MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 1, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:40 a.m., Wednesday, April 1, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary

Testimony on bills scheduled for hearing on Tuesday, March 31, 1981 resumed on April 1, 1981.

SENATE BILL NO. 437--Broadens definitions or increases penalties for certain crimes and amends miscellaneous criminal laws.

Mr. Bud Campos, Chief Parole and Probation Officer, stated he both favored and was against certain parts of S. B. No. 437. He stated he had no particular feelings about Section 1, it deals with isolated cases. One area of concern was that the district attorneys believe in retaining jurisdictions themselves, in having discretion to prosecute, but are continually introducing supporting bills and this bill is of that nature. It takes that discretion away from other people such as the courts and parole board. They trust themselves explicitly to make good rational decisions at all times but do not seem to trust other aspects of the criminal justice system.

Senator Raggio answered in regard to the statements of Mr. Campos, the district attorney is an elected office and the whole process

of criminal prosecution is one of discretion on the part of the prosecutor. Mr. Campos stated there are states which have laws which prohibit pre-negotiation in many areas.

Mr. Campos referred to Section 4 which addresses rape and increases the minimum eligibility for parole from five to ten years and questioned the justification for this. This would have an impact on the prison but possibily not that much because few people are convicted of rape.

Senator Raggio asked when a person would be eligible for parole on a sentence of sexual assault with no substantial bodily harm, with life with possibility of parole. Mr. Campos stated good-time has not been applied to that, it would be five calendar years. The only credit off of that would be time in county jail. Regardless of the sentence, the parole eligibility would be five years. It is his feeling and that of the prison that good-times should not be credited against that time or any of the life terms. Senator Wagner asked if there was any indiciation if the penalties were increased for sexual assault, it is harder to convict. Mr. Campos stated he did not know, however the year sales of dangerous drugs were made probational, the conviction rate went up 68%. Senator Raggio stated at one time rape could be punishable by the death sentence.

Mr. Campos stated under Section 5, the increase of parole eligibility from one to five years would have a significant impact on the system in Nevada. In the terms of armed robbery, many people turn to it who are not true criminals. They do because no particular skills are required, and having a gun seems to persuade people to give up their money quickly. He stated robbery with a firearm is nonprobational, and the penalty is doubled. It has not stopped robberies but he felt the law is good.

Senator Ford asked for his opinion as to the necessity of the bill. Mr. Campos stated the section which addresses burglary presents some problems. He does not agree with the part which makes it nonprobational. Last year probation grant for property crimes was 66%. With these percentages, last year we would have had 252 people ineligible for parole or probation under this particular statute. Most robberies are of the residential nature. He stated that even though most of these people have committed several burglaries, they can still be worked with and can be taught trades. He could not support the nonprobational aspect of the bill.

Mr. Campos stated in regard to raising the minimum sentence of residential burglaries, he would be agreeable to but the part which would make nonprobational he did not like. It would require a new prison within two or three years. Mr. Campos stated his department has a sliding scale based on the degree of the sophisitication of the offender which they use in recommending to the courts. A higher sentence is requested for a crime in a higher cash area. The type of legislation in this bill goes after the losers more than anyone else. In regard to sentencing, the courts usually sentence to less than the department suggests.

Mr. Steve Robinson stated his department did a cursory evaluation on S. B. No. 437 and prison impact and the consistency and progression of sentences and that creates a problem. Regarding robbery, under section 5, changes proposed would make the penalty for robbery with the use of a deadily weapon identical to the penalties for the following crimes: murder in the first where death or life without is not imposed, kidnapp in the first, with substantial bodily harm, sexual assault, habitial criminal, sexual assault against a child under 14 years of age and battery with intent to commit sexual assault. That creates a problem with the progression of sentencing. With regard to good-time credits for murder and sexual assault, there is a bill draft into the Assembly Judiciary committee which would mandate in the law and clear this up and prohibit good-time credits. About one-third of the prison population would be affected by this legislation and more bed space would be required. Mr. Robinson stated this legislation does not help his department.

SENATE BILL NO. 438--Amends provisions relating to corporations.

Mr. Bill Swackhamer stated this bill would reduce the number of persons required to be incorporators from three to one. That is the the situation in Delaware and California and Nevada is competing with Delaware for corporation business. It is meaningless because they are usually clerks in a law office. He had been advised by a person involved in the corporate business that Nevada could get more corporations in Nevada, presently going to Delaware, just on this one issue. This individual indicated approximately 50 more corporations could come to California if this legislation was passed.

Senator Raggio stated the reasons behind having three was regardless of the number of shareholders, three directors were required in a corporation. That has been eliminated and you need only have the number of directors as shareholders.

Mr. Swackhamer stated in Section 3, there is a change, under present law if a corporation is dissolved before the payment of any capital, it is done by the incorporator, there is no statutory fee. It is

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treated like anyother dissolution and charge $20. Several times people have challenged that there is no statutory fee for the dissolution, this legislation would provide for the fee.

SENATE BILL NO. 439--Removes restriction on renewal of reservation of name for corporation.

Mr. Swackhamer stated there previously was a provision in the law that a person could reserve a corporate name for $2.00 for 30 days. The last session of the legislature changed that, for a period of 90 days for $5.00. The reason being the same firm reserved the name at the end of the expiration date if they chose to but under a different name. However, in some way, the language was put in that says that a name which has been reserved, provided in subsection 1, may not be subject of a renewal or reservation by any person, firm or corporation for a period of 90 days after the expiration of the reservation. This provides a three-month period where a name can be reserved, then another three-month period which the person originally reserving the name or anyother person can get the name under any circumstance.

Chairman Close the reason for the law was to prohibit people from constantly reserving names, having a cut-off time so after that time, it is a free name again and anyone else can take it. Mr. Swackhamer stated this is not working. An attorney general opinion stated the person after the 30 days was up, under old legislation, that person could not reserve the name, so they just reserved the name under someone in their firm. Chairman Close stated that was the reason for the free period. Mr. Swackhamer stated his office has been affected by having to go through all the name reservations for the first 90 days, then through them again for the next 90 days when a request is made. It creates considerable burden. Mr. Swackhamer asked the committee to consider making S. B. No. 439 upon passage and approval if they agree to process the bill.

ASSEMBLY BILL NO. 232--Clarifies age of and eliminates citizenship requirement for directors of corporation.

Mr. Swackhamer stated it is not a bill from the Secretary of State department but he is supportive of it. It would delete the requirement that a foreign corporation have one director who is a Nevada citizen, there is no apparent reason for this. Indications have been that several Canadian corporations have gone elsewhere because of this requirement. It also clears up the ambiguity on the age of a person, the requirement of a full age can be argumentative. Mr. Swackhamer stated, he did not mean a Nevada citizen in his original testimony, he meant a United States citizen.

SENATE COMMITTEE ON JUDICIARY
April 1, 1981

SENATE BILL NO. 415--Expands definition of "condominium" to cover mobile home parks.

Mr. Julius Conigliaro, City of Las Vegas, stated the Department of Planning and Development in Las Vegas recently received inquiries from developers interested in developing mobile home condominium parks. The parks would include a common area, inclusive of recreational facilities which would be owned in common by the legal membership of the mobile home park. The current statutes do not contain language to accomodate such developments, specifically the ownership of common area. The addition of the language providing for air space for mobile homes in the NRS definition of condominium would allow the development of mobile home facilities with provisions to common area ownership.

Mr. Conigliaro stated the same provisions would apply as to a condominium, an association pays a fee to support and maintain the facilities. However the association controls the fee, depending on costs. There are several parks in Las Vegas with a similar setup. However after buying a space, the developer owns the facilities and provides the maintainence and establishes the fees. This bill would provide for the membership owning the facilities and controlling the fees. Under this legislation, the developer would have an option, it would not be mandated.

Senator Ford stated line 11 does not specify who owns the pad under a mobile home, it refers to airspace only without any building or structure. Mr. Conigliaro stated he would assume that would be included in part of the contract. Senator Raggio stated the language in section 2, subsection b is not inconsistent with the present definition of condominium. Senator Ford stated the present law does not allow for people living in mobile homes, the new legislation will permit them to jointly own the commom areas.

Mr. David Hoy, Attorney and has in the past represented mobile home dealers, stated he had some problems with the concept of condominium for mobile homes. He stated in the condominium concept, the owner owns a unit but all supporting structures and the land underneath is retained by the developer. In the townhouse situation, the individual owns the lot under his unit, but roads and other facilities are owned in common by everyone else. That lot is described in a subdivision map which is filed. The difficulty arises when you take a lot and condominiumize the lot for a mobile home and he owns the airspace, there is nothing to sell. What you are really selling is the lot. Another way to do this is planned unit development, you take the mobile home park,

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cut it into lots, have a common area for recreational facilities and sell the lots with an undivided interest to the resident. Chairman Close stated it was said this cannot be done under the present statutes. Mr. Hoy stated he felt the P.U.D. statute allows for this. If the common area is not to be retained, the cities and counties have the power to insist because they have to approve the P.U.D. If the problem is to avoid having the developer retain the common area, this should be provided for in the bill. Language should state that no condominium or planned unit development shall be approved unless the developer agrees to sell undivided interest to the common area.

Senator Ford suggested that Mr. Conigliaro go back to the City of Las Vegas and see if they have explored using the P.U.D. law and ordinances and see if they want to preclude the developer from owning the common areas. Mr. Conigliaro stated he would come back to the committee with the requested information.

SENATE BILL NO. 429--Regulates sale of time-share estates and time-share licenses.

Mr. Robert Bilbray, representing the American Land Development Association and the Resort Timesharing Council, stated S. B. No. 429 is a culmination of two to two and one-half years of work which conforms almost identically to the full disclosure provisions of the national bill which was prepared in association with the Resort Time-Sharing Council and the National Association of Real Estate Licensing Law Officials. See Exhibit C for additional information.

Senator Raggio, District 1, Washoe County, stated S. B. No. 429 is an attempt to address the industry of time-sharing which has become a major enterprise in most states where tourism and resort areas flourish. It is beneficial to the state to allow for the purchase or use of resort facilities and also to the individual who may want to purchase a second vacation home. Time-sharing also allows an individual to have the use of that facility at present day prices when inflation may raise those prices later. There is also a value to the developer which will enable him, with the sale of units or intervals, realize a source of funds for development which may not otherwise be available to him. Senator Raggio stated he will make available to the committee information from the Real Estate and Review Journal. See Exhibit D attached hereto. The article deals with the advantages and disadvantages of the concept of time-sharing.

Senator Raggio stated time-sharing exists now in the state without any kind of regulation. The Real Estate division will also testify as to some of the problems which have been encountered. The bill has been drafted to deal with any of these problems. The essence of S. B. No. 429 is to require full disclosure and review by the real estate division and require that there be conformance with a public offering statement which will have to be approved by the division.

Senator Raggio stated only six states have adopted any kind of regulation, those being ones with tourism a major part of their economy. He stated during the 1980s, time-sharing will be very expansive industry in the state. It serves the State of Nevada, the purchaser of the unit and the person developing the project. He advised the committee a seminar had been held during the summer and everyone agreed that in starting regulation and control of the industry, it should be done in an efficient manner but not by over regulation. He felt the proposed legislation, with some amendments can meet those concerns.

Senator Raggio review the bill by sections with the committee. Areas of concern and comments regarding individual sections follow below.

Senator Raggio advised the committee the bill had omitted a definition for public offering statements and the Real Estate Division suggested that be added.

Senator Raggio suggested under Section 27, subsection 4, lines 25 and 26 should be omitted. As a sponsor of the bill, he did not intend that time-shares out of state be exempt. Also line 10 would need to be changed. Regulation should be both in and out of the state.

Senator Wagner asked if the purposes and substance of the bill had been taken from any of the other states which have adopted regulations of this industry. Senator Raggio stated no, there is such a thing as "Uniform Time-Sharing Act", but is not a bill which has been submitted to the Uniform Commission. The proposed bill is modeled after this act, other states have gone in varying directions from the act. There is some similarity but is not a copy of any one bill.

Senator Ford questioned why the use of more than 12 time shares was used in Section 37. Senator Raggio answered the agreement during the seminar had been to avoid regulating small units. Anyplace renting out for twelve months would not be covered, but thirteen would be.

Senator Raggio stated in regard to Section 46 which allows for a three day cooling-off period, this is being done today without any legislation because of the problems which have existed in high-pressure situations. Senator Don Ashworth questioned how three days was determined. Senator Raggio said it varies from three to five days in other states. He said the intent of the bill as drafted in Section 46, had been the offer could be voidable three days after either, the date of purchase or the day on which the purchaser receives the public offering statement.

