Timeshare Obligations, Regulations, and Challenges

Matthew du Mee, Unit Chief, Consumer Litigation Unit, Arizona Attorney General’s Office

Grace Ordonez, Pre-Law Legal Assistant, Consumer Litigation Unit, Arizona Attorney General’s Office

The timeshare industry comprises a significant segment of the hospitality sector. Buyers beware! According to the American Resort Development Association (ARDA), the $9.6 billion U.S. timeshare industry boasts over 1,570 resorts and 205,100 units.¹ About nine million households in the U.S. own timeshares, and sales increased approximately 25% between 2010 and 2016.² Given this volume of sales and the substantial expense of timeshares, any deficiencies in consumer protection in this area will have a massive impact on consumers nationwide. Unfortunately, the current landscape of the timeshare industry has exposed significant inadequacies in protection for those seeking to purchase, lease, or exit their timeshare contracts.

The Timeshare Obligation

A timeshare purchase agreement is unique among consumer contracts because the contract typically creates a non-cancellable lifetime obligation. A buyer pays tens of thousands of dollars for an interval (usually one to two weeks a year) at a resort condominium and agrees to pay maintenance fees and property taxes every year. Timeshare buyers may pay upfront or finance their purchases through the timeshare developer. Any fees, dues, or maintenance assessments must be paid in perpetuity, until the consumer either passes away or is able to sell the timeshare.

However, annual assessments typically increase each year,\(^3\) averaging around 5% per year.\(^4\) Consumers frequently are unable to pay for the timeshare’s ever-increasing, variable costs, especially when those consumers are elderly and on a fixed income. Elderly consumers also appear to be more vulnerable to timeshare sales tactics—for example, a March 2019 article reported on a couple in their late 80s who were sold a $150,000 timeshare with $19,000 in annual fees.\(^5\)

As annual fees grow exponentially, consumers often try to sell their timeshares, only to find that the “asset” for which they paid tens of thousands of dollars cannot even be given away. Timeshare developers rarely buy back timeshares, and re-selling a timeshare can be extraordinarily difficult. The secondary market is oversaturated with timeshares priced at a penny from consumers seeking to liberate themselves from a timeshare’s ever-increasing, life-long financial commitment.\(^6\)

As a result, certain fraudulent schemes have arisen external to the timeshare industry, which prey on consumers’ desperation to exit their contracts. “Timeshare exit companies” promise to help consumers exit their timeshare contracts, and tend to target elderly consumers.\(^7\) Such businesses may charge tens of thousands of dollars in fees but typically will not and cannot get consumers out of their timeshare contracts.\(^8\) Further, these companies frequently provide unsophisticated and often detrimental advice, such as advising consumers to cease making maintenance fee payments. This leads consumers to default on their timeshare contracts, which impacts their credit score and their future ability to obtain credit.

In addition, some scammers have discovered that timeshare owners are ripe targets for resale scams. In a resale scam, a scammer locates a consumer with a timeshare and tells that consumer that a third party will buy the consumer’s timeshare for tens of thousands of dollars. The scammer then has the consumer wire the scammer money up front for supposedly refundable payments for “escrow,” “government fees,” “taxes,” or the like. The scammer will continue to invent new excuses for additional payments until the consumer runs out of money or realizes they are being scammed.\(^9\) Some of these scammers are extraordinarily devious and will use slick websites, real corporate filings, and altered government documents to convince even highly sophisticated consumers, such as an experienced real estate broker who lost over $24,000 before

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\(^3\) Timeshares rarely, if ever, have a decrease in their annual assessments. See, e.g., Barbara Peterson, *Trouble in Timeshare Paradise* (2019), [https://www.consumerreports.org/vacations/trouble-in-paradise-timeshares/](https://www.consumerreports.org/vacations/trouble-in-paradise-timeshares/).


\(^8\) Id.

realizing he was being scammed. Enforcement actions have been brought by the United States Department of Justice and other government agencies specifically alleging that timeshare resale scammers targeted the elderly.

**Timeshare Regulation**

A timeshare contract can become a commitment to spend tens, or even hundreds, of thousands of dollars over many decades. Even modest annual increases in maintenance fees can result in eye-popping financial obligations over time. For instance, the average maintenance fee in 2018 was $980.\(^\text{12}\) Assuming a conservative annual increase of 5% each year for 30 years, a consumer’s maintenance fee would increase over that timeframe to over $4,200 annually, and by that point, the consumer would have spent a total of approximately $64,000 in maintenance fees alone. In many cases, consumers also must pay property taxes, “special assessments,” and an up-front or financed payment of tens of thousands of dollars. As such, it is both surprising and concerning that the cooling-off period for timeshare contracts ranges from only three (3) to fourteen (14) days depending on the state.\(^\text{13}\)

