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Timesharing and Consumer Protection: A Precis for Attorneys

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TIMESHARING AND CONSUMER PROTECTION: A PRECIS FOR ATTORNEYS

PATRICK J. ROHAN† & DANIEL A. FURLONG††

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I. INTRODUCTION

This Article serves as a guide to attorneys counselling potential timeshare condominium purchasers.¹ Given the nature of a

1. The rapid growth of timesharing is attributable to several factors. The concept dovetails with the mobility of our society. Timesharing holds the potential for multiplying promoter profits because of the splintering of every single unit into fifty-two potential sales.

A large cross-section of the population can afford to purchase one or two weeks of vacation properties out of their savings, because the price range of such intervals approximates the price of a new automobile. The low cost obviates the necessity for permanent mortgage financing, enabling the developer to ignore fluctuations in the availability of mortgage money and varying interest rates. The dollar volume of timeshare offerings attests to these conclusions.

Timesharing has become one of the fastest growing areas in real estate. A recent Wall Street Journal article estimates that, in 1982 alone, sales of such interests were well over the \$1.5 billion mark, up from \$1.3 billion in 1981. See Wall St. J., June 22, 1982, at 1, col. 1. As of 1982, there were over six hundred timeshare resorts in the United States, with a quarter of a million families participating. See August, *Clockwork Condo: The Time-Sharing Condominium Stumbles Into Court*, 11 REAL EST. L.J. 203 (1983); Bloch, *Regulation of Timesharing*, 60 U. DET. J. URB. L. 23 (1982); Eastman, *Time Share Ownership: A Primer*, 57 N.D.L. REV. 151 (1981); Ellsworth, *Condominiums Are Securities?*, 2 REAL EST. L.J. 694 (1974); Ellsworth & Prendergast, *Securities Maze Awaits Resort Time-Share Offerings*, 10 REAL EST. REV., Spring 1980, at 59; Gunnar, *Regulation of Resort Time-Sharing*, 57 OR. L. REV. 31 (1977); Hart & Pfrommer, *Financing the Time-Share Project*, 12 REAL EST. REV., Fall 1982, at 72; Pollack, *Time-Sharing, or Time Is Money But Will It Sell?*, 10 REAL EST. L.J. 281 (1982); Smith, *Urban Time-Sharing: A Major Growth Area*, 12 REAL EST. REV., Summer 1982, at 69; Comment, *Time-Share Condominiums: Property's Fourth Dimension*, 32 ME. L. REV. 181 (1980) [hereinafter cited as Comment, *Fourth Dimension*]; Comment, *Legal Challenges To Time Sharing Ownership*, 45 MO. L. REV. 423 (1980) [hereinafter cited as Comment, *Legal Challenges*]. See generally M. HENZE, THE LAW AND BUSINESS OF TIME-SHARE RESORTS (1982); R. POWELL, 4B POWELL ON REAL PROPERTY § 633.34[6] (1981); 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW AND PRACTICE §§ 17C.01-02[F] (1983) [hereinafter cited as ROHAN & RESKIN]; THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING (P.L.I. Real Estate Law And Practice No. 220, 1982); Byrne, *Securities Regulation of Time-Sharing Resort Condominiums*, 7 REAL EST. L.J. 3 (1978); Davis, *Time-Sharing Exchange Networks*, 8 REAL EST. REV., Fall 1978, at 42.

The New York State Attorney General's Office has disclosed that since 1980, the office has accepted seventeen Offering Plans for the sale of timesharing interests for filing. The aggregate sales price reflected on the cover of such plans was approximately eight hundred million dollars. There are currently ten timeshare Offering Plans being reviewed

timeshare offering, the attorney's role in this area may be minimal. Purchaser's counsel should note that the developer's offer may not be subject to any meaningful modification: the timeshare condominium documentation may have already been processed through one or more governmental agencies; some units may have already been marketed under the original arrangement; or the transaction may be too complex to tinker with. As a result, timesharing transactions are typically offered to the public on a "take it or leave it" basis.

Nevertheless, the attorney plays a significant role because lay purchasers may have little understanding of the economic and legal ramifications of a particular timeshare offering. Given that the project may be situated in a remote vacation area, and that the purchaser's investment may be too small to warrant hiring local counsel if problems arise at a later date, clients must enter into a timeshare investment with their eyes wide open.

This Article examines the history of timesharing, along with the statutes, regulatory measures, and model acts that have evolved in the past two decades. Developers' concerns, which may influence the nature of the offering to the purchaser, are also noted where applicable. The Article concludes with an analysis of the common pitfalls found in timesharing arrangements.

II. "TIMESHARING"—"INTERVAL OWNERSHIP"—"VACATION LICENSES"—WHAT'S IN A NAME?

Investment in a timeshare condominium is typically offered to buyers under such labels as "timesharing," "interval ownership," or "vacation licenses." The public has a grasp of the central idea of timeshare ownership and considers such labels tantamount to brand names for a single commodity. Nevertheless, timeshare projects may take one of a dozen or more legal formats. Each legal form affects the project's structure, as well as the rights and obligations of the individual participants. Accordingly, purchasers' counsel must begin their analysis with a review of the project structure. In many instances, the offering will involve a complex form of tenancy in common in real property, with or without a condominium arrangement as an overlay. In other instances, the offering will not involve a fee simple interest and the participants

for filing. The value of such offerings is approximately two hundred twenty-five million dollars. Most of the offerings involve the sale of fee interests while three offerings involve interests in cooperative corporations and four involve the "right-to-use" type ventures.

may purchase a lease, license, or contractual rights and obligations.

A. Real Property Interests

Timesharing arrangements may involve the conveyance of a "timeshare estate."² The ownership interest is evidenced by a deed and may be covered by title insurance. At least two types of "fee" timesharing arrangements are currently marketed: time span ownership and interval ownership.

Time span ownership is an adaptation of the traditional tenancy in common ownership. Individual use periods, typically one week units, are established in covenants, conditions, or agreements, which are separate from the deed evidencing the ownership interest. The buyer receives an undivided interest in the particular unit. A separate agreement establishes the time period when the buyer may use the property. The owner irrevocably waives his right to partition. Thus, a participant cannot sever his joint ownership of the property.³

The second type of "fee" timeshare ownership is interval ownership. Under this type of ownership, a separate agreement establishing the use period of each owner is unnecessary. A revolving estate for years is conveyed to each owner. The purchaser actually owns the unit for a specified period of time each year for a designated number of years. At the end of the period of years, which approximates the useful life of the property, the estate for years reverts to a tenancy in common. When all of the owners become tenants in common, their percentage interests are proportionate to the number of weeks they owned the units.⁴ At the end of the

2. The Model Real Estate Time-Share Act (MRETSAs), originally approved as a uniform act by the National Conference of Commissioners on Uniform State Laws of 1979 and officially changed to a model act in August 1980, defines a "time-share estate" as follows:

[a] right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof.

MODEL REAL ESTATE TIME-SHARE ACT § 1-102(14), 7A U.L.A. 262 (Supp. 1983) [hereinafter cited as MRETSAs].

3. 1 ROHAN & RESKIN, *supra* note 1, at § 17C.01A. Irrevocable waiver of the right to partition is a departure from the traditional concept of tenancy in common. In tenancy in common, a sale of property or physical partition may be brought about by judicial proceedings where the co-tenants have a falling out. *Id.*

4. *Id.*

interval ownership term, partition is allowed, thereby enabling the owners to dispose of the real property.

B. Non-Real Property Interests

Non-real property forms of timesharing usually involve some type of right-to-use interest.⁵ These forms of timesharing are often marketed to the public as “vacation license,” “vacation lease,” or “club membership” timeshares. Contractual relationships, rather than a conveyance of an interest in real property are involved. The documentation, as well as the participants’ rights and obligations, will vary significantly from project to project.

The most popular type of non-ownership timeshare is the vacation license. This form of timesharing is widely used for vacation resort properties. The license grants the buyer the right to use a particular unit for a specified number of weeks. This right continues for a designated number of years. The vacation lease resembles the vacation license, but allows the buyer to sublet or transfer his rights thereunder. The lease may also designate a particular unit that will be available to the participant. The club membership timeshare involves the purchase of a membership which enables the buyer to stay at the project for a specified period of time each year. The club, in turn, owns or leases a building or resort property for the benefit of its members.

The various types of right-to-use timesharing were developed to escape federal and state regulations governing the marketing of securities or interests in real property. In many jurisdictions, however, legislation or regulation has closed this loophole. For example, some localities have imposed stringent regulations on right-to-use arrangements, compared with minimal regulation on ownership arrangements. This regulatory disparity can be attributed to the ephemeral character of the right-to-use concept. Already, confusion has arisen over whether the right-to-use form creates an interest in real property.