Chairman Close questioned why the seller was allowed to rescind a contract. Mr. Bilbray stated it is consistent with the model act. Senator Raggio said a purchaser may have misrepresented himself regarding his financial ability and it was felt the provision should exist.

Senator Raggio stated Section 50 needs an amendment on line 46. He did not know why the language 1 time share was included. The concept was that anytime a purchase was made, a public offering statement had to be given. It is receipted for and it is kept on file for at least three years and the records are subject to inspection.

Senator Raggio stated Section 57 requires that a fee-type interest would be a recordable document. Section 59 deals with time-share license, these do not convey a fee and would not be recordable although they are subject to the requirements of disclosure. This gives the developer the opportunity to proceed with either type of concept.

Senator Raggio said Section 58 needed to be addressed because it pertains to local zoning ordinances. Several counties have adopted ordinances pertaining to time-share. The purpose of this bill is to make uniform regulation and control of time-sharing throughout the state. This section would prohibit a county or entity from imposing any requirement on a time-share property that it would not impose on a similar development. It is an attempt to prohibit any differential treatment within the county of that purpose.

Senator Wagner asked what protection is there for a buyer of a time-share if the developer goes broke. Senator Raggio stated as the situation is now, there is none, the proposed legislation would require the full disclosure in the application and a review and investigation by the real estate division and the requirement of the public offering statement. However there is no way to guarantee that someone will not go broke in the future.

Mr. Bilbray stated in behalf of The Resort Timesharing Council, he would like to suggest some amendments to the bill. He felt under any circumstance, regulation should be of sales activity, rather than project site so far as the jurisdiction of the bill. Another amendment suggested is Section 27, putting in a new subsection 4 for a grandfather provision for those registrations under NRS 119,time-share estate registrations which are affected. Another item is the inclusion of the judicial invalidity provision which is not currently in the bill draft. He felt the industry of time-sharing is important to the state of Nevada. In slow times, conventions have been promoted to pick up the slack in tourism traffic. This could provide a supplement to that stability of tourism.

Senator Wagner asked if Mr. Bilbray knew how many time-share projects there are in Nevada. He stated 7 at the present time.

Ms. Mary Van Kirt, Deputy Commissioner of State Consumer Affairs, stated she had some information on what happens when a company goes under. She said there is a time-share license company going under now in the northern part of the State. A letter has been sent out from the counsel representing the investors stating they are financially insolvent to all the members. Contacts date back to 1976 and possibily 1974. People signing these contacts were given the right-to-use for a period of 25 years. The investments ranged from $3,300 to $6,200. Now that some of these contracts are already paid up, some with balances, and the people were getting ready to use their property, they found the units were closed down. The statute enforced by our division deals with deceptive trade practices. It would have to be proven there was knowing misrepresentation at the time they were being sold. There is nothing the department can do to help them.

Ms. Van Kirt stated the department started receiving complaints in January even though they can do nothing under the present law. There were approximately 500 people involved in this situation with an an average investment of $4,500 to $4,700, approximately $250,000 has gone into this property. The only answers given to the consumers is poor management, financially insolvent and then their maintenance fees are going to be raised to pay for the back utilities. The people are now being advised the company is going to convert to fee simple which requires a conversion fee. It appears the company mortgaged all of the equity out of the business.

Senator Don Ashworth pointed out that a bona fide company can still have financial problems after a period of time and the proposed legislation will still not alleviate this problem. Ms. Van Kirt stated it would be helpful to have a trust fund

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set up for any fees the consumer pays for utilities and maintenance for the units.

Mr. David Hoy, Attorney, representing Plaza Resort Club, stated it is a fee time-share project in Reno, Nevada. That club is presently registered under NRS 119 with the Division of Real Estate which has a requirement that the property report must be given to the buyer and he has three days from receipt to rescind. It also has a provision if the buyer receives the report and visits the project prior to signing, then there is no right to rescind. He suggested Section 27 be amended. In Subsection 3, the language states if the amendment grants to any person the rights permitted by this chapter, all correlative obligations, liabilities and restrictions of this chapter also apply to that person. It also says in 1, (b), that it applies to a time share created within the state before July 1, 1981, with respect to events and circumstances which occur on or after July 1, 1981. An amendment is requested which states that any time-share project which was in existence prior to July 1, 1981, and is registered under Chapter 119, be exempt from the provisions of this bill. A further protection could provide that the time-share instrument of any time-share property which is exempt may not be amended unless such amendment is first approved by the division of real estate. The filing of this bill is almost the same as the filing that his client has already done. See Exhibit D attached hereto.

Senator Wagner asked Ms. Van Kirt if the company she had referred to had been registered with the state. Ms. Van Kirt stated, not to her knowledge, there was no requirement. Senator Raggio said the right-to-use concepts do not come under the existing law pertaining to NRS 119 but do apply to fee type. Mr. Hoy stated his project is a fee type and that is the reason it has been registered.

Mr. Hoy said he had another suggestion on page 10, lines 34 to 39 which states each time-share estate must be separately taxed and the aggregate assessed evaluation must not exceed the valuation of physically similar property. This procedures enables a developer to generate more capital from the sale of time-share than otherwise. Mr. Hoy stated an Attorney General opinion, A.J. 8040, which stated on time-share condominiums, they may be taxed as one unit. He felt this would be a better rule, both in fee-simple concept and the right-to-use concept with the tax bill going either to the manager of the property or the association. They can make sure all tax bills are paid. See Exhibit E attached hereto.

Mr. Hoy said his idea is to avoid forcing the assessor to assess each time-share unit separately. If he does assess separately, then under Section 55, subsection 3, then reduce that assessment that to the same assessment that he would otherwise assess a hotel, there is considerable work involved in bookkeeping and make sure that all taxes are paid. Assessments on units can vary from the times of year so far as value. Senator Raggio stated possibly by the end of the session, a decision will be made that property will not be assessed on the basis of its potential use.

Senator Hernstadt asked what protection there would be under the suggested amendment of Mr. Hoy regarding the tax question, what would the owners have if the developer starts having trouble and the manager is the only one notified of a default in taxes. Mr. Hoy stated it would have a different type of approach. In a fee sale type time-share, there is a time when the owners will take over the project, the same as a condominium situation. The developer owns the home owners association and controls it until he sells out about 50% of the units. Generally that is the same situation in the fee time-share sale. The developer is phased out, then there would be no difficulty of them getting notice of delinquent taxes. In the right-to-use situation, such as the Hacienda Hotel in Las Vegas, the hotel management controls the payment of all of the bills, including the taxes. It would burden the county assessor if they have to send out separate notices for each unit. Senator Hernstadt stated he felt there should be some notification to the real estate division if a tax default occurs. Mr. Bilbray stated a provision could be put in for delivery inside the registration of tax bills. Mr. Hoy stated he felt the language which deals with provisions for management or other services in Section 39, subsection (f), which allows the divisions to make those requirements for a right-to-use situation would cover this.

The committee adjourned at 10:50 a.m. and scheduled a lunch hearing immediately upon adjournment of the session.

The meeting reconvened at 1:15 p.m.

Chairman Close stated since there was no additional testimony on the philosophy of the bill, the committee would review it on a section By section basis.

Senator Ford question Section 7 which referred to a hearing officer, are these new or existing people. Mr. Jim Wadhams, Director of the Department of Commerce, stated new hearing officers would not be required. There are no appointed people to this position but the administrator would probably be the hearing officer.

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Senator Hernstadt asked if this bill would be self-supporting or is there a fiscal note on this bill. Mr. Luman, Administrator of the Real Estate Division, stated there was a fiscal note prepared, it would require three people in addition to the present staff. He said the fiscal note would require $43,408 for additional salaries, fringe and payroll of $7,000, additional equipment of $5,600, additional space rental of $2,400. It has estimated additional revenues to offset this of about $16,000 and $32,000 the second year. The total would be $58,625 for the first year, second year would be $53,025 the second year, the equipment would be a one-time purchase.

Chairman Close asked in what context independent parcel is used throughout the bill. Mr. Bilbray stated he thought it is to pick up a time-share of recreational vehicle park. He stated it is under Section 18 and 21.

In Section 9, Chairman Close asked who hires the manager. Mr. Hoy replied the manager can be hired either by a developer or the association at such time as they take over the management of the project in a fee situation.

Section 10: Richard Drechsler, President, Plaza Resort Club, stated the definition would have to be cleaned up to make sure an exclusion is not made to the jurisdiction of this legislation to out-of-state offerings. Mr. Hoy stated in some states registration is required if advertising is done in magazines, airline magazines particularly have been used. Discussion resulted in the decision Section 10 should be left as is.

Section 13: Mr. Bilbray stated he felt the word "recordable" should be deleted in this section, it appears to be mandatory.

Senator Hernstadt requested a suggested definition to be inserted between sections 13 and 14. Mr. Richard Drechsler stated there is a problem throughout the bill which refers to licensed public offering statement and time-share license. To avoid a confusion, he suggested a definition of a public offering statement defining it as a permit to sell issued by the division. Then in the following sections, 38.1, 39.1, 42.1, 42.2, 42.3 and 44.1 public offering statement be substituted for the word licensing. This would make the bill more clear.

Senator Wagner asked if the Real Estate Division supports S. B. No. 429. Mr. Jim Wadhams stated the division does support the bill. Presently there is no governmental entity which can assist people who have problems such as are occurring in Reno which Ms. Van Kirt described. Regulation is done through NRS

on fee type of time-share arrangements. Mr. Wadhams said he felt this bill is a good start for this industry.

Chairman Close questioned whether or not in Section 14, a buyer through foreclosure should be included in the term purchaser. Mr. Drechsler stated in Section 48, it would be an easier amendment to add another word. The word obtained after the word be. Mr. Bilbray said it may be simpler to indentify a purchaser as any person other than a developer or lender who purchases a time-share.

Mr. Hoy stated in Section 48, it should be broadened to cover the sale, rather than just say that a public offering statement need not be delivered to a purchaser in case of the following. It should say, a public offering statement need not be required for sale in case of, then list execeptions. Section 48 does not exempt anyone included in purchaser from having to have the permit.

Mr. Drechsler stated there was a typographical error on page 1, line 9, it should read previously instead of previous.

Chairman Close asked why voluntary is included in Section 14. Mr. Hoy stated the reason it is in there because the use of the word purchaser is in later sections which indicate each purchaser shall receive a copy of the public offering statement. It should not be required that before a foreclosure, that a public offering statement is presented. Mr. Bilbray stated the model act indicates any purchaser, means any person other than the developer or lender. Only the developer or lender potentially would take the property back.

Mr. Hoy suggested a "Sales representative" be clarified to read, Sales representative means a person who on behalf of the developer sells or offers to sell. That way he would not have to be identified as an agent or employee.

Mr. Bilbray pointed out in Section 18, there seems to be an inconsistency. They should read five or three years but either would be okay. Mr. Bilbray stated the number of separate time periods is not the issue, it is over what period of time it is contracting the use of occupancy.

Mr. Drechsler stated the intent of this section is to come up with a minimum threshold beyond which you would be required to register and speaking as a time-share estate developer, he has no problem with the time periods as they exist. Chairman Close stated he was concerned with the fact knowledgeable developers are being covered, but not covering those individuals out to scam someone.

Mr. Drechsler stated if there is a concern, the following language could be used: after the word during, it could read, independent parcel of several units or independent parcels during a fixed or floating schedule upon a periodic basis over any period of time in excess of five years.

Mr. Hoy stated the exemption as he understood it is to avoid the situation where a person has a house in a resort area and agrees every certain holiday, the house is theirs for the next four or five years and someone else has it another weekend. Also flight crews will buy a condominium and agree among themselves for the different time intervals. These are to be avoided.

Chairman Close advised the committee and people testifying that the meeting would have to be adjourned because another meeting had been scheduled at 1:30 p.m. Another hearing date would be set for S. B. No. 429.

Chairman Close advised the committee a vote was need on S. B. No. 322, the Nevada State Welfare Division had requested it be withdrawn from consideration.

S. B. No. 322--Revises grounds and procedures for termination of parental rights.

> Senator Raggio moved to indefinitely postpone any further consideration of S. B. No. 322.
>
> Senator Don Ashworth seconded the motion.
>
> The motion carried unanimously.

The meeting adjourned at 1:25 p.m.

Respectfully submitted:

Shirley LaBadie, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

DATE: april 6, 1981

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on JUDICIARY, Room 213.

Day MONDAY, Date March 30, 1981, Time 9:00 a.m.

S. B. NO. 416--Specifically allows employment of prisoners on public works projects.

S. B. NO. 432--Increases number and allowances of costs for expert witnesses.

S. B. NO. 435--Expands duty of agencies of criminal justice to disclose records of criminal history to certain persons.

TUESDAY, March 31, 1981, 9:00 a.m.