Most states lack disclosure rules that would put a consumer on notice that they are signing up for a lifelong commitment to pay an undetermined amount of money that will increase each year. This lack of disclosure is particularly jarring in light of the fact that other long-term financial obligations, such as mortgages and auto loans, must provide easy-to-read, transparent disclosure statements under the federal Truth in Lending Act (TILA). In comparison, it is perplexing and concerning that many timeshare contracts, which are non-cancellable and perpetual, have no such disclosure requirements. Some in the industry rely on this lack of transparency to conduct business. If consumers were made aware of the timeshare’s actual life-long financial obligation and, consequently, the transaction’s high risk, many would not elect to buy. At the very least, disclosure would provide consumers with the information necessary to make informed decisions. The lack of disclosure by some in the industry too often creates a market that is not driven by economic forces, but rather relies on aggressive sales practices and consumers’ reliance on verbal information presented by a salesperson.

Some timeshare developers capitalize on confusing contract language and the inadequacy of disclosures. Many salespeople engage in aggressive sales tactics, orally misrepresent material components of the contract, or pressure consumers into signing contracts on the spot. Sales

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\(^{13}\) Cancellation periods and statutes for each state have been listed in the following chart, which may be outdated: https://www.arda.org/uploadedFiles/ARDA/Government_Affairs/Government_Affairs_Call_Out_Boxes/Rescission%20Period%20Chart%208.14.pdf.
representatives may also utilize high-pressure pitches, grilling and grinding away at potential customers during sales presentations that span several hours. Many feel intimidated by the sales experience and break down during the sales pitch marathon, succumbing to the salesperson’s hard-sell tactics. Consumers also report being surprised to find out that certain timeshare benefits promised by the sales agent were not included in the contract. Further, consumers often are unaware of their cancellation rights and complain about not being provided with time to review the contract. Unscrupulous salespersons are adamant that certain pricing is contingent on purchasing the timeshare during the presentation, and do not provide consumers with sufficient time to review the contract before, during, or after the presentation. Consumers dealing with such tactics are rushed into making a snap decision about whether to take on an unpredictable lifetime financial burden.

As evidenced through many consumer complaints about transparency issues and deceptive and unfair acts during the sales process, as well as the imposition of a lifelong commitment, consumers soon begin to realize the timeshare agreement is not as promised and seek to get out from under the onerous financial obligations. Most timeshare companies, however, will not let consumers out of their contracts, even if the consumer has paid the purchase price in full and is current on fees.

The inability of consumers to exit their timeshare contracts is a persistent issue around the world, and countries are beginning to implement various solutions for consumers. For example, Israel provides consumers a legal right to exit the timeshare agreement and prohibits cancellation fees, but requires consumers who exercise their exit rights to pay the next year’s annual fee. Spain removed the ability for timeshares to last into perpetuity; under Spanish Law 42/98, all timeshare contracts after January 4, 1999 can only last between 3 to 50 years.

**Arizona’s Legislative and Enforcement Efforts**

In Arizona, the Attorney General’s Office supported a 2019 bill with a number of protections for timeshare purchasers. The original bill (HB2639) unanimously passed the Arizona House, but timeshare lobbyists were able to weaken the bill drastically in an Arizona Senate committee. Ultimately, the final bill extended Arizona’s initial cancellation period from seven to ten days and provided consumers with some additional disclosures to sign before purchase, such

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15 Since 2015, the FTC's Consumer Sentinel Network has reported around 7,000 consumer complaints a year related to timeshare sales, and around 2,500 complaints a year related to timeshare resales. https://public.tableau.com/profile/federal-trade.commission#!/vizhome/shared/295DG7F9Y.


18 https://www.azleg.gov/legtext/54leg/1R/bills/HB2639H.pdf.

as warnings that timeshares are not investments and an estimate of the assessments due during the first year of ownership.

The Arizona Attorney General’s Office also has litigated against individual timeshare companies. In late 2016, Arizona reached a settlement with Diamond Resorts. That settlement included $650,000 for consumer restitution, but even more importantly, it allowed consumers who had been misled by Diamond Resorts a chance to get out of their timeshare contracts. Hundreds of Arizona consumers applied for relief under this provision and were able to relinquish their timeshares, collectively saving an estimated $25 million in future timeshare fees.

In addition, the Arizona Attorney General’s Office is working with other law enforcement officials to trace resale scammers and has issued a consumer advisory warning consumers about the rise in these scams.

In conclusion, it is clear that many consumers purchasing timeshares lack sufficient information and protection. We encourage other states to propose their own timeshare legislation and to conduct thorough investigations of timeshare companies about which consumers have filed complaints.

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