C. Cooperative Interest

A “timeshare cooperative” is a cross between real property and non-real property timesharing forms. The timeshare cooperative

5. MRETSAs defines a “time-share license” as “a right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, not coupled with a freehold estate or an estate for years.” MRETSAs § 1-102(18) (Supp. 1983).

concept involves a cooperative corporation which owns or leases the real estate. The timeshare owner buys shares of stock in the corporation; the number of shares varies according to the size of the unit, the length of the annual use period, or some other yardstick. Individual use periods are set forth in the proprietary lease.⁶

There are many advantages to the timeshare cooperative. Absent other legal complications, developers will not have to register a timeshare cooperative with the Securities and Exchange Commission, because federal securities laws do not apply to cooperative stock.⁷ Thus, the developer avoids the considerable expense involved in registering stock and complying with securities laws. The developer may also receive capital gains treatment on the conveyance of title to the cooperative housing corporation. Unlike a condominium developer, who is a "dealer" because of the multiplicity of sales, a developer who structures his timeshare as a cooperative makes only one sale. The property is transferred to the cooperative corporation in exchange for all the monies paid into the corporation by subscribers. Assuming the requisite holding period, capital gains treatment should result.

Another advantage of a timeshare cooperative lies in the developer's ability to convey the property subject to a favorable existing mortgage, assuming the existing mortgage does not contain a due on sale clause. Timeshare units must be delivered to purchasers free and clear of all liens and encumbrances. Finally, a cooperative corporation may refinance its mortgage debt with greater ease than a condominium project, which requires a unanimous vote of all the condominium unit owners. The cooperative's board of directors may refinance the building's debt without obtaining the approval of all the shareholders.

D. Ownership v. Non-Ownership: A Comparison

There are obvious advantages and disadvantages attendant to both real property and non-real property forms of timesharing. With timeshare ownership the buyer obtains a fee interest in the

6. The following is a sample provision in an Interval Proprietary Lease dealing with the allocation of shares and assignment of use periods:

WHEREAS THE INTERVAL LESSEE is the owner of _____ shares of stock of the INTERVAL LESSOR (the cooperative corporation), to which this Interval Lease is appurtenant and which have been allocated to Week # ____ in Unit _____.

See 1 ROHAN & RESKIN, *supra* note 1, at § 17C.01A n.3.

7. See *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975); *Grenader v. Spitz*, 537 F.2d 612 (2d Cir. 1976).

property and can deduct his interest and real estate tax payments. A build-up of equity occurs and the value of the property may increase. The buyer may also sell or lease his interest, if the project's documentation permits. Disadvantages of timeshare ownership include the usual burdens of fee ownership, such as the obligations to maintain and repair the property. The owner must also pay real property taxes.

The advantages of a non-ownership timeshare arrangement include the real or imagined escape from the burdens accompanying fee ownership. Several disadvantages exist, however, including the loss of tax shelter, absence of equity, and the inability to sublease.

E. Exchange Programs

Exchange programs are integral to the acquisition of timeshare interests. Exchange programs enable a participant to trade the use of his timeshare interval for time at another resort. Frequently, a developer subscribes to an independently operated exchange service to provide buyers with an opportunity to exchange for time in other timeshare projects.

Timeshare interests become more marketable if a purchaser can avoid returning to the same resort year after year. This selling feature was initially implemented through rental agencies or pools which furnished the participants with a mechanism for periodically renting their space to third parties. The real solution, however, arrived with the creation of various types of exchange programs or services.

In an exchange program, the developer pays a membership fee to the service. Participating timeshare owners become individual members by paying an annual fee to the exchange service. When individual members wish to exchange their time periods, they apply to the exchange program, indicating the time period and location desired as well as the time period and location offered in exchange. Two distinct methods to effectuate such exchanges have emerged: the "space bank" and the "interval selection."

In the "space bank" method, all individual members who desire exchanges place their time periods in a "bank." A "depositor" can withdraw a similar amount of time at another resort, simultaneous with or subsequent to his deposit, as he desires. The drawback of this system is obvious. Similar time periods at different locations have varying degrees of appeal and value. Moreover, the more desirable time periods will be withdrawn quickly, while the less

desirable periods may stay on "deposit" indefinitely. Attempts have been made to rectify this imbalance by restricting a member's right to "trade up," or by imposing a charge on any member withdrawing a more desirable time period than he is depositing with the bank.

The "interval selection" method of exchanging timeshare periods closely resembles a barter system. Individual members submit to an exchange service a list of time periods which they would exchange for their own time interval in order of preference. The service then attempts to find a suitable match for that member. Three or four exchanges may be involved to accomplish the desired goal.

The two leading timeshare exchange programs are "Interval International" and "Resort Condominium International." The former uses the "interval selection" method, while the latter employs the "space bank" method. While the opportunity to exchange one timeshare interval for another has facilitated sales, exaggeration of the realistic prospects for such an exchange have constituted the largest element of marketing fraud in the timeshare field.

III. FEDERAL AND STATE MEASURES APPLICABLE TO TIMESHARING VENTURES

A. *Federal Securities Regulation*

Whether federal securities regulations apply to timeshare offerings is uncertain. Notwithstanding the uncertainty, securities regulations apply if the venture is structured so that it may be classified as an "investment contract."

Under the Securities Act of 1933,⁸ the definition of a security includes an "investment contract."⁹ The starting point for defining an investment contract is the Supreme Court's opinion in *SEC v. W.J. Howey Co.*¹⁰ In *Howey*, the Court defined an investment contract as:

[A] contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.¹¹

8. 15 U.S.C. §§ 77a-77bbbb (1976).

9. *Id.* § 77b(1).

10. 328 U.S. 293 (1946).

11. *Id.* at 298-99; see *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344 (1943).

Subsequent decisions have modified the *Howey* test. In *SEC v. Glenn Turner Enterprises*,¹² the Ninth Circuit Court of Appeals held that an investor may participate in an enterprise to a limited extent, as long as the efforts of others are “undeniably significant.”¹³ In *United Housing Foundation, Inc. v. Forman*,¹⁴ the Supreme Court further limited the *Howey* test by distinguishing the expectation of profits from the personal use or consumption of the item purchased. In *Forman*, the Court held that the sale of shares in a nonprofit housing cooperative project did not involve an investment contract, stating: “What distinguishes a security transaction—and what is absent here—is an investment where one parts with his money in the hope of receiving profits from the efforts of others, and not where he purchases a commodity for personal consumption of living quarters for personal use.”¹⁵ The test enunciated in *Forman*, variously known as the “investment contract test,” the “federal test,” or the *Howey-Forman* test, is adhered to by a majority of states.¹⁶

Other jurisdictions have developed a different method of determining what constitutes an investment contract—the “risk capital” test. While similar to the *Howey-Forman* test, the risk capital test substitutes the expectation of “valuable benefits” for the *Howey-Forman* requirement of “profits.” As stated in *State v. Hawaii Market Center*,¹⁷ the risk capital test contains four elements to determine the existence of an investment contract:

- (1) An offeree furnishes initial value to an offeror, and
- (2) A portion of this initial value is subjected to the risks of the enterprise, and
- (3) The furnishing of the initial value is induced by the offeror’s promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and
- (4) The offeree does not receive the right to exercise practical and actual control over the managerial decision of the enterprise.¹⁸

12. 474 F.2d 476 (9th Cir.), *cert. denied*, 414 U.S. 821 (1973).

13. 474 F.2d at 482.

14. 421 U.S. 837 (1975).

15. *Id.* at 858; *see also* Grenader v. Spitz, 537 F.2d 612 (2d Cir. 1976) (purchase of shares in housing cooperative constituted real estate transaction not purchase of investment securities).

16. *See* Byrne, *supra* note 1, at 7-8.

17. 52 Hawaii 642, 485 P.2d 105 (1971).

18. *Id.* at 646, 485 P.2d at 109. One commentator states that the test was first sug-

The risk capital or *Hawaii Market Center* test, when used in conjunction with the federal test, is perhaps the more important one for timeshare developers. States that have adopted the *Howey-Forman* test¹⁹ and concurrently apply the *Hawaii Market Center* test may consider the use of the timeshare unit as a "valuable benefit." That benefit will accrue to the purchaser and may be one which induced the purchase.²⁰ The structure of a particular timeshare offering will determine how much influence a purchaser has in the project's decision-making process. This factor will influence a risk capital state's view of the amount of risk²¹ to a purchaser's rights in exercising any "actual and practical control."²²

The Securities and Exchange Commission (SEC) position on whether condominium or timeshare offerings constitute investment contract securities is difficult to discern.²³ In 1967, the SEC took its first enforcement action against a condominium offering.²⁴

gested in Coffey, *The Economic Realities of a 'Security': Is There a More Meaningful Formula?*, 18 CASE W. RES. L. REV. 367 (1967). See Byrne, *supra* note 1, at 6-7; see also *Silver Hills Country Club v. Sobieski*, 55 Cal. 2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961) (sale of country club memberships constituted securities transaction).

19. States which have adopted the federal test include Alaska, California, Hawaii, Oklahoma, Oregon, and Washington. See Bloch, *Regulation of Timesharing*, TIMESHARING II (Urb. Land Inst. 1982), reprinted in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 289, 301 (P.L.I. Real Estate Law And Practice No. 220, 1982).

20. Timeshare advertising campaigns which stress the dollar savings of timeshare units over traditional vacation costs or accommodations have led to findings of sufficient benefits for the offerings to be considered securities in at least two states. See, e.g., *In re Vacation Internationale, Ltd.*, [1977-1978 Transfer Binder] BLUE SKY L. REP. (CCH) ¶ 71,287 (March 15, 1976); 1975 Op. Nev. Att'y Gen. 186, cited in Byrne, *supra* note 1, at 11-12.