S. B. NO. 436--Provides variable rate of interest for judgments.

S. B. NO. 437--Broadens definitions or increases penalties for certain crimes and amends miscellaneous criminal laws.

S. B. NO. 438--Amends provisions relating to corporations.

S. B. NO. 439--Removes restriction on renewal of reservation of name for corporation.

WEDNESDAY, April 1, 1981, 9:00 a.m.

S. B. No. 415--Expands definition of "condominium" to cover mobile home parks.

S. B. NO. 429--Regulates sale of time-share estate and time-share licenses.

A. B. NO. 205--Fills gap and makes technical corrections in statute on registration of convicts.

A. B. NO. 232--Clarifies age of and eliminates citizenship requirement for directors of corporation.

THURSDAY, April 2, 1981, 9:00 a.m.

S. B. NO. 440--Changes monetary amount for jurisdiction of courts and conforms certain statutory provisions to constitutional provisions relating to jurisdiction.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: April 1, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
STEVE ROBINSON	DEPT of Prisons	885-5048
[illegible] DRECHSLER	PLAZA RESORT CLUB INC.	323-1069
David Thompson	Plaza Resort Club Inc	323-1069
[illegible]	Real Estate Div	885-4280
[illegible] Christopherson	Commerce - Director's Off.	885-4250
Bill Cozart	Nev. Assoc. of Realtors	329-6698
John Wright	Nurs Indus.	882-0202
[illegible]	mobile home	883 6746
Mary VanKirk	Consumer Affairs	885-4340
DAVID COOK	TOUREX CORP.	731-1229
Peggy Twedt	League of Women Voters	882-2078
[illegible] Hoy	Plaza Resort Club	786-8000
Harvey Whittemore	Lionel, Sawyer & Collins	323-5050
ROBERT P. BILRRAY	AMERICAN LAND DEVELOPMENT ASSOC	386-1933
[illegible] (BOB JAKOBSON)	JAKOBSON INVEST. INCLINE Village	831-0205
Jim Woolhams	Commerce Dept	885-4050
[illegible]	Real Estate Division	885 4280
Julius Conigliaro	CITY OF LAS VEGAS	883-0768
[illegible]	[illegible]	

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March 31, 1981

EXHIBIT C

Melvin Close, Chairman
Committee on Judiciary
Capitol Complex
Carson City, Nevada 89710

Re: Senate Bill No. 429

Dear Mr. Chairman:

This letter is written on behalf of the American Land Development Association (ALDA), which represents the nation's recreational, resort and residential real estate development industry. Our 800 member companies develop, build and sell vacation homes, condominiums, planned unit developments, destination resorts, new and retirement communities, mobile home parks, recreational vehicle parks and campgrounds, marinas, and the newest concept in our field and the subject of this Act — resort timesharing projects.

The Resort Timesharing Council (RTC), is comprised of approximately 300 members from all areas of recreational resort timesharing, including developers, marketing representatives, lenders, attorneys and suppliers to the resort timesharing industry. A number of our members are located in the State of Nevada and will, undoubtedly, respond to this proposed legislation.

In August of last year, a hearing was held for the purpose of providing developers, sales representatives, attorneys, lenders and other interested parties the opportunity to supply to the Division input for preparation of regulation in the State of Nevada of this quickly expanding industry.

On behalf of ALDA and the RTC, we believe that it is of the utmost importance to the buying public, and to the future of a relatively new industry, that the State of Nevada enact reasonable regulation of time-sharing in order to discourage abusive or fraudulent sales practices. We, therefore, commend and support efforts to regulate timesharing in the State of Nevada through sound legislation.

Senate Bill No. 429 represents, for the most part, the consensus of desired first generation regulation of the industry as propounded by industry members and the Nevada Division of Real Estate, and would,

subject to the enclosed comments and suggestions for amendment, receive our enthusiastic support for adoption.

The suggestions represent, for the most part, housekeeping matters in order to clarify ambiguities in the definitional and jurisdictional provisions of the Bill.

We appreciate your extending to us this opportunity to share our thoughts and recommendations with you on this proposed legislation and hope that they will be of benefit to you in your deliberation. Upon adoption, we will look forward to working with the Division and Nevada industry members in adoption of comprehensive regulations corresponding to the intent of the Act.

Very truly yours,

ROBERT P. BILBRAY

RPB:dlk
Encls.

cc, Committee Members:

Sen. William Raggio
Sen. Sue Wagner
Sen. Jean Ford
Sen. Don Ashworth
Sen. Keith Ashworth
Sen. Wm. Hernstadt

cc: Ms. Joan Poggione, Deputy Administrator, Nevada Division of Real Estate

cc, Nevada Developer Members:

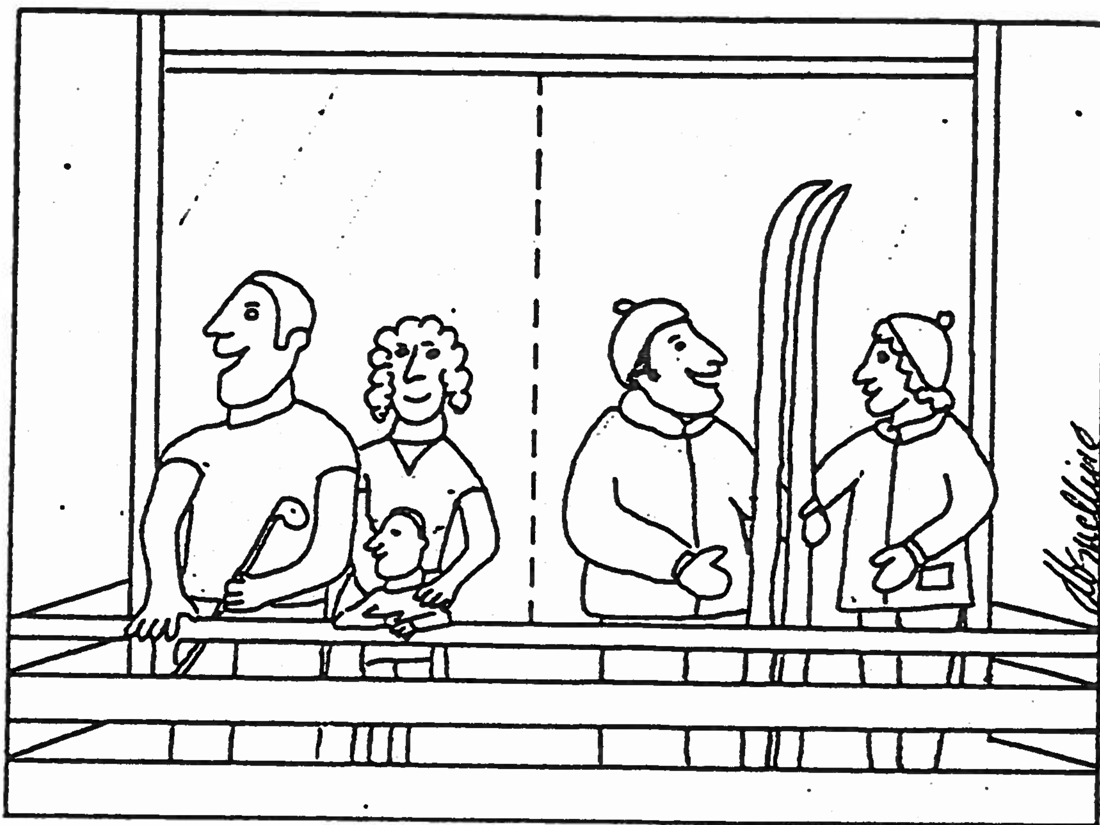
Phil Murphy, Esq., Corporate Counsel, American International Vacations
M. Patrick Dyer, Esq., Corporate Counsel, Scottish Inns of America
Mr. David Cook, Director of Operations, Tourex, Inc.
Mr. Robert J. Ahern, Corporate Counsel, The Aloha Group, Inc.
Mr. Mark Jonah, General Sales Manager, Jockey Club Resort Properties
Mr. David Thompson, Vice President, Plaza Resort Club

A complex and sophisticated new marketing vehicle remains unproven.

EXHIBIT D

Time-Sharing: New Hope for the Second-Home Industry?

Steven L. Ingleby



TIME-SHARING, though widely used in European resort developments for many years, is relatively new to the American vacation-home development industry. But in the last half of 1974 alone, twelve to fifteen time-sharing projects came on stream—despite adverse economic, financial, and market conditions.

Why? The main push has come from the sky-rocketing costs of land and construction, which have driven resort condo prices to a level only the very wealthy can afford. For instance, recent studies on condominium development indicate that 30 to 40 percent of resort condominium purchasers have household incomes of over $50,000 a year. Since less than one percent of American households earn this much, it is clear that condo developers as a group are missing out on much of the potential

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Steven L. Ingleby holds a Juris Doctor Degree from the University of Utah. He is a condominium consultant with Keith Romney Associates, Salt Lake City, and specializes in all aspects of condominium development. The author found Carl Burlingame's "Special Report on Time-Sharing," *Recreational Land and Housing Report*, Vol. 5, No. 9, July 8, 1974, particularly helpful in preparing this article.

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Real Estate Institute of New York University

recreational property market. To tap this market, developers are turning in increasing numbers to time-sharing.

Time-sharing usually involves the purchase by multiple buyers of undivided interests in a single condominium unit as tenants in common. (Many time-sharing project developers, however, are offering long-term time-sharing leases of twenty to fifty years or vacation licenses rather than fee simple interests.) A fee simple time-sharing interest is usually conveyed by a grant deed. Each interest holder is entitled to one or more occupancy periods in a commonly owned unit. Unit owners frequently number between five and fifty persons, and occupancy periods usually run from one to six weeks in length. Buyers may sell, convey, and devise their fee simple interest freely.

ADVANTAGES OF TIME-SHARING PLANS

The key advantage of time-sharing is the low price of the time-sharing unit when compared with the whole condominium unit. A time-sharing project can tap a much broader group of potential buyers than a resort project without the time-sharing feature. A purchaser buys only the vacation time he actually uses. By contrast, the owner of a standard resort condominium unit pays not only for the few weeks a year he actually uses his unit, but also for the lengthy period during which the unit either stands vacant or is occasionally rented. Lowered purchase price alone is not the only benefit time-sharing offers, however.

- Another important advantage of the time-sharing concept is flexibility. Since a buyer is usually only spending $500 to $7,000 for each time-sharing interest be purchases, he may be able to afford to acquire several time-sharing interests in a variety of locations. Conversely, the time-sharing project developer can carefully determine what the target market will be willing to pay and create time-sharing resort home packages that will meet the demand of the target market.
- Through time-sharing ownership a buyer can be assured of a guaranteed reservation at the resort of his choice year after year.
- To an extent, the buyer is purchasing future vacations at today's prices.
- The buyer need not rely on tax-shelter benefits or rental income to justify and help pay for his second-home purchase.
- The mystique of property ownership which continues to be important in the minds of most Americans is also an attractive part of a fee simple time-sharing purchase.
- A major advantage to the developer is that the sum of the parts in a time-sharing project can be greater than the whole. In other words, a developer can sell a condominium unit for more money when it is divided into several time-sharing interests than he can by selling it as a whole condominium unit.
- Since the price of a time-sharing interest is usually relatively small, there may sometimes be no need for a purchaser to finance his interest. Several time-sharing developers assert that 75 percent of those buying interests at their resorts are paying cash.
- There is currently no SEC registration required since there is no rental arrangement or other direct investment incentive involved in a typical time-sharing offering. Only use is sold. The SEC and other federal and state regulatory agencies are presently taking a close look at time-sharing, however, and this advantage may prove to be short-lived.
- It is probable that Congress will soon move to reduce the tax-shelter benefits currently enjoyed by rental condominiums. Stripped of their tax-shelter advantages, whole unit rental condominiums will no longer offer the upper-income buyer the same attractive second-home package. With the popularity of whole unit rental condominiums on the wane, time-sharing, by providing resort condominium living at a reasonable price, may become the new focal point of the vacation home industry.
- The higher occupancy rate generated by time-sharing increases the use of other profit centers in resort complexes, such as commercial and recreational facilities. The underutilization of such facilities in many whole unit resort condominium communities has been a major ongoing economic burden for a number of developers.

DISADVANTAGES AND CURRENT PROBLEMS

The principal disadvantage of the time-sharing concept is the substantial increase in marketing expenses required to sell out a time-sharing project. The price markup on a unit sold in shares may run from 15 percent to over 100 percent higher than the selling price of a comparable non-time-sharing unit. In some instances, the markup is twice the equivalent whole unit price. There is some question whether the cost of a time-sharing interest that is

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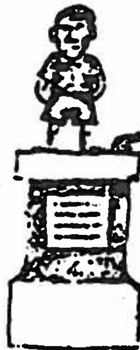
being sold at an inflated price due to the increased marketing costs is worth the money as a real estate investment. But it should be kept in mind that time-sharing is a hybrid concept that lies midway between the resort condominium and the vacation package. Thus, time-sharing costs should be compared not only with resort condominiums, but also with comparable vacation packages. The cost of a time-sharing interest is much less than the cost of equivalent hotel and motel accommodations over a five- to ten-year period.



