the industry. However, in the end, the best defense a consumer has is his or her own common sense and knowledge. Whenever considering an expensive purchase, whether it is a timeshare or a car, no amount of regulation can take the place of research and asking the right questions of the seller.

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<sup>159</sup> ARDA, *supra* note 41, at 16.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 17. One excellent resource for listing a for sale by owner timeshare interest is on the Timeshare User Group website, available at [www.tug2.net](http://www.tug2.net). A three-month listing is only ten dollars for members, and the membership fee is only fifteen dollars annually. See Timeshare User Group Classified, <http://www.tug1.org/tugads/adshome.php3> (last visited Mar. 23, 2006).