21. Risk factors examined may include whether the unit owners' association can protect purchasers' interests and the financial stability and history of the developer. See Bloch, *supra* note 19, at 300-01. Higher risk has sometimes been found for offerings of timeshare units in conjunction with a public business such as a hotel, where the investment is subject to the hotel's successful operation. Byrne, *supra* note 1, at 10.

22. The amount of a purchaser's control will also depend upon the structure of the particular timeshare project. The involvement of the developer is a key factor and may depend to a large extent upon whether the interests sold are fee simple or licenses.

23. For a discussion of whether condominiums are securities, see Berman & Stone, *Federal Securities Law and the Sale of Condominiums, Homes and Homesites*, 30 BUS. LAW. 411 (1975); Clurman, *Condominiums As Securities: A Current Look*, 19 N.Y.L.F. 457 (1974); Dickey & Thorpe, *Federal Security Regulations of Condominium Offerings*, 19 N.Y.L.F. 473 (1974); Ellsworth, *supra* note 1, at 694; Rohan, *The Securities Law Implications of Condominium Marketing Programs Which Feature A Rental Agency or Rental Pool*, 2 CONN. L. REV. 1 (1969); Rosenbaum, *The Resort Condominium and the Federal Securities Laws—A Case Study In Governmental Inflexibility*, 60 VA. L. REV. 785 (1974); Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective*, 62 GEO. L.J. 1403 (1974); Comment, *Condominium Regulations: Beyond Disclosure*, 123 U. PA. L. REV. 639 (1975).

24. Hale KaaNapali Apartment Hotel Dev. Co., Registration Statement No. 2-25489

The SEC held that the offer and sale of condominiums, in conjunction with the offer to have the unit operate as part of a resort hotel, was the offer and sale of a security within the meaning of the Securities Exchange Act of 1934.²⁵ The SEC ordered the developer to refrain from any further sales pending registration and to offer rescission to those who had already purchased.²⁶ Months later, the SEC addressed the issue of whether rental pool arrangements fell within the auspices of the Securities Act of 1933,²⁷ indicating that such arrangements satisfied the *Howey* definition of investment contract securities.²⁸

In 1973, the SEC issued Release Number 5347, which contained an outline of the types of condominium offerings that would be considered offers of securities.²⁹ Release Number 5347 remains the most complete statement of the SEC position on condominium offerings. The response of developers to the Release was swift. The SEC immediately received many requests for no-action letters to clarify questions raised or unanswered by the Release. One of the earliest SEC responses was the *Big Sky of Montana*³⁰ no-action letter,

(effective date April 13, 1967), discussed in Gunnar, *supra* note 1, at 36 n.24; see Securities Exchange Act of 1934, §§ 1-10 (codified at 15 U.S.C. §§ 78a-78j (1976)).

25. Hale Kaanapali Apartment Hotel Dev. Co., Registration Statement No. 2-25489 (April 13, 1967).

26. *Id.*; see Ellsworth, *supra* note 1, at 695.

27. 15 U.S.C. §§ 77a-77bbbb (1976).

28. See SEC Securities Act Release No. 4877, [1966-1967 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 77,462 (Aug. 8, 1967).

29. SEC Securities Act Release No. 5347, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,163 (Jan. 4, 1973). The Release states:

In summary, the offering of condominium units in conjunction with any one of the following will cause the offering to be viewed as an offering of securities in the form of investment contracts:

1. The condominiums, with any rental arrangement or other similar service, are offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, from rental of the units.
2. The offering of participation in a rental pool arrangement; and
3. The offering of a rental or similar arrangement whereby the purchaser must hold his unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his occupancy or rental of his unit.

Id.

The Release was based in part on the report of the Real Estate Advisory Committee, also known as the Dickey Committee, which was established in 1972. The stated purpose of the Committee was to assist the SEC in reviewing its disclosure procedures and policy objectives in the area of real estate security interests. See Real Estate Advisory Comm. Report, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,265 (Oct. 12, 1972); see also Ellsworth, *supra* note 1, at 695-96; Gunnar, *supra* note 1, at 36-37.

30. *In re Big Sky of Montana, Inc.*, SEC No-Action Letter (Apr. 13, 1973). The com-

involving a condominium offering with a rental pool arrangement. Other no-action letters on timeshare offerings followed Release Number 5347. For example, the SEC in its no-action letter to the Innisfree Corporation³¹ found no requirement for registration where timeshare purchasers were merely offered assistance in renting their units.³² The SEC has been consistent in not requiring registration where the offering consists only of a membership, vacation license, or right-to-use interest.³³

In 1977, the SEC issued a letter regarding a timeshare offering by Vacation Internationale, Ltd.³⁴ (the Company). The Company's proposal offered the use of condominiums at several resort locations, in segments of two weeks or more, through the purchase of a vacation timeshare (VTS) interest with a term of forty years. The Company would be responsible for management of the program and facilities, while VTS owners would be free to sell or assign their interests.

In its response to this proposal, the SEC stated that a VTS inter-

plete text of both the SEC no-action letter as well as the Big Sky request letter may be found in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 199-203 (P.L.I. Real Estate Law And Practice No. 220, 1982).

The no-action letter responded to the developer's proposal that a division of Big Sky would act as a separate rental agent for each condominium owner, with net proceeds to be remitted directly to each owner from the rental of his unit. The proposal did not require that units be available for rental or at a designated time. The proposal did not permit owners or their agents to rent their units independently. Condominium sales were to be made by salesmen from another division of Big Sky, which was not connected with the rental management division. The salesmen were to be instructed to respond to inquiries by prospective buyers by telling them that rental agents were available in the area and that a division of Big Sky was one such agent. Salesmen also were to make no representations regarding income or tax benefits, nor to mention actual or estimated rental changes. Big Sky was to offer a right of rescission to any purchaser to whom such representations were made. On the basis of these facts, the SEC stated it would not recommend action if the interests were offered without registration under the Securities Act of 1933. *Id.*

31. *See In re The Innisfree Corp.*, SEC No-Action Letter, [1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,398 (May 7, 1973).

32. *Id.*

33. *See, e.g., In re Bronze Tree Club*, SEC No-Action Letter (May 12, 1976), *reprinted in* THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 207 (P.L.I. Real Estate Law And Practice No. 220, 1982) (club memberships conferring right-to-use facilities; no right to profits or proceeds; no interest in property or assets of Club; offered with emphasis on use of facilities; no profit on resale); *In re Caribbean Beach Club, Inc.*, SEC No-Action Letter, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 78,819 (May 25, 1972) (vacation license arrangement where developer may rent accommodation for own use if purchaser does not use so long as purchaser receives no profits from hotel operation and purchaser may not resell license at profit).

34. *See* 1 ROHAN & RESKIN, *supra* note 1, at § 17C.01D(3) n.21.

est “may well be” an investment contract security.³⁵ It focused on the forty year term, free alienation, and importance of promoter management of the facilities and program.³⁶

The Company requested that the SEC reconsider its action. In 1979, the SEC responded to the Company’s request by withdrawing its 1977 finding. The 1979 letter provided that the VTS interests were not securities within the definition of the 1933 Act.³⁷ The SEC based its opinion on the finding that VTS interests were purchased to acquire vacation accommodations for personal use, rather than investment purposes. Given the complexity of financing arrangements and the multitude of ownership plans in timeshare projects, the SEC stated in its 1979 letter that it would no longer respond to requests of developers for no-action letters.³⁸

The SEC ordered its staff not to respond to requests for no-action letters or interpretive requests in the timesharing area. As its rationale for this policy, the SEC stated that the financing arrangements surrounding timesharing plans were too complex and the legal arrangements too varied.³⁹

*B. Miscellaneous Federal Statutes and Regulations*⁴⁰

1. FTC Regulation—Unfair or Deceptive Acts or Practices

The Federal Trade Commission (FTC) has jurisdiction over any individual or corporation engaged in the sale of land in interstate commerce.⁴¹ In 1975, the FTC first exercised its jurisdiction in the

35. *Id.*

36. *See id.*

37. *See In re Vacation Internationale, Ltd.*, SEC Action Letter, [1979 Transfer Binder] FED SEC. L. REP. (CCH) ¶ 82,133 (Jan. 5, 1979).

38. *See id.*

39. *See id.*

40. A number of additional sources of federal laws and regulation governing timesharing exist. Although beyond the scope of this article, these laws and regulations include: Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601-2617 (1976); Truth in Lending Act, 15 U.S.C. §§ 1601-1693 (1976 & Supp. V 1981) and Regulation Z, 12 C.F.R. §§ 226.1-29 (1983); Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)-(f) (1976 & Supp. V 1981) and Regulation B, 12 C.F.R. §§ 202.1-1104 (1983); Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301-2312 (1976) and 16 C.F.R. §§ 700-703 (1983); Equal Accommodations Law (Title II of Civil Rights Act of 1964), 42 U.S.C. § 2000a (1976); Fair Housing Law (Title VII of the Civil Rights Act of 1968), 42 U.S.C. §§ 3601-3631 (1976 & Supp. II 1978); and Federal Flood Insurance Act, 42 U.S.C. §§ 4001-4027 (1976 & Supp. V 1981). *See* Schlaifer, *Federal Regulation of Timeshared Property: An Overview of Shared Agency Jurisdiction*, reprinted in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 329 (P.L.I. Real Estate Law And Practice No. 220, 1982).