Since time-sharing interest owners are purchasing only the amount of time in the condominium unit which they anticipate using each year, it can be expected that the time-sharing units will be in constant use throughout the year. This high occupancy rate should lead to somewhat higher maintenance and upkeep costs, and this must be viewed as another disadvantage of this ownership concept.

One of the primary concerns regarding the time-sharing concept is the complexity to which time-sharing gives rise. At the Kona Billfisher project in Hawaii, for instance, management for the sixty-five-unit development may be dealing with as many as 1,625 different owners. While measures are being developed to meet this problem, it will always be a difficult task for the management of a time-sharing project to keep so many different people with diverging interests and demands happy and satisfied.

The financing of time-sharing interests is a major problem faced by developers today. Lenders usually evaluate time-sharing projects as if they were traditional condominium resorts. Although the sellout price of a time-sharing project is usually substantially more than the aggregate sales price of a comparable whole unit condominium development, lenders are reluctant to provide any more construction financing for a time-sharing resort than they would if the project were being sold as a straight condominium or townhouse development. Lenders also have been reluctant to provide permanent financing for share purchasers. The problem has been further complicated by the current tight money market.

A number of legal problems must be confronted and overcome by time-sharing developers. Some means must be instituted to meet the problems of obtaining title insurance, establishing an acceptable approach to appraising a time-sharing project, and dealing with mortgage or tax defaults by fellow owners. The Hawaiian legislature recently passed the first time-sharing act, but it was vetoed by the acting governor. It is also uncertain at the present time which are the best methods of conveyance to employ in a time-sharing project. Finally, there is a question as to which management vehicle to employ in a time-sharing project.

Time-sharing developers may yet have to contend with the SEC and state agencies much as rental resort condominium developers have had to do in recent years. Time-sharing development was stimulated initially when Innisfree Corporation obtained a no-action letter on the Brockway Springs development. Recently, however, the SEC refused to grant Tropics International a similar no-action letter on Matili Village in Hawaii. The Commission has now instructed its staff not to express any view on the question of whether a time-sharing offering could involve "the sale of a security in the form of an investment contract, interest in a profit-sharing agreement, evidence of indebtedness or any interest commonly known as a 'security.'" The California Department of Real Estate has recently established some firm requirements for time-sharing projects.

While flexibility is one of the key virtues of the time-sharing concept, flexibility has also led to a confusing multiplicity of approaches to time-sharing. Time-sharing comes in leasehold, license, and fee simple form. Time periods range from one week to nine months. To date, no decidedly best method has come to the surface which a new developer can feel perfectly confident in using in his own project.

Condominium developers have always had difficulty trying to price their units properly so that the less desirable units will sell at about the same pace as the more desirable units. What frequently happens is that the desirable units sell rapidly, leaving the developer with a number of unmarketable "dogs" on hand that he is forced to peddle as best he can. In time-sharing developments, the developer is left burdened not only with the question of

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how to market the less desirable units in his project, but also with the problem of selling the off-season time periods. Pricing in a time-sharing project depends not only upon the location and type of resort involved and the size and type of units being sold, but also upon the period of time and season during which the units are to be used. Whereas pricing is a difficult task in a regular resort condominium project, it becomes an extremely complicated and absolutely critical function in a time-sharing project. Errors could jeopardize the ultimate success of the entire project.

It has not yet been proven that time-sharing will be able to generate broad second-home interest within the massive but as yet untapped middle-income market. So far, most purchasers of time-sharing interests appear to be the same generally well-to-do people who have patronized the whole unit resort condominium developments in the past.

SOME THUMBNAIL SKETCHES OF TIME-SHARING DEVELOPMENTS

The developer who is considering undertaking a time-sharing project will be interested in the success of other projects currently being offered. One of the oldest and most successful projects is Caribbean International Corporation's vacation license program. Sales started in 1973 and about 9,000 licenses have been sold to date. Prices range from about $2,000 to $6,000. Buyers are allowed to put 10 percent down and are given up to four years to pay the balance. The licenses are sold for one-week periods over a forty- to sixty-year term.

Four time-sharing projects by El Conquistador Hotel started sales of their fifteen-day time-sharing interests in Puerto Rico in early 1974. An inventory of 700 time-sharing units is being marketed. An additional 2,500 units are proposed for future development. Prices for the predominantly efficiency and one-bedroom units range between $3,100 and $9,000 for each two-week time period. Nearly 500 time-sharing interests (not units) have been sold.

Property Planning Associates began marketing Encore at Long Key in the Florida Keys in February 1974. Fee simple ownership of two-week time-sharing interests is offered. Prices range from $600 to $1,800 per week and are based upon the size of the unit and the time of the year during which the interest runs. After eight months, about sixty of the 250 time-sharing interests have been sold.

The International Resort Membership Club in Boca Raton, Florida, began sales in early 1974. The offering consists of eleven days and ten nights per time-sharing period over a 20-year license. There are four classes of membership, with price depending on the time of year chosen, the type of unit, and the number of guests permitted. Green memberships at $3,500 provide two-person accommodations during the summer; blue memberships are priced at $5,000 and allow as many as six persons to use a large unit during the summer; $5,500 silver memberships permit two people to use a unit at any time during the year; the $7,500 gold memberships allow up to six people to use a unit any time during the year. Terms require at least 20 percent down and permit four years to pay off the balance.

The Ski and Racquet Club at Breckenridge, Colorado, commenced sales in February 1974. Four-week time-sharing periods are offered for an average of $6,000 each with 10 percent down and ten-year financing. The project consists of seventy-two condominium units. Over 100 reservation deposits were taken during the first six months of marketing.

The Lodge at Lions Head in Vail, Colorado, began sales in March 1974. Four thirteen- to twenty-six-day intervals are offered per condominium unit. Each owner's use period is divided between the winter and summer seasons. Prices range between $22,000 and $36,000, depending upon the size of the unit. Nearly one-third of the available interests have been sold.

Brockway Springs is a luxury condominium project at Lake Tahoe, Nevada, with rustic interiors and excellent views of the lake. Innisfree Corporation, a subsidiary of Hyatt Corporation, obtained an exclusive selling contract on the project and instituted the time-sharing concept to accelerate the original development's lethargic sales pace. Time-

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sharing sales began in late 1973 and offer fee ownership of two consecutive or nonconsecutive fixed time periods of one, two, and three weeks in length. The Brockway Springs units have almost all been sold.

Hawaii Kailani offers three condominium locations in Hawaii. Sales commenced in 1971. Forty-year leases are offered with fixed annual two-week occupancy periods. Prices include $1,950 for a studio and $2,450 for a two-bedroom unit. Down payments are as low as $200 with up to four and a half years to pay off the balance. More than 4,000 leases have been sold.

The Kona Billfisher on the big island of Hawaii has been marketed by B.J. Lerner & Company, a securities broker/dealer. Sales began in March 1974 and 300 time-sharing units have been sold. Fee ownership of a fourteen-day period was being offered at $2,055 per period. No financing is offered. However, sales were recently suspended, pending an extensive revision in the time-sharing program.

The Matili Village in Maui, Hawaii, is being developed by Tropics International. Vacation licenses are being offered for $2,000 each and run for fifteen years. A buyer may choose to put as little as 20 percent down with five years to pay the balance. The licenses run for one week. From March to October 1974, 35 percent of the project was sold.

Snowbird started offering time-sharing interests in November 1973. In order to offer greater flexibility, the offering was recently restructured. The initial offering consisted of one-month fee ownerships, including two winter and two summer weeks. The current offering is for one-week interests, which range between $500 for a single bedroom during the summer to $6,900 for a suite during the peak of the winter season.

Sweetwater offers interrelated time-sharing programs in both Jackson Hole, Wyoming, and Bear Lake, Utah, projects. The offering has proven to be very successful. Since March 1974, 320 time-sharing interests have been sold. Original prices of $5,900 per unit are expected to rise to $6,500 per interest. The fee simple time-sharing interests run for five nonconsecutive weeks per year. An owner may divide his vacation time between Bear Lake and Jackson Hole. Future reciprocal use plans will include units to be built in Park City, Utah. The success of Sweetwater is a remarkable achievement particularly since Sweetwater has limited its sales to Utah residents.

A LOOK AT THE WHOLE PICTURE

To evaluate the success of current time-sharing projects, one must convert the number of time-sharing interests sold into actual whole condominium units sold. While it may sound impressive when a project sells 300 time-sharing interests in six months, if those 300 interests run for only one-week periods, the 300 sales are the equivalent of only six whole units sold. Conversions of the sales records of existing time-sharing projects to actual whole units sold indicate that many of the projects sold only a handful of condominium units in six months from April through October 1974. A notable exception was the Caribbean International Corporation.

Table 1 indicates the approximate sales performance of the time-sharing projects examined above, listing the approximate number of whole units sold per project, the approximate total number of whole units offered, and the time since commencement of sales in months for each project.

TABLE 1

SALES PERFORMANCE OF TIME-SHARING PROJECTS (AS OF DECEMBER 1, 1974)

	Number of Whole Units Sold	*Total Number of Whole Units Offered*	*Time Since Commencement of Sales in Months*
Caribbean International	180	665+	29
El Conquistador	21	700	8
Encore at Long Key	3	10	6
International Resort Membership Club	20	200	6
Ski & Racquet Club at Breckenridge	9	72	6
Lodge at Lion's Head	7	21	5
Brockway Springs	5+	10	9
Hawaii Kailani	157	157+	42
The Kona Billfisher	12	65	5
Matili Village	9	25	5
Snowbird	2	81	9
Sweetwater	32	*32+	8

* Sweetwater's limited partnership time-sharing offering is being sold only on a presale basis. Once all interests in one limited partnership have been sold, a new one is created. The total number of whole units to be offered at Sweetwater has not been predetermined. Market demand will dictate the number of units actually built.

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Sales in all but one or two projects have been unspectacular. In some projects sales have been poor. However, sales of all resort condominiums, time-sharing and more traditional forms alike, have suffered from current economic conditions. And it appears that the sales performance of time-sharing projects has been somewhat better than sales for comparable whole unit resort condominium projects. It is worth repeating again, however, that marketing costs for time-sharing projects are substantially higher than for comparable whole unit developments.

In view of the above, it appears essential that a developer closely analyze his own objectives and the demands of his target market before making a decision to proceed with a time-sharing program. Time-sharing is far from the perfect marketing vehicle. The increased cost of selling time-sharing units can be justified only if they permit a developer to tap a larger market. Careful evaluation of the target market and the developer's goals is required to make the proper determination of whether or not to proceed with a time-sharing program. Too many developers, hoping it will prove to be a safe route through the present troubled times, appear to be leaping before they take a cold hard look at this new concept.

HOW TO CONSTRUCT A TIME-SHARING OFFERING

If the decision is made to proceed with a time-sharing offering, it would be well to keep the following considerations in mind in structuring the offering:

License, Lease, or Fee Simple

The first consideration is whether to offer a fee simple, leasehold, or vacation license type of time-sharing interest. Using a time-sharing license or lease, a number of developers have been able to steer as clear as one can from the securities implications of resort condominiums. However, as noted previously, the SEC is now taking a skeptical view of all types of time-sharing interests. Also, by offering vacation licenses or leases the developer may be able to avoid the registration requirements of the real estate and securities departments of the states in which he plans to market his units. The license and lease also enjoy the advantage of being free from many complexities of real estate ownership such as the potential partition of the property. Because of their legal simplicity, the license and lease are more easily adapted to internal and external reciprocal use programs. Its advocates assert that the vacation license is offered as a "clean sale" of nothing more than a long-term vacation package. The buyer is purchasing a set number of future vacations at today's prices. Many vacationers in Europe, the Caribbean, and Hawaii have found the vacation license to be an attractive and simple alternative to resort property ownership.

On the other hand, the fee simple time-sharing interest offers the benefits of real property ownership in perpetuity. The advantages of ownership will always be attractive to a great many people. The developer making the decision of whether to proceed with a license, lease, or fee simple arrangement must balance the advantages of simplicity against the emotional advantage of a familiar ownership form.

Structuring the Time-Sharing Periods

The time periods offered must be uncomplicated and tailored to the target market. Will prospective purchasers want long time intervals or short ones? Will they want consecutive or nonconsecutive time periods? Some developers, particularly in the Rockies, have opted for comparatively long time-sharing intervals of one to three months. Breckenridge and Sweetwater are examples of these.

Unsold off-season time-sharing interests pose a critical problem for developers who do not have true four-season developments. Consequently, a number of such projects have made the decision to proceed with a nonconsecutive four- to five-week time period with the owner being able to use his unit for one week every two or three months throughout the year. Through this type of program a developer hopes to sell out both the on-season and the off-season at the same time. Multiple-week, nonconsecutive time shares are probably best suited to a development that can draw buyers from a local

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market, as Sweetwater does. People will drive 50 to 100 miles several times a year to spend three to five weeks at a nearby resort, but they are less likely to fly across the country to a distant vacation retreat three to four times a year. Snowbird abandoned its twenty-eight-day program in part because skiers had little desire to spend two of their four weeks at Snowbird during the off-season summer months.

Most developers are moving to shorter one- and two-week vacation intervals. Advocates of this marketing approach contend that a one- or two-week interval is the simplest, least expensive, and thus the easiest package to sell. The fact that Snowbird substituted a one-week time-sharing interval for its former one-month period is indicative of the validity of this theory. It should be kept in mind, however, that the shorter the time period, the more time-sharing interests there will be to sell before a unit may be closed. It is consequently more costly to sell a time-sharing interest for a one-week time interval than an interest for a five-week interval.

Financing the Time-Sharing Project

Financing has been a major problem for time-sharing project developers. Lending institutions have been generally unwilling to extend loans to owners of time-sharing interests. One developer is seeking to solve the financing problem in his development by converting the existing interim financing on the project to permanent financing and offering prospective buyers real estate contracts (land contracts) rather than mortgage financing. Since the time-sharing purchases normally require the financing of only a few thousand dollars, the term of the real estate contract need not exceed three to five years.

Some financing arrangement is essential in most time-sharing developments. Few time-sharing interests are sold at such a low price as to not warrant some sort of financing. Many and perhaps most Americans are used to financing any purchase costing more than a few hundred dollars. As noted by the developer of Kona Billfisher, a project that has offered reasonable interest terms but no financing: "Financing must be provided. We had gone to market thinking that all buyers would pay cash because of the low price tag." To prospective purchasers who are used to buying their cars, furniture, and major appliances on time, the $2,055 price tag of a time-sharing interest is an amount that must be financed if a sale is to be made.

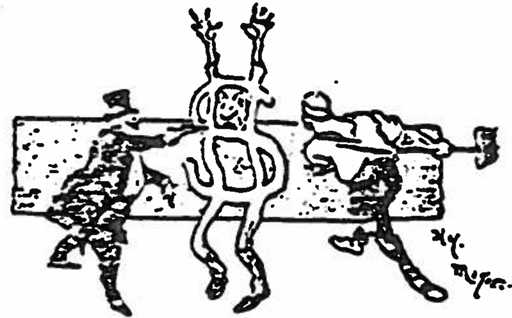
Switching to and From Time-Sharing

If only a few sales are made under the time-sharing program, could a developer revert back to straight condominium sales without risking serious problems? When any fundamental changes are made in a program after some sales have been consummated, the developer could well face serious problems from disgruntled purchasers. A change of the rules of the game in midstream always raises the specter of lawsuits and rescissions by unhappy buyers.

Possibly a developer should insert special provisions into his documents which permit him to convert his project to a non-time-sharing condominium in the event that time-sharing proves to be unmarketable. He may also wish to phase his project in order to reduce the number of units committed to time-sharing prior to determining the market's receptivity to the idea.

Perhaps the best way to proceed with a time-sharing program is to condition the final implementation of the program upon the obtaining of a specific number of time-sharing sales. Once the proper number of commitments is received, the developer could close the sales simultaneously and file the appropriate time-sharing documents.

Brockway Springs presents another cautious approach to the time-sharing idea. Innisfree Corporation, rather than offering a project consisting of thousands of time-sharing interests, offered only 110 interests involving a relatively small number of the total units at the Brockway project.



The Management Vehicle

At present there are three basic approaches to time-sharing management: (1) pure agency; (2) trust indenture; and (3) lease arrangement. Each of the three approaches involves some problems. It is my judgment that the pure agency form has the fewest disadvantages.

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Determining the Unit Mix

At first glance it would seem that whatever unit sizes sell best as condominiums would also sell well as time-sharing units. Generally, two-bedroom units are the most marketable condominiums, with one-bedroom units being the next most popular, and studios and three-bedroom units bringing up the rear. Several time-sharing developers contend, however, that efficiency units are the most salable time-sharing units. Buyers of time-sharing interests, they assert, are buying prepaid vacations more than a resort home. At El Conquistador they have found that it is easier and more sensible to connect studio units than to offer several different sizes of units.

Internal and External Exchange Privileges

The attraction of time-sharing is that it preserves many of the benefits and few of the disadvantages of both resort condominium ownership and vacation package purchase. Internal and external exchange privileges make it possible for a time-sharing program to incorporate the advantage of variety normally available in vacation packages, without losing the benefits of ownership common to resort condominium purchase. The American Land Development Association is offering a new idea for resort condominiums called Resort Condominiums International (RCI). For a $1,000 initial project fee plus $20 per unit, a developer can make available to his purchasers worldwide reciprocal use of the condominium facilities of all member developments for thirty days each year. RCI can serve not only time-sharing programs, but also straight resort home condominiums.

CONCLUSION

Time-sharing appears to be a viable concept. But it is a new concept that will require further refinement. Governmental agencies, both federal and state, have yet to come to grips with time-sharing. It can be expected that the SEC will have more to say about this new idea. While the sales performance of time-sharing as a whole has not been scintillating, it has been respectable, given the current economic and financial climate.

Time-sharing is a sophisticated-appearing new marketing vehicle that may hereafter carry many second-home developers down the road to success. But a careful look under the hood reveals an unproven and relatively complicated piece of machinery that could cause a disconcerting number of problems. Before a developer climbs aboard the time-sharing bandwagon, he should weigh the positive and negative aspects of time-sharing against his own development objectives and the demands of his project's target market.

CLASS ACTION

Cities have always had lower classes. This was true in the middle of the eighteenth century, long before the American Revolution. There were riots in the cities and there was turmoil of one kind or another. The difference between those days and the present is that we now have a middle class large enough and sensitive enough to the welfare of these people to rule out many methods of management which were harsh by any standard. The question is not whether we confront a new set of problems, but whether we can agree upon methods for coping with them. It may just be that American middle-class society prefers to accept the depredations of street criminals, for example, rather than take the necessarily harsh measures that would curb them.

Edward C. Banfield
author of *The Unheavenly City Revisited*
Quoted in *Business and Society Review*, Autumn 1974

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Selling vacation homes in shares requires a carefully thought-out sales plan.

Marketing the Time-Share Unit

Alyce Boster

TIME-SHARING OWNERSHIP is a by-product of the resort condominium which initially became popular as a way to combine vacation pleasures with the informality and comfort of living in one's own home. Purchasers of resort condominium units quickly realized that the limited use they could make of a vacation home made these units very expensive on a cost-per-day basis. This led developers to seek ways to reduce owner costs. One approach is the rental condominium which seeks to partially offset the cost of single ownership by income from transient use of the unit. Another approach—and the subject of this article—is time-sharing, a concept that involves the shared purchase of a vacation condominium unit, with each owner's share expressed in terms of a specified time period for which he obtains full ownership rights, including deed and title. (In a broader sense, time-sharing involves relationships other than co-ownership; these include long-term leases, vacation licenses, and club memberships.)

MULTIPLE OWNERSHIP AND TIME-SHARING COMPARED

The advantages of multiple ownership of vacation property have long been apparent. Examples of two or more families joining together to purchase such limited-use items as pleasure boats or mountain

Alyce Boster is an associate analyst in the San Francisco office of Real Estate Research Corporation, which specializes in economic and real estate analysis for investors, business, and government. Ms. Boster recently completed an exhaustive study on time-sharing developments which centered on the planning and operating experience of these projects, and the identification of the elements critical to their success.

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cabins are not new. With such an arrangement, the purchaser greatly reduces the size of his investment without significantly reducing its benefits; generally, he can use his purchase almost as frequently as he desires while sharing the associated costs. But there are problems inherent in multiple-ownership arrangements. If one owner fails to uphold his financial commitment, his co-owners are responsible.

Time-shared ownership, on the other hand, provides the benefits of multiple ownership while eliminating mutual liability. The time-sharing owner's rights extend to only a certain percentage or share of a condominium unit, and he is protected from any responsibility for other shares in the unit. (One exception to this insulation between co-owners is a federal tax lien against one delinquent owner. It may be enforced against the entire condominium unit, with the unit subject to sale to satisfy the lien if not otherwise paid.) The owner can enjoy all the privileges of vacation home ownership for a limited period of time and at a significantly reduced cost.

THE MARKET POTENTIAL FOR TIME-SHARING

Increasing leisure time, discretionary income, and mobility have caused a tremendous growth in the number of Americans who take vacations and the length and frequency of these vacations. The advantage of assured accommodations in popular areas combined with the comforts and conveniences of home are offered by time-sharing condominiums. While the time-sharing market includes traditional condominium purchasers, it is not limited to the high-income market. Because of the relatively small investment it requires, time-shared ownership can appeal to middle-income, generally younger consumers as well. Time shares are usually priced between $2,000 and $10,000, making the cost comparable to that of a new automobile.

In addition to broadening the market by expanding "affordability," time-sharing may also result in a deeper penetration of the existing market for second homes. Potential consumers who can afford a traditional resort condominium may see the benefits as limited. Because constraints on leisure time restrict use to a few weeks a year, the cash investment may not seem justifiable. Possible income from unit rentals may appear too uncertain or too much trouble. Time-sharing, however, can provide benefits with value more directly in line with its costs.

But even though time-shared vacation homes would appear to have great potential in a market that extends to both high- and middle-income purchasers, consumer acceptance has not been overwhelming so far.[1] Several developers have been surprised and disappointed by slow time-share sales. One reason is the poor quality of early time-sharing projects—a last resort "bailout approach" for unsuccessful traditional condominium projects. But the major obstacle to consumer acceptance appears to be the novelty of the concept and attendant skepticism toward a new "product." Since this new product is also recreational real estate, a field where past examples of unscrupulous developers have been well publicized, the skepticism is increased. Although much of the potential market at present seems willing to sit back and wait and see, attitudes should become more favorable as time-sharing becomes more widespread and establishes a successful track record.

MARKETING STRATEGY

Selling a time-shared second home involves more than the sale of an interest in real property for a fraction of its total cost. To accomplish that sale, the developer must produce a product that appeals to vast numbers of people. Thus, marketing strategy begins with the design of the project and the makeup of the time share to ensure that the development will meet the needs of the market and the specific requirements of the project's location. A time-sharing development in a ski area should differ from one in the tropics not only in physical design but in the number of days per time share, percentage of consecutive days, seasonal share composition, and pricing.

[1] See Ingleby, "Time-Sharing: New Hope for the Second-Home Industry?" immediately preceding this article.

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Unit Design

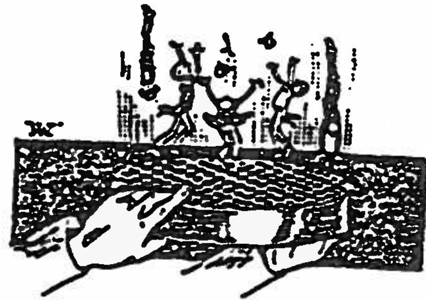
Use patterns of time-share owners differ from those of conventional second-home owners. The time-sharing owner often uses his unit for shorter time periods and for maximizing vacation enjoyment, considering it more like a hotel room than a second home. This use pattern implies smaller units with more efficient utilization of space, usually indicating a large number of studio units. Most importantly, though, physical design must be based on the needs of the market for a particular location so that small units are not built in a location that is usually visited by families on one-month vacations.

Time-Share Composition

The makeup of the time share itself—number of days, season, and price—is crucial to marketing success since the purchaser is not buying a unit but the *use* of that unit during a particular time period. Thus, locational characteristics and visitor patterns must be taken into account in designing the time-share package. Ski resorts require a different time-share composition than beach resorts. Resorts with great seasonal fluctuations in demand require different share packages than year-round resorts. Consider the difficulty of selling a September share in a winter resort or a one-month share where the average stay is one week.

Two methods have been used to deal with heavy seasonal demand differences. A relatively unsuccessful approach has been to artificially force the purchase of off-season time by combining off-season and prime time in a package purchase; for example, the developer might require that a week in November be bought in combination with a week in July. This type of share composition may have contributed to the lack of success experienced by Woodstock at Mammoth, California, since a strong element of purchaser dissatisfaction uncovered in a series of interviews at that resort was the necessity of buying unwanted time periods in order to get a desired period. Both skiers and summer hikers indicated visit preferences in only one season; both regretted not being able to buy enough time in their favored season while having to accept vacation time during another.