41. In the *Matter of Horizon Corp.*, 97 F.T.C. 464 (1982), respondent contended that the

timeshare area by commencing an investigation of promoters and vendors of timesharing. This investigation sought to determine whether any individuals or corporations were engaging in unfair or deceptive acts or practices in violation of section 5 of the FTC Act.⁴²

More recently, the FTC has asserted its consumer protection authority in the land sales area. Having received numerous complaints concerning members of the land sales industry, the FTC has found many instances of section 5 violations. In response, the FTC has issued complaints and obtained consent decrees. In an effort to curb future violations of section 5, FTC officials frequently appear at timesharing conferences, outlining potential problem areas to prospective developers and their attorneys.

FTC investigations focus on two aspects of the sales process. The first aspect covers misrepresentations made in connection with the solicitation of customers interested in listening to a project's sales presentation. The second aspect includes material misrepresentations, misleading claims, and failure to disclose material facts during sales presentations.

*In re Market Development Corporation*⁴³ illustrates the types of misrepresentation that occur in the process of generating potential timeshare customers. As part of its "lead generation" program, the Market Development Corporation mailed letters informing a recipient that he had won a free vacation. He subsequently discovered that his vacation was not entirely "free," as an array of nominal financial charges and high pressure sales pitches to invest in a timeshare project were forced upon him.

The FTC held that Market Development Corporation had misrepresented the availability and quality of the prizes it offered. The time limits on acceptance of the prizes or goods, as well as the prospective prize winner's obligation to listen to the sales pitch before receiving the gift or prize, were also misrepresented in the promotional materials. Furthermore, the materials represented

FTC lacked jurisdiction because Congress gave the Department of Housing and Urban Development (HUD) exclusive jurisdiction over the land sales industry when it enacted the Interstate Lands Sales Act, 15 U.S.C. §§ 1701-1720 (1976). The FTC's opinion rejected respondent's contention, stating that neither the statute nor the legislative history behind it purport to grant exclusive jurisdiction over fraudulent land sales to HUD. The opinion concluded that the FTC and HUD serve complementary, rather than coterminous, regulatory roles with respect to interstate land sales practices. *See Matter of Horizon Corp.*, 97 F.T.C. at 860-64.

42. 15 U.S.C. §§ 41-58 (1976).

43. 95 F.T.C. 100 (1980).

that the prize winners were specially selected, when in fact a mass mailing had been used.⁴⁴

The most pervasive misrepresentations made to prospective purchasers concern the potential profitability of the timeshare project. This type of deception includes representations concerning the buyer's ability to resell a unit, atypical past sales figures, and low investment risk. Representations that a timeshare unit will limit future vacation costs while providing a hedge against inflation have also attracted investigation by the FTC. Equally common are misleading claims regarding the nature and extent of present and future development; the quality, location, and availability of timeshare units; and the buyer's ability to exchange use rights in other timeshare projects.⁴⁵

Clearly, any promotional material used for a timeshare project must conform to the advertising standards established by the FTC for land sale offerings. Failure to adhere to these standards can result in protracted litigation as well as fines of up to \$10,000 per violation.⁴⁶

2. *The Holder In Due Course Trade Regulation Rule*

The Preservation of Consumers' Claims and Defenses Regulation,⁴⁷ commonly known as the holder in due course rule, requires that consumer credit contracts for the sale or lease of goods or services contain the following notice:

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.⁴⁸

This rule has been applied to right-to-use timesharing, which the FTC describes as a "novel form of consumer services."⁴⁹ The rule has not yet been applied to fee timesharing. The FTC has stated, however, that the goods and services portion of the timeshare transaction might be compared against the real estate portion of

44. *See id.* at 104.

45. *See* F.T.C. v. Paradise Palms Vacation Club, No. C8111160 (W.D. Wash. 1981); *Matter of Horizon Corp.*, 97 F.T.C. 464, 808 (1981).

46. *See* 15 U.S.C. § 45(m) (1976). The FTC regards failure to comply with the rules as an "unfair and deceptive practice." *Id.*

47. 16 C.F.R. § 433 (1983).

48. *Id.* § 433.2(a).

49. *See* Bloch, *supra* note 1, at 45.

the interest to require compliance with the rule.⁵⁰

3. *Cooling-Off Period*

The Cooling-Off Period for Door-to-Door Sales Regulation⁵¹ provides that a purchaser must be given specific notice of his right to cancel certain purchases during the three business days following the date of the transaction.⁵² The rule applies to a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, in which the seller or his representative personally solicits the sale, and the agreement is entered into at a place other than the seller's place of business.⁵³ The penalty for violation of the rule is a fine up to \$10,000.⁵⁴ To date, the applicability of the cooling-off period rule to timesharing has not been tested in the courts.

4. *Interstate Land Sales Act*

The Interstate Land Sales Act⁵⁵ (the Land Sales Act) requires land developers to make full disclosure in connection with the sale or lease of certain undeveloped, subdivided land.⁵⁶ A developer may not sell or lease lots in a subdivision by use of the mail or any means of interstate commerce. An exception is land for sale or lease registered with the Secretary of Housing and Urban Development and accompanied by a printed property report furnished to the purchaser or lessee before the sales or lease agreement is signed.⁵⁷

The Land Sales Act, which is administered by the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, defines a "lot" as "any portion, piece, division, unit or undivided interest in land located in any state or foreign country if the interest includes the *right to the exclusive use of a specific portion of the land.*"⁵⁸ Section 1702(a)(2) exempts from the Land Sales Act the sale or lease of any improved land on which there is a "residential, commercial, *condominium*, or industrial building, or the

50. *Id.* n.158.

51. 16 C.F.R. § 429 (1983).

52. *Id.*

53. *See id.*

54. 15 U.S.C. 45(1) (1976).

55. 15 U.S.C. §§ 1701-1720 (1976 & Supp. III 1979).

56. *Id.* at §§ 1704-1705 (1976).

57. *Id.* § 1703 (1976 & Supp. III 1979).

58. 24 C.F.R. § 1710.1 (1983) (emphasis added).

sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years.”⁵⁹ Therefore, the vast majority of timeshare offerings appear to be outside the ambit of the Land Sales Act. Nevertheless, counsel should be aware of the Land Sales Act and its possible application, particularly where construction of other facilities may not be completed within two years after the date of the offering.⁶⁰

5. *Mail Fraud*

The federal Mail Fraud Statute⁶¹ prohibits the use of the postal service to carry out fraudulent schemes. The statute does not contain a litany of prohibited schemes and may apply irrespective of whether the particular promotional material contravenes state law. The statute imposes a fine of up to \$1,000 and imprisonment for up to five years for a violation.⁶² Any fraudulent or misleading material on timesharing sent through the postal service may be covered by this statute.

C. *State Regulatory Measures*

1. *Types of Legislation*

State regulation of timeshare offerings involves several types of statutes. Therefore, a developer within a given jurisdiction may find a project regulated by more than one agency or more than one statute. State legislation covering timeshare offerings may exist in a number of areas including: (1) timeshare laws or amendments;⁶³ (2) subdivision laws;⁶⁴ (3) condominium laws;⁶⁵ (4) consumer protection laws;⁶⁶ or (5) “Blue Sky” laws.⁶⁷

To exacerbate the confusion, state legislation affecting timesharing is being enacted and amended at a rapid pace, while administrative regulations and opinions are changing this area of the law on nearly a daily basis. In addition to statutes which may regulate

59. 15 U.S.C. § 1702(a)(2) (Supp. III 1979) (emphasis added).

60. *See id.*

61. 18 U.S.C. § 1341 (1976).

62. *See id.*

63. For example, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Maine, Nebraska, New Hampshire, New Mexico, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, and Virginia.

64. For example, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, and Washington.

65. For example, Louisiana, Maryland, Michigan, and Oregon.

66. For example, New Jersey and New York.

67. For example, Alaska, New York, North Dakota, Oklahoma, Ohio, and Oregon.

the content and registration of an offering, a developer may also have to comply with state statutes covering: (1) the licensing of sales personnel as real estate brokers or sales people, or as securities brokers or dealers; (2) the licensing and taxation of the developer's company; (3) the taxation of the timeshare sales; (4) consumer credit; and (5) usury.

2. State Blue Sky Laws

A timeshare offering may be covered by state Blue Sky Laws if the offering of a timeshare interest is considered the sale of a "security." Under state Blue Sky Laws, securities are generally viewed as agreements by which funds are invested in an enterprise with the expectation that the investment will earn a profit. Agreements that do not involve a profit-sharing venture or participation will not fall within the coverage of state Blue Sky Laws.⁶⁸ Nevertheless, each state's definition of "security" must be carefully considered.⁶⁹ Opinion letters and rulings of state securities commissions shed considerable light on the states' regulation of timeshare offerings. These rulings stem not only from the local Blue Sky Laws, but also from the particular state's view of the *Hawaii Market Center* or *Howey-Forman* definitions of an investment contract.