Another way to deal with seasonal demand is through differential pricing—pricing the peak season as high as the market will bear and the other seasons at artificially low prices to attract bargain hunters. This method enables the developer to make his investment profitable by selling only what is easiest to sell—the peak season; he does not have to sell out completely in order to profit. Low-season sales then become "gravy," not essential to success and therefore not worthy of any extensive sales effort. Low pricing may actually increase off-season sales substantially as the consumer perceives a bargain. Differential pricing can reduce marketing costs considerably, an important factor in time-sharing condominiums since a single unit may require ten purchasers before it is "sold" from the developer's point of view.



In resort areas like Hawaii, where seasonality is not a factor, nonspecific time plans are sometimes used. Under these arrangements, time-sharing owners reserve their use time by making reservations each year on a first-come, first-served basis. Nonspecific time does have the appeal of flexibility, but the potential for serious problems exists. If a purchaser consistently were unable to reserve his preferred use period, he might become dissatisfied, might not fulfill his financial commitment, and might ultimately sue to regain his investment. These problems should be thoroughly investigated before any project is committed to using nonspecific time periods.

Sales Program

Once the product is designed and packaged, the marketing strategy that emphasizes *consumer (user) benefits* will be the most successful. Since the primary reason for purchase is usually the unit's vacation use rather than possible income from the investment, the sales program should stress the following vacationer concerns:

- Time-sharing offers the purchaser a comfortable, convenient living unit in a popular resort area during the period he will most likely be able to use it.
- The time-shared condominium unit provides the purchaser with all the benefits of a vacation home at a fraction of the cost.

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- Time-sharing eliminates the need for any owner attention to the property when it is not in use.
- Time-sharing eliminates the need for the owner to bring costs in line with benefits by renting unused periods or by using his unit more than he otherwise would.

Even though most time-share purchasers are most concerned with vacation benefits, the role of *investment potential* in consumer motivation should also be recognized as a major selling point. For an investor who desires rental income, time-sharing offers an opportunity to buy only what can be rented easily—the peak season. Equity ownership is the prime appeal to users who are also interested in investment, since they anticipate eventually reselling their time shares at a profit after enjoying vacation use for a number of years.

In summary, the developer should sell his project's value as a vacation home, stressing the recreational advantages of the area and the development as well as the guarantee of accommodations in a popular area. Investment value is a secondary motivation for the majority of purchasers. However, in some very popular resort areas, a high rate of return on investment is possible and this factor should obviously be pointed out.

MARKETING COSTS AND UNIT PRICING

When divided into time shares, a modest 100-unit condominium project may involve selling shares to as many as 5,000 purchasers; a large project could mean selling 10,000 or even 20,000 shares. Selling thousands of anything involves mass marketing, but mass marketing techniques for time-shared condominium units are not well developed. Since the sales effort must also include educating the consumer about an unfamiliar concept, some developers of time-sharing projects report sales costs of 25-45 percent of sales price, compared with the usual 10-12 percent for traditional condominium sales.

The cost of sales obviously has a significant impact on pricing. To cover their increased costs, developers have generally marked time shares up by 25-50 percent over whole unit prices. This markup may still be insufficient; in terms of developer profit, realistic markups may be nearer 100 percent. Such high prices raise serious questions about the product. There is already an awareness on the consumer's part that the total of time shares adds up to more than the whole unit cost. Obviously, purchasers have been willing to accept this discrepancy, possibly because current time-share prices are competitive with vacation costs in a rental unit. But when the cost of their time shares no longer adds up to a long-term vacation saving, buyers will refuse to accept the high markups. In the future, developers will be treading a finer line between what they must charge for a time share and what consumers will pay.

FINANCING THE TIME-SHARING CONDOMINIUM

Obtaining financing, either construction or takeout, for a time-sharing project has been difficult because lenders are not yet familiar with the unique characteristics of the time-share concept. A time share has been considered real estate but has certain features not generally associated with real estate:

- The real property itself—the condominium unit and land under it—may have as many as fifty different owners.
- The value of the time share is based not only on the real estate, but also on the specific time period owned.

These two characteristics play havoc with traditional appraisal and foreclosure techniques. Lenders are reluctant to offer takeout financing on "two weeks in December" which they find difficult to appraise, especially since they are uncertain as to the effectiveness of foreclosure if this becomes necessary. To eliminate the foreclosure problem, developers often must agree to repurchase the time shares of any owner who fails to meet his financial obligations.

Despite these difficulties, however, it is possible to obtain financing for time-sharing projects. Probably most important to success is finding an innovative lender, one who is willing to alter traditional

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techniques and methods to fit the characteristics of an untraditional product. Indications are that once the time-sharing concept is understood and the project and shares properly appraised, lenders will judge a time-sharing development just as any other —on the basis of project quality, feasibility, marketability, and developer strength.

Because of the characteristics of time-sharing, new roles are possible for management. Some projects offer or plan to offer formal exchange programs with other projects—a major management responsibility. In projects using nonspecific time periods, management must handle annual scheduling of use periods. And in order to protect the interests of the other owners, management must be prepared to assist in solving the problems that could arise from an IRS lien on an individual owner's time share to recover back taxes.

Since the continuing value of a time share to a consumer is so closely tied to the quality of project management, an assurance of ongoing management is a primary requisite for approval from the various regulatory agencies. Therefore, the appropriate legal arrangements for management, its required capabilities, and its responsibilities should be part of the original project planning process. Success or failure might ultimately depend as much on the type and quality of management as on physical design, location, and time-sharing composition.

MANAGEMENT OF TIME-SHARING CONDOMINIUMS

Project management is important to any condominium's success. In a time-sharing project, where the number of individual owners can exceed 10,000 and where (during the season) there is virtually 100 percent occupancy of each unit by several different owners, management can make or break a project very quickly. Without professional management to ensure routine cleaning and maintenance, the project could rapidly deteriorate. With the number of owners large and the occupancy periods short, managing a time-sharing project becomes very similar to managing a hotel.

MARKET OUTLOOK FOR TIME-SHARING PROJECTS

We believe that time-sharing ownership will become an accepted, popular form of ownership in vacation resort areas. Conceptually, time-sharing fulfills the needs of a highly mobile, independent, affluent populace. Most problems to date have been the result of the application of traditional condominium development methods to a new and separate industry. As both developers and the public increase their understanding of how time-sharing ownership works, the developer should be able to produce a better product, and consumer acceptance will create an active market demand.

55,000-GALLON STORE

A new use for old oil storage tanks turns up in Texas. Ruel W. Reynolds operates an antique store out of an abandoned 55,000-gallon, three-story oil tank near the town of Putnam. The major alteration: A hole cut in the side for a door.

Wall Street Journal, Nov. 17, 1974

"I hate the term *permanent loan*."

William Leahy, vice-president, Metropolitan Life Insurance Co., speaking at a Practising Law Institute seminar on "Realty Interests: Default and Rescue."

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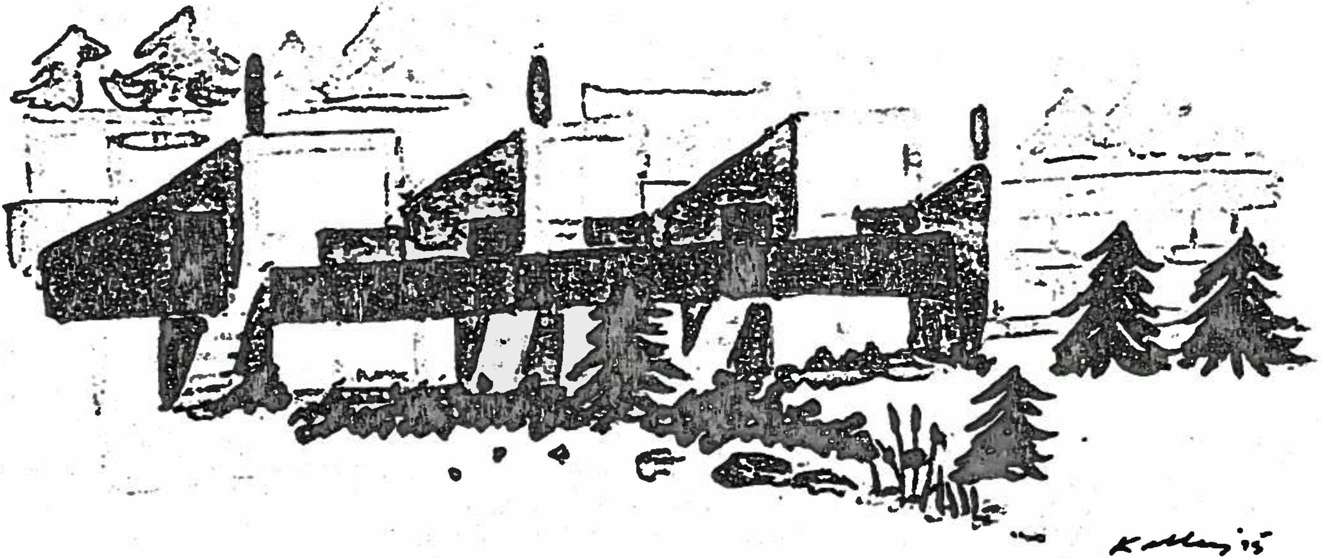
Ownership and nonownership time-sharing analyzed and compared.

EXHIBIT



Time-Sharing Ownership: Possibilities and Pitfalls

Thomas J. Davis

TIME-SHARING, as applied to real estate, is the breaking down of the ownership of a piece of real property among a number of owners, each of whom has the right to use the property for a specified period each year. This fractional ownership and the accompanying right of use may extend for a limited period of time, or may last forever, depending on the method used. This article will not examine the history of time-sharing, or the reasons for its development. Rather, it will discuss the time-shared ownership techniques that are in use today and acquaint the entrant into the field with their relative advantages and disadvantages.

A second, but not necessarily secondary, purpose underlies this article. Several states[1] are studying a statutory basis for time-sharing, and one, Utah, has passed such a statute at the time of this writing.[2]

[1] Hawaii, South Carolina, Maryland, and Colorado.

[2] Utah Condominium Ownership Act §§ 57-8-13.2, 57-8-13.4, 57-8-13.6, 57-8-13.8, 57-8-13.10, 57-8-13.12, 57-8-13.14, 57-8-16.5, 57-8-32.5, 57-8-36 (1975 amendment).

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REAL ESTATE REVIEW, Winter 1976
Real Estate Institute of New York University

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While it delights this writer to see legitimacy granted to the concept in the form of statutory endorsement, it is troubling to read the precise wording of some of the proposed legislation and realize some of the pitfalls that may be created. This article attempts to draw attention to some of these potential problems.

The time-sharing techniques in use today are divided into two main categories: ownership and non-ownership. These in turn have their own variations.

OWNERSHIP APPROACHES TO TIME-SHARING

There are two basic forms of ownership time-sharing. Each derives its name from the company that originally used the form in real estate developments of the early 1970s. "T.S.O." ownership was originally used at a resort at Brockway Springs, California, by the Innisfree Corporation. About the same time, "Interval Ownership" came into being at the Bird Rock Falls resort in Western North Carolina, developed by Interval Incorporated, a Florida development firm.

T.S.O. Time-Sharing

T.S.O. time-sharing consists of a tenancy-in-common undivided interest, together with a side agreement for the use of a specific time period by each of the owners of the undivided interest. For example, twelve purchasers are each granted an undivided one-twelfth interest in a parcel. A separate agreement provides that purchaser *A* will use the property during the month of January each year, purchaser *B* will use the property during the month of February, etc. The agreement sets aside a time period for overall maintenance and refurbishment of the property and, additionally, some period of non-use between each owner's occupancy is set up to allow cleaning and maintenance between use periods.

The separate agreement is usually a master deed or declaration of condominium, if the property is a condominium, or a declaration of restrictive covenants, if it is not. These documents are used because all future grantees are automatically bound by them, thus preserving the time-sharing characteristics of the property.

Several problems exist when the T.S.O. approach is used. The first, and possibly least important, results from the power of the federal government, when a tax lien is levied on one tenant in common, to have the entire property sold to satisfy the lien. While the government may not use the sale proceeds attributable to the interests of the other owners of time periods for satisfaction of the lien of the offending owner, its power to force a sale obviously bars use of the property by the other owners. And since the owners have paid a premium to the developer for his extra marketing efforts in setting up and selling the property as a time-shared project, a sale probably would result in a loss to them. The probability of such an occurrence seems remote; nevertheless, it is important to realize that the problem does exist and a duty of disclosure to prospective buyers exists, if not by statute, then at least by the doctrine of fairness.