Several states have ruled that vacation license offerings constitute securities.⁷⁰ The focus has been on the risks involved in the investment, particularly where the timeshare units are offered in conjunction with a hotel operation.⁷¹ An offering which highlights the vacation cost savings may also be treated as a security.⁷²

An opinion letter of the Oklahoma Department of Securities⁷³ (the Department) ruled that a right-to-use timeshare offering con-

68. See BLUE SKY L. REP. (CCH) ¶ 1611.

69. See, e.g., KAN. STAT. ANN. § 17-1252(j) (1981); ME. REV. STAT. ANN. tit. 32, § 751-A(9) (Supp. 1982); MD. CORPS. & ASS'NS CODE ANN. § 11-101(o) (1983); MICH. COMP. LAWS § 451.801(l) (1982); MINN. STAT. § 80A.14(18) (1982); MO. REV. STAT. § 409.401(l) (1982); VT. STAT. ANN. tit. 9, § 4202(9) (1982); WASH. REV. CODE § 21.20.005(12) (1982); W. VA. CODE § 32-4-401(l) (1983).

70. For examples of states addressing the securities question, see BLUE SKY L. REP. (CCH) ¶ 71,294 (Alaska); ¶ 71,287 (Michigan); ¶ 71,200 (Nevada); ¶ 39,721 (Oklahoma). See Gunnar, *supra* note 1, at 40.

71. *Alaska v. Vacation Internationale, Ltd.*, BLUE SKY L. REP. (CCH) ¶ 71,294 (May 27, 1976).

72. *In re Vacation Internationale, Ltd.*, BLUE SKY L. REP. (CCH) ¶ 71,287 (March 15, 1976).

73. Opinion Letter, Okla. Dep't of Securities, BLUE SKY L. REP. (CCH) ¶ 146,642 (May 11, 1981); accord Opinion Letter, Okla. Dep't of Securities, BLUE SKY L. REP.

stituted a security under the Oklahoma Securities Act. In applying a "risk capital" test, the Department found a "common enterprise" in advertised amenities such as golf, fishing, boating, tennis, riding, and skiing.⁷⁴ The Oklahoma Act defined risk capital as an investment of money with the expectation of benefit.⁷⁵ Accordingly, the Department found that the offer of amenities presented definite benefits to the investor. The Department found other benefits in the long-term occupancy arrangement, which included cost-containment features in the initial investment and in maintenance fees restricted by contractual arrangement.⁷⁶ In addition, the Department noted that participants had no voice in the managerial control of the lodge.⁷⁷

In contrast, a formal administrative ruling by the Georgia Commissioner of Securities (the Commissioner) declared that the sale of fee simple timeshare units in a condominium, without a rental pool or other profit-sharing arrangement, does not fall within the purview of the Georgia Securities Act.⁷⁸ The ruling is based on findings that: (1) any return from the purchase of a unit will not result from the managerial efforts of the developer or other designated party, and (2) the purchase was not to be induced by promises of promotional or sales efforts on the investor's behalf.⁷⁹ The Commissioner stated in part:

The manner of offering and economic inducements held out to the prospective purchaser play an important role in determining whether a sale of condominium units involves a sale of securities. In other words, the sale of condominiums, coupled with a rental arrangement, will be deemed to be the sale of securities if the condominiums are offered and sold through advertising, sales literature, promotional schemes or oral representations which emphasize the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, in renting the units.⁸⁰

(CCH) ¶ 146,643 (May 14, 1981); *see also* Letter of Corp. Comm'r, Oregon Dep't of Commerce, BLUE SKY L. REP. (CCH) ¶ 42,657 (Dec. 18, 1973).

74. Opinion Letter, Okla. Dep't of Securities, BLUE SKY L. REP. (CCH) ¶ 146,642 (May 11, 1981).

75. *Id.*

76. *Id.*

77. *Id.*

78. Formal Administrative Declaratory Ruling, Comm'r of Securities, State of Georgia, BLUE SKY L. REP. (CCH) ¶ 18,506 (Feb. 5, 1981).

79. *See id.*

80. *Id.* (citing SEC Rel. No. 33-5347 FED. SEC. L. REP. (CCH) ¶ 1049 (Jan. 4, 1973));

An analysis of the securities regulation of timeshare offerings for each state exceeds the scope of this Article. Nevertheless, the timeshare developer's counsel must carefully analyze the status of regulatory activity within a state, to ascertain whether a timeshare offering must comply with that state's securities laws. If an offering is viewed as a security, the developer will be locked into a scheme of regulation which prevents a buyer from modifying the developer's offer.

IV. MODEL STATUTES AND SPECIFIC STATE TIMESHARING MEASURES

Although the real estate timesharing industry is relatively new, sixteen states have already enacted legislation or promulgated administrative regulations specifically addressing one or more aspects of timesharing. Comprehensive laws regulating the various forms of timesharing have been adopted by Florida,⁸¹ Hawaii,⁸² Virginia,⁸³ Tennessee,⁸⁴ South Carolina,⁸⁵ and Nebraska.⁸⁶

In varying degrees these statutes have been patterned after two model timesharing acts, the Model Real Estate Time Share Act⁸⁷ (MRETSAs), developed by the National Conference of Commissioners on Uniform State Laws, and the RTC/NARELLO model Act⁸⁸ (RTC/NARELLO), drafted jointly by the Real Estate Timesharing Council of the American Land Development Association (RTC) and the National Association of Real Estate License Law Officials (NARELLO). Both model acts are designed to provide uniform timesharing legislation.

Nebraska adopted RTC/NARELLO in its entirety.⁸⁹ The timesharing laws of Florida, Hawaii, Tennessee, and Virginia are based in part on RTC/NARELLO. MRETSAs is the more detailed and complex of the two acts and may provide the basis for second-generation timesharing statutes, once developers, legisla-

see also Maryland Securities Act Release No. 19, BLUE SKY L. REP. (CCH) ¶ 30,561 (Oct. 18, 1974).

81. FLA. STAT. ANN. §§ 721.01-28 (West Supp. 1983).

82. HAWAII REV. STAT. §§ 514E-1 to -15 (Supp. 1982).

83. VA. CODE §§ 55-360 to -400 (1981).

84. TENN. CODE ANN. §§ 66-32-101 to -130 (Supp. 1982).

85. S.C. CODE ANN. §§ 27-32-10 to -230 (Law. Co-op Supp. 1982).

86. NEB. REV. STAT. §§ 76-1701 to -1741 (1981).

87. MRETSAs §§ 1-101 to 5-110 (Supp. 1983).

88. RTC/NARELLO MODEL TIME-SHARE ACT (1979).

89. *See, e.g.*, NEB. REV. STAT. §§ 76-1701 to -1741 (1981).

tors, and regulators acquire experience with the timesharing industry.

Uniform timesharing legislation is desirable for several reasons. First, timesharing is necessarily a multi-state industry. Sales are made in one jurisdiction for property located in another state or in a foreign country. Uniform laws will simplify the evaluation of different projects by prospective purchasers and lenders. Multi-state exchange programs also make uniform timesharing laws more desirable, since purchasers and users are typically from different states.

The divergent perspectives of the two model Acts result in part from the differing viewpoints of their respective authors. The Commissioners on Uniform State Laws prepared MRETSA, which is very detailed. MRETSA offers commentary analyzing the purpose of each section. The commentary provides useful information for the attorney attempting to analyze a timeshare offering. In contrast, RTC/NARELLO was prepared by an association that serves real estate developers. As such, it furnishes developers with considerable leeway in fashioning their documentation.

V. EMERGING PROBLEM AREAS IN TIMESHARING

There are unique economic and legal risks associated with real property co-ownership, particularly with condominiums. In timesharing ventures, these risks are magnified because the number of participants may be far greater than in owner-occupied developments. Moreover, timesharing ventures are typically located in resort areas, far from the year-round home of the participants. Should legal complications arise, the minimal amount of a participant's investment may preclude off-season travel to the site or employment of local counsel in the jurisdiction where the resort is located. Thus, the various elements of legal and financial exposure for the timeshare participant must be anticipated and understood before a decision to purchase is made.

A. *Loss of Investment*

Given the financial risks readily perceived in timesharing, a potential buyer should not proceed unless he can afford the loss of his entire investment. Apart from the risks normally associated with real property ventures during the fragile pre-closing stage, the timeshare participant is at the mercy of numerous third parties

who may fail to fulfill their obligations. The threats from failure of these obligations include: (1) participants who fail to make prompt payment on their financial obligations; (2) management which allows the premises to fall into disrepair; (3) casualty losses which result in damage in excess of the insurance coverage then in effect; (4) real estate taxes which are not paid; or (5) mortgages which enter into default. Furthermore, the management fee may be subject to future increase. In many projects, the developer, as opposed to the timeshare owner, controls future fee increases by the powers reserved to the promoter in the original documentation. Therefore, the annual fee charged by management may escalate to a point where the value of owning a timeshare all but disappears.

B. *Bankruptcy and Mortgage Foreclosure*

The rapid growth of the timesharing industry has resulted, to some extent, from a depressed condominium market. Developers who have constructed large condominium projects may find themselves on the brink of insolvency. Many of these developers are turning to timesharing as a method of achieving financial stability,⁹⁰ while investing a minimal amount of their own capital in a project. As a result, early timeshare projects are prime candidates for bankruptcy litigation and mortgage foreclosure.

Several commentators point out the significant distinction between ownership and non-ownership timesharing in the context of bankruptcy or mortgage foreclosure. In ownership timesharing, individual purchasers are insulated once they have closed title, because they have a property interest in the underlying fee.⁹¹ This, of course, assumes that all participants have purchased mortgage-free property or have arranged for their own financing. In non-ownership timesharing, however, the purchaser cannot protect his investment from bankruptcy or foreclosure, since he remains perpetually dependent upon the solvency of the developer, who holds title.

*Sombrero Reef Club*⁹² illustrates the attempted rejection of timeshare contracts in bankruptcy. In *Sombrero Reef Club*, the principal asset of the debtor was a resort-marina complex in southern

90. See Comment, *Timesharing: A Unique Property Concept Creates the Need for Comprehensive Legislation*, 25 ST. LOUIS U.L.J. 629, 651 n.128 (1981).

91. *Id.*; see also Pollock, *supra* note 1, at 286.

92. *In re Sombrero Reef Club, Inc.*, 18 Bankr. 612 (Bankr. S.D. Fla. 1982).

Florida. Before the bankruptcy reorganization, the debtor marketed a timeshare project and entered into many timeshare purchase agreements.⁹³ The bankruptcy proceeding was commenced before the timeshare scheme was implemented. The debtor requested permission to reject the contracts and sell the real property.⁹⁴

The debtor had offered club memberships to purchasers who paid an initial price ranging from \$1,000 to \$3,000 for the right to use the property for one week per year over a thirty year period. Some of the purchasers paid the purchase price in full, while others were paying in installments.⁹⁵ The court found that the timeshare contracts were all executory, including the ones for which the purchase price had been paid in full, because substantial obligations remained to be performed by parties on either side of the transaction.⁹⁶ Finally, although a sale of the property would be a breach of the contract and a violation of Florida's timeshare statute, the court held that such breach did not constitute grounds for denying rejection. Although the purchasers would have an action for breach of contract, the contracts were rejected pursuant to the federal bankruptcy law, which overrides any state statute that has the effect of frustrating the operation of the bankruptcy law.⁹⁷

C. Federal Tax Liens

A timeshare purchaser also faces the possibility that a federal tax lien⁹⁸ may attach to a delinquent taxpayer's interest in a timeshare condominium and related common areas. An interval

93. *Id.* at 614.

94. *Id.*

95. *Id.* at 614-15.

96. *Id.* at 616. Section 365 of the Bankruptcy Code permits the rejection of an executory contract by a trustee or debtor-in-possession and sets forth the effect on and the rights of parties upon rejection. *See* 11 U.S.C. § 365 (1976). The debtor remained obligated to maintain the property and provide accommodations for many years to come, while the timeshare purchasers had the obligation to pay annual dues. 18 Bankr. at 616. The court stated that the contracts were not contracts for the sale of real property, since no conveyance of the title took place. It found that the timeshare interests were not unexpired leases, since the contract suggested neither a lease nor a landlord-tenant relationship. The court viewed the arrangement as an option to make reservations at a hotel at stated terms. *Id.* at 617-19.

97. 18 Bankr. at 620.

98. *See* I.R.C. § 6321 (1976). Section 6321 provides that, "if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and right to property, whether real or personal, belonging to such person." *Id.*

estate owner is not affected by a federal tax lien upon another owner's interest, because the interest is held in fee rather than in tenancy in common. A timeshare estate which involves co-ownership interests, such as a tenancy in common arrangement, is subject to the threat of a federal tax lien.⁹⁹ Foreclosure of a federal tax lien can force the sale of all co-ownership interests.

Several Circuit Courts of Appeal have addressed the issue of whether the government can force the sale of property held jointly by the delinquent taxpayer. A majority of the circuits¹⁰⁰ hold that section 7403 of the Internal Revenue Code authorizes the government to sell any property in its entirety in which the delinquent taxpayer has an interest and to compensate co-owners out of the proceeds.

In 1979, the Internal Revenue Service (the Service) specifically addressed the implications of a federal tax lien upon a timeshare condominium.¹⁰¹ The Service held that since the interval timesharing interest was recognized under state law as a property right, a lien could only attach to the delinquent taxpayer's interest and not to the other individual's interests in the unit or the common areas.¹⁰² The Service stated that the "taxpayer's timesharing condominium interest is separate and distinct from the other owners' interests in that unit, and, therefore, is capable of being sold without selling the unit itself."¹⁰³ As one commentator notes, "while the potential effect of foreclosure resulting from a federal tax lien would be devastating, the likelihood of such a sale is small. Suits to foreclose pursuant to a federal tax lien are extremely rare."¹⁰⁴ Nevertheless, the tax lien threat, as well as the spectre of subsequent proceedings to enforce a judgment must be fully considered.

D. Partition

Partition provides a legal remedy by which people can free

99. Section 7403(a) authorizes the government to bring an action in federal district court "to enforce the lien . . . or 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." *Id.* § 7403(a) (Supp. V 1981)

100. *See, e.g.,* *United States v. Kocher*, 468 F.2d 503 (2d Cir. 1972); *United States v. Trilling*, 328 F.2d 699 (7th Cir. 1964).

101. Rev. Rul. 79-55, 1979-1 C.B. 400.

102. *Id.*

103. *Id.* at 401.

104. Comment, *Legal Challenges*, *supra* note 1, at 431.

themselves from an undesirable common ownership arrangement.¹⁰⁵ Courts will compel partition of commonly owned property upon the petition of one co-tenant, regardless of the hardship or injury to the other co-tenants.¹⁰⁶ “Where physical division of the property is inequitable or impracticable, a court may partition by ordering sale of the property and a pro rata distribution of the proceeds to the co-owners.”¹⁰⁷ A co-tenant’s claim for partition may be defeated by proving that: (1) the creator of the co-tenancy manifested an intent that there be no partition; (2) the co-tenants by agreement have excluded partition for the continuance of their lives or other reasonable time; or (3) that the plaintiff is in default in his duties.¹⁰⁸

A covenant among co-owners to waive partition is enforceable only where the agreement extends for a reasonable length of time, or is sanctioned in condominium documents or by statute. If the right to partition is restricted for an unreasonable amount of time, the covenant will be unenforceable as a restraint on alienation.¹⁰⁹ Absent a statutory provision to the contrary, the period set forth in the Rule against Perpetuities, two lives in being plus twenty-one years,¹¹⁰ is an appropriate measure of the maximum length for determining what constitutes a reasonable period.

In the context of timesharing, partition poses a serious threat and the consequences may be devastating. In order to preserve either of the timeshare schemes based upon a tenancy in common, a co-owner’s right to compel judicial partition must be eliminated. Under time span estate ownership, where all unit owners are tenants in common of the real property, judicial partition can be compelled against both the units and common elements.¹¹¹ The interval estate ownership arrangement is also subject to partition, because the purchaser receives exclusive fee title for the period he is entitled to possession with the remainder held in fee simple as a tenant in common with all the other timeshare purchasers.¹¹² Purchasers of non-ownership timeshares cannot avail themselves of

105. 4A R. POWELL, *supra* note 1, at § 609.

106. *Id.*

107. Comment, *Fourth Dimension*, *supra* note 1, at 188.

108. 4A R. POWELL, *supra* note 1, at § 611.

109. *See id.* at § 846; Comment, *Legal Challenges*, *supra* note 1, at 433.

110. *See* MINN. STAT. § 500.13, subd. 2 (1982).

111. Comment, *Legal Challenges*, *supra* note 1, at 432.

112. *See* Comment, *Fourth Dimension*, *supra* note 1, at 210.

partition because they are not tenants in common with the other purchasers in the project.

Tenancy in common timeshare ownership arrangements can be preserved by eliminating the co-owners right to compel partition in the project documentation. The declaration may contain either an enforceable waiver of the common law right to compel partition or a covenant against partition, executed by each purchaser. It is unclear whether such agreements are valid for a period extending longer than twenty-five to thirty years.¹¹³

Statutory prohibition of judicial partition provides a better solution to the problem. When states first began enacting condominium legislation, the danger of judicial partition in a common-ownership context was addressed by enacting provisions barring partition of the common elements.¹¹⁴ Statutes barring judicial partition provide that common elements shall remain undivided, and that any action for partition or division of the ownership is barred as long as the condominium regime is continued.¹¹⁵ Statutes barring partition, however, apply only to partition of the common elements and do not address partition of units commonly owned. This holds true even in states which permit common ownership of individual units.¹¹⁶

Both model timeshare acts carry the prohibition against partition one step further, prohibiting judicial partition of the timeshare unit itself.¹¹⁷ Florida, in its Real Estate Time Sharing Act, contains a prohibition similar to those in the model acts.¹¹⁸

113. See Comment, *Legal Challenges*, *supra* note 1, at 434 n.54.

114. For a general discussion of the validity of covenants against partition, see 1 ROHAN & RESKIN, *supra* note 1, at § 8.01 n.1.