A much more imminent danger lurks in the inherent right of partition held by an owner of an undivided interest in real property. This is the right of an owner to petition a court to direct the sale of the property and distribute the proceeds among the various holders of undivided interests. Since each holder of a time-shared period under T.S.O. time-sharing has such a right, the potential that it may be invoked is always present. The result of a successful partition action would be similar to that of a tax lien sale. The time-shared owners would lose the premium that they paid for their time periods, since it is unlikely that sale of the entire unit under a judicial partition would bring a sum anywhere near the original purchase price.

The partition problem can be solved by means of a waiver, in which each owner of an undivided interest agrees to give up his right of partition. In order to be of any value, the waiver must also bind future purchasers of T.S.O. interest in the property. Accordingly, the waiver is generally embodied in either the declaration of condominium or declaration of restrictive covenants, as a *covenant running with the land*. Since the validity of this covenant is crucial to the T.S.O. grantee, it is necessary that the title insurance policy insure its enforceability against each owner. There is insufficient legal basis in many states to allow title insurers comfortably to insure such covenants since they are in derogation of the common law. In California, it was necessary to pass a statute permitting such covenants, in order to allow a T.S.O. developer to secure title insurance. Developers considering the use of T.S.O. ownership for a time-shared project should consult competent counsel in each state.

A final problem in T.S.O. ownership relates to a guarantee of the right of each owner to possession and use of the unit during his T.S.O. time period. It is necessary to obtain the title company's insurance of this right to use, in order to guarantee to the

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purchaser the viability and durability of the T.S.O. agreement. Since the right to use does not exist as a direct result of the conveyance, but rather as a result of the language in the separate agreement, a title policy that insures the ownership of the undivided interest may not *automatically* insure the right to use. Since the right to use is potentially far more important to the purchaser than the undivided interest itself, such a provision in the title insurance policy is crucial. This writer knows of at least one developer who provides such a title insurance policy.[3]

Interval Ownership

Interval ownership is a combination of two forms of conveyances inherent in our English common-law system of real property law. The interval interest consists of a *tenancy for years* followed by a *remainder over* as a tenant in common. For example, the grantee receives a parcel of real property *for a stated time period per year* for a number of years (say forty years), with a remainder over *in fee simple* as tenant in common with all other purchasers of "unit weeks" starting in the forty-first year. Since each of the grantees of interval time periods has a *divided* direct interest in his particular time period, and his right to use is set up simultaneously with, and as a part of, the conveyance, the tax lien and partition problems of T.S.O. ownership do not exist during the initial period of tenancy for years. As a consequence, it is not necessary to have title insurance of the validity of side agreements or covenants against partition.

Generally, the tenancy for years is set up to exist for the period of the estimated life of the facility, with the remainder over in tenancy in common coming into being at the end of such useful life. The period usually is thirty to forty years. Naturally, once the owners become tenants in common at the end of the period, all of the attributes of tenancy-in-common ownership are present. However, by that time, the premium paid for the individual time period has been amortized over the thirty or forty years of use. Thus, the specter of partition and other forced sale of the property, with a resultant distribution of the interval ownership, is dispelled. In fact, these attributes of tenancy in common that come into being after the expected period of use very likely are an advantage to the interval method of conveyance.

The motive for developing the interval-ownership conveyance derives from the rule against perpetuities, a concept of English common law established in our legal system.[4] This exceedingly complex rule states that no interest in property subject to a condition precedent (that is, a condition which must be fulfilled prior to the interest passing to the grantee) is good unless the condition *must* be satisfied, if at all, within twenty-one years after a designated life in being at the creation of the property interest. When this rule is violated, the conveyance of the interest is void. The drafters of the original interval-ownership concept[5] believed that some courts might construe interval ownership, without the ultimate remainder as tenants in common, as a violation of the rule against perpetuities. Accordingly, the tenancy over was added.

Additionally, some attorneys have looked upon interval ownership, devoid of the tenancy over, as a lease. The author believes that this view is incorrect. The nature of a conveyance depends upon the *intent* of the grantor, as set forth in the instrument of conveyance. Accordingly, the statement of the grantor's intent to convey in fee, as opposed to a lease, should suffice to remove any question that the conveyance is actually a lease. However, the addition of the tenancy over dispels any possibility that interval ownership is merely a lease with a vested remainder in the developer.

NONOWNERSHIP FORMS OF TIME-SHARING

There are three principal forms of nonownership time-sharing in use today: vacation licenses, vacation leases, and club membership. Other nonownership methods, at this point in time, are not a significant factor in the overall time-sharing scene. Of the three forms, club membership is the least important.

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[3] LTV's Steamboat Springs, Colorado, project.

[4] While a number of states have significantly modified the rule by statute, it must nevertheless be dealt with. See 2 Real Property Probate & Trust J. 176 (Summer 1967).

[5] The original interval-ownership legal concept was developed by the author in conjunction with Boyce C. Outen, vice-president and assistant legal counsel of Lawyers' Title Corporation of Richmond, Virginia.

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There are three main reasons that developers use nonownership time-sharing rather than an ownership form. The first is the desire of the developer to "inventory" the property that is being time-shared. Although the developer desires to sell an interest in the property, he wants the underlying real estate to revert to him at some point in time.

The second reason is the relative ease of drafting nonownership time-shared documentation. In the ownership forms of time-sharing, the developer conveys all right, title, and interest in the property, including *all* of the incidents of ownership, retaining only those that are specifically excepted within the face of the documentation. The grantee has all rights of ownership, including the right to change the appearance of the property during his period of ownership, unless those rights are specifically denied him through the instruments of conveyance themselves. In the nonownership time-sharing vehicles, the developer retains all of the incidents of ownership, and the purchaser acquires only those rights that are given to him within the four corners of the instrument.

The third reason for using nonownership methods of time-sharing is the belief of many developers that licensed real estate salespeople are not needed and real estate regulatory bodies are effectively *avoided* when a nonownership product is marketed.

Vacation Licenses

The vacation license is the oldest form of time-sharing[6] in the United States. The license is evidenced by an agreement that can be drafted with relative ease between the developer and the purchaser. The purchaser is given the use of a particular piece of real property for a specified time period each year. The life of the license is limited by the instrument and usually runs from five to forty years.

[6] The first vacation license in the continental United States was used by Caribbean International, Inc., a company which operated out of Baltimore, Maryland, in the late 1960s. The company currently is headquartered in Fort Lauderdale, Florida.

The license was developed primarily as a means of avoiding real estate and regulatory agencies and the need to use licensed real estate salesmen. Most developers using the license specifically disclaim that it conveys an interest in real property. This writer believes that such a premise is suspect. The distinction between a vacation license and a lease is difficult to make. Both grant a right to use a specific piece of real property for a specified period of time. Both span a relatively long period of time. Both may effectively cloud the title of the property should the developer desire to sell. Several states[7] have already ruled that the license is actually an interest in real property and therefore must comply with state real estate regulatory agencies.

It appears advisable, in order to avoid unexpected problems, to consider this nonownership technique as a lease, rather than a license, admitting the real estate nature of the transactions, and to comply with the requirements of real estate regulatory agencies.

Vacation Leases

The main distinction between the vacation lease and the vacation license is the admission of the developer in the former case that he is selling an interest in real property and is therefore subject to jurisdiction of the various real estate regulatory bodies. The lease is exactly what it seems. The purchaser acquires a lease of a particular piece of real property for a given period each year. The lease extends for a specified time period. The instrument is entered into between the developer as landlord and the purchaser as tenant. All of the rights and obligations of both parties are set forth within the instrument itself. It has several advantages over the license in that it may be recorded under the recording statutes of the various states, if executed in accordance with their particular requirements. Title insurance may be acquired for the lease, a distinct advantage from a marketing standpoint.

Club Memberships

Club membership appears to be the only nonownership form of time-sharing that has a legitimate claim to being other than an interest in real property, and therefore not being subject to the jurisdiction of the various real estate regulatory bodies. It is impossible to predict the view of the subject that

[7] Maryland, California, Hawaii, and New York.

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the real estate regulatory bodies eventually will adopt. However, club membership appears to be devoid of many, if not all, of the attributes which constitute an interest in real property.

The club membership undertaking usually consists of a nonprofit corporation set up for the purpose of providing time to its members. The time may be provided in a specific resort, or a number of resorts. The member generally receives the right to a specific time period each year for a given term of years, although several developments have featured a floating time period, or an undesignated time period. The rights and obligations of the developer and the member are set forth in the articles and bylaws of the nonprofit corporation (club) and the membership agreement between the developer, acting for the club, and the member.

The real property itself may be owned by the club, or it may be retained by the developer. In the latter case, the developer leases to the club either the property in its entirety or only the *specific* portions needed to fulfill the members' needs.

INCOME TAX ASPECTS OF OWNERSHIP AND NONOWNERSHIP TIME-SHARING

Developers should be aware of the income tax implications of a choice between ownership and nonownership organization for time-sharing property.

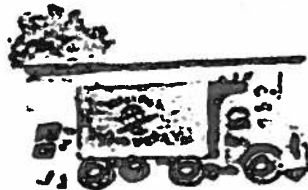
In the discussion that follows, we assume that the marketing costs of a nonownership time-sharing project are substantially the same as those of an ownership project. Similarly, we assume the cost to the purchaser of acquiring a facility is the same, whichever approach is used. Administrative costs, in all likelihood, will not differ on the basis of the type of time-sharing used. While in theory nonownership time-sharing should be priced lower (because the developer retains the reversionary interest and ultimately will receive back possession of the property), the present value of this future interest is normally regarded as insignificant.

In order to compare the tax effects of each type of time-sharing, assume that the cost of acquiring the property is $50,000 per unit; that 50 separate time periods are either sold or leased, the remaining two weeks being kept free for a maintenance period; the cost basis is allocated equally among all weeks being sold, giving a cost basis of $1,000 per unit week. Assume further that the net sale or lease price is $2,000 per unit week.

☐ *Tax effects, ownership time-sharing.* If time-sharing ownership is used, the sales price is $2,000. The cost basis to the developer of the time period sold is $1,000. Net taxable income from the sale of a unit week is $1,000. If the developer is a corporation, its income tax is approximately $480 on the sale.

☐ *Tax effects, nonownership time-sharing.* The drawback in the case of nonownership time-sharing is that the developer may not directly subtract the cost basis from the net income in arriving at his net taxable income. If the $2,000 amount is a lease payment, rather than a sales price, the tax effect changes. Let us assume that the $2,000 lease payment is paid over four years, with the purchaser paying $500 per year. The developer treats each $500 payment as rental income. While a depreciation deduction is available, it will be much less favorable to the developer than the ability, in the case of a sale, to reduce his income by his total basis in the unit.

Assuming the straight-line method of depreciation and a forty-year life, the $1,000 basis of each weekly tenancy is divided by forty, resulting in an annual depreciation deduction of $25. In our example, annual taxable income for each week sold is $500 less $25, or $475 (for each of the initial four years). This gives an income tax liability to the corporation of $228 per year, or $912 over the four-year payout of the lease. This compares quite unfavorably to the $480 tax liability under the ownership method of time-sharing.



Of course, the developer will have a $25 per year depreciation allowance available for each unit week for the remaining thirty-six-year life of the property. But this may be of little solace to a developer who plans no further ventures for the particular corporation after the original development. Since the period for carrying back a net operating loss is limited to three years for a corporation, while the loss may only be carried forward five years, much of the depreciation deduction may be lost completely. Even granting that the developer may have income against which to offset the depreciation allowance each year, good tax planning does not consist of prepaying tax dollars many years in advance.

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This example, it should be noted, is oversimplified. If the facility to be used for the nonownership time-shared development is not a new building, the period of useful life will be less and the annual depreciation allowance will be greater. Also, there may be some rationale for adopting a useful life equal to the period of the nonownership time-share where it is the intent of the developer to demolish the building at the expiration of the period. Undoubtedly other methods, such as the use of a trust, will be found to soften the tax impact of nonownership time-sharing.

TIME-SHARING STATUTES

As of the date of this writing, only the State of Utah has passed a statute setting up a specific time-shared conveyance, although both Hawaii and South Carolina have considered, or are considering, such statutes. The proposed Uniform Land Transactions Act has a specific section (Article 4) dealing with time-sharing. State statutes have favored the interval method of time-sharing. That is to say, the time periods, as set up under the statutes, are separate interests in the time period conveyed, as opposed to the undivided T.S.O. interests.