115. *Id.*

116. For example, section 339-i of New York's Condominium Act states in part:
The common elements shall remain undivided and no right shall exist as to partition or divide any thereof, except as otherwise provided in this article. Any provision to the contrary shall be null and void. Nothing in this subdivision shall be deemed to prevent ownership of a unit by the entireties, jointly or in common.

N.Y. REAL PROP. LAW § 339-i(3) (McKinney 1982).

117. RTC/NARELLO § 2-107; MRETSA § 2-104 (Supp. 1983). The comment to MRETSA section 2-104 points out that most, if not all, jurisdictions have statutes permitting any tenant in common to compel, by judicial action, either a physical division of the property or a sale and distribution of the proceeds. The purpose of section 2-104, the comment notes, is to assure that the owners of timeshare estates are *not* entitled to the rights conferred by those statutes. The comment also makes clear that section 2-104 does not prohibit partition of a timeshare owned by two or more persons as tenants in common, joint tenants or any other form of common ownership. *Id.* § 2-104 comment 1.

118. FLA. STAT. ANN. § 721.22 (West Supp. 1983).

Several state timesharing statutes deviate from a flat prohibition, permitting the creator of the timeshare project to expressly prescribe the right of partition.¹¹⁹

E. Tort Liability

Timeshare projects are generally founded on the basis of a condominium scheme. The condominium is composed of common elements and individual units. The unit owners constitute the membership of the association. Therefore, the same aspects of tort liability which apply to condominiums typically apply to timesharing projects.

Several different areas of potential tort liability exist in the context of a timesharing scheme. One is the possibility of a unit owner¹²⁰ or a third party suffering injury in the common area and bringing an action against the association. Most state condominium statutes provide that the association, whether or not it is incorporated, may sue and be sued. Thus, a third party injured by the negligence of the association could sue that entity. Through membership in the association, individual timeshare estate owners are potentially liable to the injured party.

Incorporating the association offers one solution to tort actions.¹²¹ Incorporating the association brings "the established body of corporate law to bear upon administrative operations of the association and [limits] liability . . ." ¹²² Georgia's condominium statute, for example, requires incorporation of the association prior to recording the declaration.¹²³

119. See, e.g., ARIZ. REV. STAT. ANN. § 32-2197.04(14) (West Supp. 1982).

120. See *White v. Cox*, 17 Cal. App. 3d 824, 95 Cal. Rptr. 259 (1971). *White* established the principle that an unincorporated condominium association could be sued by a unit owner. In granting the unit owner standing, the *White* court stated:

In view of . . . developments over the past decade we conclude that unincorporated associations are now entitled to general recognition as separate legal entities and that as a consequence a member of an unincorporated association may maintain a tort action against his association.

Id. at 828, 95 Cal. Rptr. at 261; accord *Pratt v. Maryland Farms Condominium Phase I, Inc.*, 42 Md. App. 632, 402 A.2d 105 (1979) (standards of liability applicable to possessor of land vis-a-vis an invitee also applicable in the context of a condominium).

121. See *Knight, Incorporation of Condominium Common Areas? - An Alternative*, 50 N.C.L. REV. 1 (1971); Note, *Condominiums: Incorporation of the Common Elements—A Proposal*, 23 VAND. L. REV. 321 (1970). Another solution is comprehensive liability insurance coverage.

122. Hyatt & Rhoads, *Concepts of Liability in the Development and Administration of Condominium and Home Owners Associations*, 12 WAKE FOREST L. REV. 915, 919 (1976); see also Jackson, *Why You Should Incorporate a Homeowners Association*, 3 REAL EST. L.J. 311 (1975).

123. GEORGIA CODE ANN. § 85-1632e (Supp. 1982).

Since many condominium statutes are silent as to whether members of an association can be held individually liable, conceivably co-owners can be jointly and severally liable as well. MRETSAs specifically circumscribes the unit owner's individual liability.¹²⁴

A second area of potential tort liability is the liability of co-owners as tenants in common for injury to a third party on the premises of an individual unit.¹²⁵ Liability cannot arise, however, under the interval estate concept, since each owner owns a distinct period of time, exclusive of all rights and liabilities of persons who have title to another period.¹²⁶ Determination of liability will hinge upon whether the court views the timeshare estate as a true tenancy in common or as a hybrid form of co-ownership, which includes increased rights and liabilities.

F. *Joint Liability for Debt*

The timeshare purchaser also faces liability for obligations incurred by the association such as contracts, property tax assessments, and mechanics' liens. In jurisdictions that permit the association to adopt formats such as a corporation, not for profit corporation, or unincorporated association, the purchaser's legal exposure may be clearly defined. On the other hand, where a particular condominium statute provides only for a "board of managers," each individual unit owner could be fully responsible for contractual obligations of the unincorporated association.

Under some condominium statutes, a unit owner can free himself of the obligation by paying his aliquot share of the association's obligations. MRETSAs specifically resolves the question of individual liability for contracts of the association in the first instance, providing that "an action arising from a contract made by or on behalf of the association may be maintained only against the association."¹²⁷

The potential exposure relating to property tax assessments and mechanics' liens raises issues distinct from contractual exposure. Legal exposure to tax assessments and liens does not exist in interval estate timeshare projects, since each timeshare interest is separate. On the other hand, timeshare owners under a tenancy in

124. See MRETSAs § 3-107(b)-(c) (Supp. 1983).

125. See Comment, *Legal Challenges*, *supra* note 1, at 436.

126. *Id.* at 437.

127. MRETSAs § 3-107(c) (Supp. 1983).

common approach are exposed to obligations of this character, since they are co-owners.

Statutory provisions or project documentation is necessary to eliminate this problem and to provide adequate protection for timesharing purchasers. Counsel should press for legislation which expressly states that liens can only arise against each timeshare interest and that liens arising against two or more units may be discharged by any individual unit owner by paying his pro rata share of the debt.¹²⁸ Legislation should also provide for separate taxation of each timeshare interest, thereby avoiding joint tax liability which would otherwise arise among the owners as the holders of the unit in common.¹²⁹ Interestingly, MRETSA provides that "a judgment for money against the association is a lien against all of the timeshares, but no other property of a timeshare owner is subject to the claims of creditors of the association."¹³⁰

VI. CONCLUSION

Conveyancing of real property has traditionally been viewed as an exacting task. The role of purchaser's counsel becomes all the more taxing when condominium documents are involved, and reaches the height of complexity when timesharing is involved. In such an undertaking, a thorough grounding in both litigation and real estate will prove invaluable, although on occasion it may prove a poor substitute for omniscience. A timesharing project will never be free of legal and economic risks. The attorney's role is to sift through the offering to determine the risks and their manageability. In the last analysis, one should always advise a client that in matters of timesharing, "Murphy's Law" is paramount. If the client still insists upon making the purchase, advise him to

128. See, e.g., UTAH CODE ANN. § 57-8-19 (1953). Section 57-8-19 insulates each timeshare owner from joint liability for debts incurred by a co-owner in the same unit. *Id.* But see N.H. REV. STAT. ANN. § 356-B:3 (1983) (defines a "unit" in terms of physical space). Although the New Hampshire Condominium Act provides elsewhere that liens shall only be created against each unit and that each unit shall be separately taxed, each timeshare purchaser holding a joint interest in one unit will be fully liable for the total amount of debts or assessed taxes which are the subject of liens on the unit. Comment, *Fourth Dimension*, *supra* note 1, at 228-30.

129. See UTAH CODE ANN. § 57-8-27(1) (Supp. 1981). MRETSA makes each timeshare other than a timeshare license a separate estate or interest for all purposes besides assessment and taxation. Whether timeshare estates are separate estates for purposes of assessment and taxation, and whether a distinction is made in this regard between fee simple timeshare estates and timeshare estates for years, depends on a particular state's preference. See MRETSA § 1-103 (Supp. 1983).

130. MRETSA § 3-107(d) (Supp. 1983).

walk with his back against the wall, carry a Bible, and, if all else fails, punt.