None of the proposed interval-type statutes have a provision for a remainder over in tenancy in common, or any other method of terminating the time periods at any time in the future. This may prove to be unfortunate. Although the tenancy over was added to the original interval concept merely to meet the needs of the rule against perpetuities, a substantial unanticipated benefit has resulted from its use. The tenancy over allows the property to be partitioned when the time-sharing period ends and upon the conveyance over to the owners as tenants in common. Recent interval documentation provides for an *automatic* partition upon the vote of the time-shared owners at the point of tenancy over, or at designated time periods thereafter.

Without this "escape" mechanism, the time-shared developer may be creating a monster. At the end of its economic life, say forty years hence, the underlying real property will be useless as a vacation facility. It is desirable that the property then be sold and the proceeds distributed among the various owners of time-shared interests. Since *each* of the interval owners has a direct and distinct interest in the property, no disposition of the property may be made without consent of all in the absence of the right to partition.

In a facility containing 100 units, each divided into two-week time periods, 2,500 separate consents would have to be obtained. Of what use is a potentially valuable piece of property with ownership fractionalized among large numbers of people, *all* of whom must agree to any disposition? And if the property may not be effectively disposed of, the owners will face continuing carrying costs. Many of them undoubtedly will refuse to pay for unusable property, and the final result will be a legally tangled and blighted parcel.

In drafting any time-sharing legislation, legislatures should provide a definite mechanism for terminating the time-shared interest, by vote of a majority of the time-shared owners at certain future time periods. In addition, all well-drafted interval documentation should provide for such disposition within the four corners of the instrument itself.

CONCLUSION

All of the time-sharing methods we have discussed are legally viable, if drafted properly. However, developers should understand the various vehicles and, in particular, avoid the misconception that regulation may be avoided merely by labeling. An instrument that sets up a lease is not taken out of the realm of real property law because it is called a license. It goes without saying that in determining which time-sharing method to use, the developer must choose one that the public will purchase.

Not only must the time-shared documentation set up the desired result during the period of estimated use of the time-shared facility, but some reasonable and intelligent provision must be made for ultimate disposition of the property. Legislators should take this into consideration in drafting time-shared statutes.

IS THERE SEX IN CONDOMINIUMS?

Developers of a retirement condominium used a medical seminar approach to lure prospects to Adventura in North Miami Beach. Opener on "Sex over 50" drew over 1,000 and sponsors were unable to survey buyers because of the crush.

—*Buildings Magazine*
Aug. 1975

1,219

PROPOSED AMENDMENTS TO SB 429

EXHIBIT E

I Page 3, strike lines 10-24 and insert:

"and independent parcels within this state on or before July 1, 1981.

2. This chapter does not apply to any time share created in units and parcels within this state prior to July 1, 1981 if a property report has been issued for the project pursuant to Chapter 119 of N.R.S.

3. The time-share instrument of any time-share property created prior to July 1, 1981 may not be amended unless such amendment is first approved by the division."

II Page 10, strike lines 34-39 and insert:

"Sec. 56. 1. The time share project must be assessed as one property.

2. Notices of assessments and bills for taxes must be furnished to the resident agent for the homeowners' association or the management agent."

DEC 15 1980

EXHIBIT F

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
TAX DIVISION
CAPITAL PLAZA
1100 E. WILLIAM
CARSON CITY, NEVADA 89710

RICHARD H. BRYAN
ATTORNEY GENERAL

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TAXATION

November 5, 1980

OPINION NO. 80-40

DocuServ
Doc.# R12-80-4
Price $ 1.00

TAXATION, TIME SHARED CONDOMINIUMS, TAX COLLECTION. Where a single condominium is divided into fifty one-week intervals conveyed in fee simple tenancies in common, the county treasurer may send one tax bill to the owners' association for real property taxes accruing on the whole unit in lieu of separate bills for each interval owner. Where taxes on such a condominium are delinquent, the entire condominium is subject to a sale for the delinquent taxes.

Honorable Michael S. Rowe
Douglas County District Attorney
Douglas County Courthouse
Minden, NV 89423

Dear Mr. Rowe:

This is in response to your written request for an Attorney General's opinion regarding the taxation of time shared condominiums.

FACTS

In your letter, you enclosed copies of a grant deed which conveys to the grantee in fee simple an undivided 1/50th interest as a tenant in common in a condominuim unit. The grantee's interest is described as a "use right easement" of one week's duration. The deed reserves to the grantor exclusive right to use and occupy units and the common areas for sales, administration, development and improvement purposes. The deed also designates a "time share owners' association" as the entity to which the tax statement is to be mailed.

QUESTION ONE

Where a condominium is divided into fifty one-week time shared intervals, each an undivided fee simple tenancy in common, may the Douglas County Treasurer, acting as the ex officio tax receiver, send one tax bill to the time share owners' association for ad valorem real property taxes accruing on the entire condominium unit in lieu of separate bills for each interval owner?

ANALYSIS

At the outset we note that there is no requirement under NRS Chapter 361 that a county treasurer, acting as ex officio tax receiver for taxes assessed on real property, bill any taxpayer individually. NRS 361.480 provides only that upon receiving the assessment roll from the county auditor, the treasurer "shall proceed to receive taxes." Notice to the taxpayer is furnished by publication or by posting, if no newspaper is published in the county, and need only specify the dates when taxes are due and the penalties for delinquency. NRS 361.480(2).

NRS 361.243 provides that condominiums, as defined in subsection 2 of NRS 117.010, shall be separately assessed to the owner thereof. NRS 117.010(2) defines "condominium" as follows:

> 2. "Condominium" means any estate in real property consisting of an undivided interest in common in portions of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building or industrial and commercial building on such real property, such as, but not restricted to, an apartment, office or other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either:
> (a) An estate of inheritance or perpetual estate;
> (b) An estate for life; or
> (c) An estate for years

The above definition indicates that the owner's separate interest is defined spatially. The duration of this separate, spatial interest may be perpetual, for life or for years. Nothing within NRS 117.010(2)

indicates that a temporal division of the spatial interest in a residential building, qualifies, in and of itself, as a separate "condominium" within the purview of the definition.

Inasmuch as the deed in question grants an undivided 1/50th interest to the grantee as a tenant in common "in and to the condominium hereafter described," the grantee's interest is 1/50th of a condominium as defined by NRS 117.010(2). The aggregate of 1/50th interests equals the condominium to be taxed separately pursuant to NRS 361.243, as opposed to the "project" as defined by NRS 117.010(3), which consists of other condominiums that may or may not be divided into temporal interests. Accordingly, the tax liability of the individual grantee of a temporal interest in a condominium must be determined by the general rule regarding cotenants' liability for property taxes.

In that connection, it is well settled that tenants in common are jointly liable to the taxing authority for the entire amount of tax due on their common real property. Victoria Copper Mining Company v. Rich, 193 F.314 (6th Cir. 1919); Willmon v. Koyer, 143 P. 694 (Cal. 1914); Hutchens v. Denton, 98 S.E. 808, (W. Va. 1919).

Essentially, there are two reasons for this rule. First, it is inimical to the prompt collection of revenue for the taxing authority to be required to trace all the interests that may be held in real estate and to seek to hold each owner responsible. Bell v. Myers, 345 A.2d 105 (Md. App. 1975). Second, a cotenant who pays the entire amount of taxes due on the common property is generally entitled to contribution from his cotenants. Marsh v. Edelstein, [illegible] Cal. Rptr. 26, 31 (1970); Palmer v Protrka, 476 P.2d 185, 189 (Or. 19[illegible]). It has been held that the taxpaying cotenant acquires a lien on the subject property to enforce such contribution. McClintock v. Fontaine, 119 F. 448 (1902); Hurley v. Hurley, 19 N.E. 545 (Mass. 1889).

Thus the common law contemplates that the taxing authority may look to one source for the entire tax, leaving the various tenants in common to their own devices for adjustment of their pro rata shares.

As indicated above, the deed in question here conveys a 1/50th interest in the subject real property consisting of an exclusive "use right easement" for 7 days and 7 nights. The deed designates a "time share

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owners' association" to be the recipient of the tax statement, and presumably, the entity responsible for payment of the tax. The question arises whether the grantor, who retains the remaining interest in the subject property, is a tenant in common with its grantees, with authority to designate another entity as the taxpayer. However, in view of the absence of a statutory provision requiring that a tax bill be sent at all to an owner of real property, it is not necessary to address this question. We are of the opinion that so long as the Douglas County Treasurer complies with the notice provisions contained in NRS 361.480(2), it is proper to bill the time share owners' association for all the ad valorem taxes due on a single condominium unit. In the alternative, the treasurer may also properly bill any of the tenants in common of the unit.

We are aware of only one state, Utah, which taxes time share intervals separately. This is specifically mandated by statute. UTAH CODE ANN. § 57-8-27, 1979 Supplement.

CONCLUSION TO QUESTION ONE

It is the opinion of this office that there is no statutory authority in Nevada permitting separate taxation of temporal interests in a single condominium unit. The county treasurer may bill the owners' association or any of the tenants in common for all of the ad valorem real property taxes on a single condominium unit, where the interval owners' interests are in fee simple as tenants in common.

QUESTION TWO

If real property taxes become delinquent on a condominium divided into fifty one-week time shared intervals conveyed to the owners in fee simple as tenants in common, is the whole condominium subject to sale for the delinquent taxes?

ANALYSIS

For the reasons set forth in answer to question one and pursuant to NRS 361.450(1), delinquent taxes on a condominium subject to temporal division into undivided fee simple tenancies in common are a lien against the whole condominium and, if not paid, subject the whole condominium to a tax sale.

NRS 361.243 provides that "the tax on each condominium shall constitute a lien solely thereon." Given our conclusion that the grantee's 1/50th undivided interest is not, in and of itself, a condominium within the purview of NRS 117.010 (2) and that the aggregate of the interests equals the condominium to be assessed, it follows that the aggregate of the interests equals the condominium to which the tax lien attaches.

It has been held that it is not necessary for the taxing authority to segregate the interests of tenants in common prior to selling real property for delinquent taxes. State v. Central Pocahontas Coal Co., 98 S.E. 214 (W. Va. 1919); Hutchens v. Denton, supra. This was so even where one tenant in common remitted his pro rata share of taxes and the sheriff mistakenly sold the property only for the amount remaining. 98 S.E. at 219, 220. Likewise, it has been held that the purchaser of real property sold for delinquent taxes obtains new and complete title to the land in fee simple absolute. Bell v. Myers, 345 A.2d 105 (Md. App 1975); Sautbine v. Keller, 423 P.2d [illegible]7 (Okla. 1967). The grant from the taxing authority is not limited merely to the interests of the persons to whom the property had been assessed for the taxes on account of which it was sold. 345 A.2d at 108.

By analogy, Section 7403(a) of the Internal Revenue Code confers upon the United States the authority "to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability." The Federal courts, save one, in a variety of contexts, have construed this section to allow the Government to sell property in its entirety where the taxpayer owns only a partial interest. U.S. v. Trilling, 328 F.2d 699 (7th Cir. 1964); U.S. v. Eaves, 499 F.2d 869 (10th Cir. 1974) (joint tenancy); U.S. v. Kocher, 468 F.2d 503 (2nd Cir. 1972) (tenancy in common). U.S. v. Overman, 424 F.2d 1142 (9th Cir. 1970) (community property). Contra, Folsom v. U.S., 306 F.2d 361 (5th Cir. 1962).

In the context of the instant situation where a single condominium is broken into 50 undivided fee simple interests, if the owners' association fails to remit the real property taxes in full, the county treasurer may ultimately sell the entire condominium upon compliance with NRS 361.565 and expiration of the redemption period. In that connection, it is important to note that NRS 361.565(6) mandates mailed notice to both the owner or owners and to the person or persons listed as the taxpayer

or taxpayers on the roll. This appears to require mailed notice to each interval owner as tenant in common in fee simple as well as the association as taxpayer.

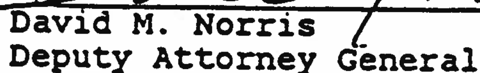
<u>CONCLUSION TO QUESTION TWO</u>

It is the opinion of this office that inasmuch as the one-week intervals should not be taxed separately, it follows that the tax lien attaches to the whole condominium unit and not to the separate interests. Accordingly, if the taxes become delinquent, the entire unit is subject to sale to satisfy the delinquency.

As is apparent from the preceding analyses, Nevada's tax statutes do not clearly address the unique problems inherent in the assessment and collection of taxes levied on time shared condominiums. Accordingly, this office suggests that officials of your County request legislative clarification of the procedure to be followed in taxing this type of property ownership. Included should be a statutory outline of the steps to be taken in notifying owners of time shared condominiums and other similar properties when tax bills are initially issued as well as when they become delinquent.

Respectfully submitted

RICHARD H. BRYAN
Attorney General

By 
David M. Norris
Deputy Attorney General

RHB:DMN/law