APPENDIX

NEW YORK ATTORNEY GENERAL'S SUGGESTED FORMAT FOR TIMESHARING OFFERING PLANS

I. Introduction:

- A. Nature of Offering
- B. Location of Development
- C. Description of Timeshare Interests Being Offered
 - 1) Explanation of Timesharing Concept
 - 2) Maximum Number of Intervals to be Offered/Created
- D. Special Risk Factors
 - 1) No Resale Market
 - 2) Risk of Partition
 - 3) Risk of Federal or State Tax Lien
 - 4) Possible Superiority of Trustee in Bankruptcy
 - 5) Failure of Prior Occupant to Vacate
 - 6) Reliance upon Sponsor/Managing Agent
 - 7) Difficulty in Voting or Lack of Voting Rights
 - 8) Possible Unavailability of Facilities in Future (Right-to-Use)
 - 9) Intervening Liens
 - 10) Excessive Wear and Tear on Furniture and Furnishings
 - 11) Special Assessments
 - 12) Exchange Club Privileges Contingent
 - 13) Additional Factors Associated with Particular Development
- E. Description of Property and Improvements
 - 1) Acreage of Zoning (Fees Only)
 - 2) Existing Improvements
 - a) Original Date of Construction
 - b) History of Use, e.g., Hotel, Motel, Etc.
 - c) History of Casualty Losses
 - d) Existing Building Code Violations and Date of Last Inspection

- e) Statement Regarding Manner of Depreciation Used and Whether Depreciation is Available
- f) Summary of Profit and Loss for Past 5 Years if Previously Operated as a Hotel or Motel
- 3) Recreational Facilities and Common Areas
 - a) Construction Schedule if Applicable
- 4) If a Condominium or HOA Describe and Cross-Reference to:
 - a) Legal Description of Unit and Association or Regime
 - b) Legal Description of Interval
 - c) Allocation of Percentages of Common Interests
 - d) Construction Data for Units and Common Areas Including Projected Schedules for Completion of Units and Facilities
 - e) Easements and Covenants
- 5) Description of Status of Title Purchaser will Receive Including Discussion of Existing or Possible Liens, Encumbrances, or Judgments Which may Affect title
- F. Description of Surrounding Areas and Facilities
 - 1) Proximity to Airports, Bus, and Train Terminals, Available Methods of Transportation to Development and Estimated Cost
 - 2) Proximity to Major Highways and Estimated Mileage and Driving Time to Nearby Cities
 - 3) Proximity to Nearby Shopping Facilities, Especially Foodstores; Availability of Transportation and Estimated Cost to and From such Facilities
 - 4) Description of Police, Ambulance, and Fire Services
 - 5) Proximity to Medical and Religious Facilities
- G. Sponsor's Future Development
- II. **Projected First Year Operating Budget**
 - A. Statement of Assumptions
 - B. Itemized Budget with Footnotes
 - C. Letter of Adequacy
 - D. Explanation of Reserve Escrow Accounts
 - 1) Cross-Reference to Exhibit —, (Itemized Inventory of Unit Furnishings Including Estimates of Useful Life of Major Items) and

Explain how Annual Contribution to Escrow Fund Established

- E. Method by Which Operating Expenses Will be Allocated to Interval Owners
 - 1) Statement of Sponsor's Obligation to Pay All Charges, Fees, Dues, and Assessments Allocable to Unsold Intervals
 - 2) Description of Security to Assure Sponsor's Payment of Charges Due from Unsold Intervals
- F. Description of all Charges, Dues, Fees, and Assessments Which may be Imposed upon Purchasers' Stating Manner, Frequency, and Purpose
- G. Description of any Service Provided by Sponsor Without Charge Which may in the Future Become a Common Expense of all Owners

III. Sale of Intervals

- A. Interval Schedule
- B. Price Schedule
 - 1) Must Specifically Define all Seasons, i.e., High, Swing, Etc.
- C. Describe Terms of Purchase Agreements (Cross Reference to Exhibit)
 - 1) Describe all Fees, Commissions, Charges, Dues, Deposits, Assessments, or other Payments Which May Become Due for any Reason Whatsoever at the Time of Signing Purchase Agreement and/or Closing
- D. Payments Held as Trust Funds
 - 1) Sponsor's Undertaking to Comply with Applicable State Law (in New York, Section 352-e (20b) and 352-h of the General Business Law)
 - 2) Name and Address of Bank Where Trust Account will be Maintained
 - 3) Funds to be Released only Upon Signature of Attorney
 - 4) Funds to be Used Only in Connection with Consummation of Transaction
 - 5) How and When will Purchaser's Interest be Conveyed (Cross-Reference to all Documents to be Used, Exhibits _____ to _____) Discuss and Explain Principal Terms of all Documents

- 6) Closing Costs
 - E. Describe Condition of Title to be Delivered at Time of Signing of Contract or Closing
 - 1) Describe all Documents of Record Filed or to be Filed in Connection with Creation of the Timeshare Regime, e.g., Declaration of Condominium, Restrictive Covenants, Easements, Etc., Cross Reference to Copies of all Documents in Part II
 - 2) Describe all Liens, Encumbrances or Defects in Title Which Affect the Property or the Timeshare Units
 - 3) Describe any Pending or Reasonably Anticipated Lawsuit Which if Reduced to Judgments Might Affect the Property or the Timeshare Units
 - 4) Describe all Mortgages Affecting the Property of the Timeshare Units, State Whether Non-Disturbance Clause Exists, Whether Mortgage is Self-Amortizing or a Balloon, State Who has Obligation to Pay Balloon Consequences if not Paid or Refinanced
 - 5) Describe Restrictions on Transfers of Intervals, if any
 - F. Describe Operation of Exchange Program
 - 1) Who Operates it
 - 2) Relationship to Sponsor
 - 3) General Description of Procedure to Join and Use
 - 4) Current Policies and Costs (Approximate Range)
 - 5) Who may Participate
- IV. Management and Operation of Development**
- A. Identity of Managing Agent and Affiliation with Sponsor if any
 - 1) State Background and Experience of Managing Agent
 - 2) Describe Duties of Managing Agent
 - 3) Describe Terms of Management Agreement Including Duration, Renewals, Fees, Etc.
 - B. Owners' Association
 - 1) Owners' Association
 - 2) Board of Managers/Directors

- a) Control by Sponsor
 - b) Powers and Responsibilities
 - C. Describe all Insurance Coverage on Property & Timeshare Units and Liability Coverage for Owners' Association and Individual Owners
 - D. Contracts Entered into by Sponsor Which will be Binding on Owners
 - E. Method by Which Timeshare Regime may be Terminated
- V. **Sponsor's Obligations**
- A. To Complete all Construction in Accordance with Specifications and Construction Schedules
 - B. To Deliver Unencumbered Intervals to Purchasers
 - C. To Pay all Charges Attributable to Unsold Intervals
 - D. To Record all Documents Necessary to Create the Timeshare Regime Prior to First Sale and to Deliver Copies to the Owners' Association
 - E. To Obtain Non-Disturbance Clauses from all Mortgagees Having an Interest in the Property or Otherwise Guaranteeing Rights of Interval Owners
 - F. To Pay all Construction and Development Costs and to Discharge Promptly by Bond or Otherwise any Mechanic's Lien Filed Against the Property or any Timeshare Unit
 - G. To Establish and Maintain Replacements Reserve Escrow Accounts Sufficient to Replace and/or Repair Units Furniture and Furnishings on a Regular Basis
 - H. To Provide a Fund by Escrow or Otherwise from Which Right-to-Use Purchasers may Obtain a Pro Rata Refund in the Event the Interval and/or Facilities are Unavailable for use
 - I. A Representation by Sponsor that he will not Sell, Convey, Alienate, Encumber, or Otherwise Transfer any Interest in or to the Property, Facilities or any Timeshare Unit to a Third Party unless such Third Party Shall First Agree in Writing that he will Fully and Faithfully Honor and Perform all of the Duties, Obligations and Commitments of the Sponsor to the Owners' Association and the Individual Interval Purchasers
 - J. Discussion of Terms of Sponsor Financing if Being

Offered (Cross-Reference to Copies of Related Documents Exhibit ——— in Part II)

VI. Purchaser Obligations

- A. Owner Obligation to Pay Annual Maintenance Charges
- B. Explain Under what Circumstances an Owner may be Subject to Additional Charges or Assessments and by Whom Same may be Imposed
- C. Explanation of Which Charges, if Unpaid, may Become a Lien Against a Purchaser's Interest
 - 1) Describe How and Whwn such Liens may be Foreclosed and by Whom (Cross-Reference to Appropriate Sections of Documents in Part II)
- D. Describe Remedies Available to Interval Owners if Preceding Occupant Fails to Vacate Unit When Required (Cross-Reference to Appropriate Section in Documents in Part II)
- E. Summary of By-Laws, House Rrules Etc., Which will be Binding on Interval Owners (Cross Reference to Part II)
 - 1) Describe Procedure by Which such Rules Etc., may be Amended

VII. General

- A. Identity of Sponsor, its Principals, Officers, and Directors
 - 1) Principal Place of Business
 - 2) Experience in the Development and Operation of Timeshare Resorts
 - 3) Whether Timeshare Projects Previously Associated with the Project are Currently Operating, Sales Achievement, Etc.
- B. Identity of Selling Agent, Architects, Engineers, and Attorneys
- C. Litigation History (Including Administrative Proceedings)
- D. Sponsor's Profit
- E. Non-Discrimination Policy
- F. Plan as Fair Summary

Exhibits to be Included in Plan**(Part II)**

- A. Map of Surrounding Areas and Facilities
- B. Site Plan with Unit Designations
- C. Typical Floor Plans
- D. Three Dimensional View of Typical Unit
(Condominiums Only)
- E. Purchase Agreement
- F. Financing Documents, if any, e.g., UCC-1, Note, PM
Mortgage, Installment Sales Contract, Etc.
- G. Declarations, Easements, Covenants, Master Deed,
Etc.
- H. By-Laws, Rules and Regulations
- I. Unit Deed
- J. Management Agreement
- K. Certified Financial Statements
- L. Opinions of Counsel
- M. Other Documents Which may be Required