

# ENTERTAINMENT, ART AND LEISURE

## *Time-Share Ownership*

### **Background**

In a “timesharing” arrangement, a consumer buys a property interest in a condominium, resort, campground or other facility. The property interest entitles the consumer to use a living unit and related facilities for a specified period of time in each of several years. For example, a consumer might buy a “timeshare” entitling the consumer to vacation at a resort during the same week in each of the next 4 years. Other consumers may buy different “timeshares” in the same living unit.

Sellers often use direct mail and telemarketing to promote time-shares. They frequently offer “free” incentives to consumers who visit time-share properties and listen to sales presentations. Although time-share offers can be legitimate, they can also pose serious risks for consumers. As in all real estate transactions, consumers should be careful when purchasing time-shares.

- Consumers often complain about high-pressure sales tactics, deceptive gift offers, undisclosed costs and unfulfilled promises.
- Consumers may find that they are unable to use the property as planned.
- Some sellers promise that consumers can spend time at different time-share locations. But actual choices may be limited.
- Some consumers have lost their property investment when time-share promoters went bankrupt or out of business.
- Some consumers have paid for time-share properties that were never constructed or completed.

### **Time-Share Sellers**

***The Wisconsin Department of Regulation and Licensing (DRL) regulates time-share sellers under Wisconsin Statutes chapter 452.***

- **A time-share seller must be a licensed real estate broker, or must be supervised by a licensed broker. DRL licenses real estate brokers.**
- **Time-share sellers must register with DRL.**
- **Time-share sellers must use forms approved by DRL.**

### **Time-Share Sales and Ownership**

Wisconsin Statutes chapter 707 regulates time-share sales and ownership. Chapter 707 applies to timeshares involving the ownership or right to use property for at least 4 separate periods over at least 4 years. The law applies to “timeshare estates” (ownership interests) as well as “time-share easements” (rights to use property).

Chapter 707 applies to time-share properties located in this state. It also applies to the promotion and sale, in this state, of time-shares in out-of-state properties. But real estate laws in other states may govern property rights related to out-of-state time-shares.

### ***Creating Time-Shares***

If a person wishes to sell more than 12 time-shares in a single property, that person must record a time-share instrument in the county where the property is located. The time-share instrument must include specific information about the time-share property, and the rights and responsibilities of time-share owners (see chapter 707 for details).

The instrument must include information related to property description, time-share periods, liability, time-share association membership and rights, property tax liability, insurance, maintenance and management. It may also spell out other rights and responsibilities of time-share owners, developers, mortgage holders and managers.

### ***Property Management***

A time-share association normally manages a time-share property, just as a condominium association manages a condominium. A time-share association consists of time-share holders. Chapter 707 prescribes the formation, rights and responsibilities of the time-share association. The law describes the association's rights and responsibilities relative to the time-share developer and individual time-share owners.

### ***Time-Share Termination***

Chapter 707 spells out procedures required to terminate time-shares. It also spells out the rights and responsibilities of time-share owners if time-shares are terminated.

### ***Disclosure Statement***

A time-share developer must provide written disclosure statements to time-share purchasers (there are some exceptions). A disclosure statement must include all the following (see chapter 707 for details):

- The developer's name and address.
- The name and location of the time-share property.
- The following verbatim statements:
  - **THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A TIME-SHARE OWNER. IF YOU DO NOT UNDERSTAND ANY PROVISIONS CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.**
  - **THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW MAY BE RELIED UPON AS CORRECT AND BINDING. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.**
  - **YOU MAY CANCEL IN WRITING ANY CONTRACT FOR THE PURCHASE OF A TIME SHARE, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN 5 BUSINESS DAYS FROM THE DATE YOU SIGN THE CONTRACT OR UNTIL 5 BUSINESS DAYS AFTE YOU RECEIVE**

**THE TIME-SHARE DISCLOSURE STATEMENT, WHICHEVER IS LATER. IF YOU SO CANCEL THE CONTRACT, YOU ARE ENTITLED TO RECEIVE A FULL REFUND OF ANY DEPOSITS MADE, EXCEPT, IF YOU HAVE USED OR OCCUPIED THE TIME-SHARE PROPERTY FOR MORE THAN 12 HOURS, THE MANAGING ENTITY OR CAMPGROUND OPERATOR MAY SUBTRACT FROM DEPOSITS MADE A REASONABLE CHARGE TO COVER THE LENGTH OF STAY PLUS THE COST OF DAMAGES TO THE TIME-SHARE PROPERTY DIRECTLY ATTRIBUTABLE TO YOU OR ANY MEMBER OF YOUR PARTY.**

- A description of the time-share property and units. This must include:
  - The number and types of units in the property, and an identification of units that are time-share units.
  - The types and duration of time-shares.
  - The maximum number of units that may be created, and the maximum number of time-share units that may be created.
  - A schedule for starting and completing any promised improvements (including improvements promised in advertising or promotional materials).
- A copy and brief narrative description of the time-share instrument (see *Creating Timeshares*, above).
- A copy and brief narrative description of any contract or lease that the purchaser must sign at closing.
- A current balance sheet and budget for the time-share association.
- All fees and charges payable by the purchaser.
- Any effect of liens, defects or encumbrances affecting title to the time-share units.
- A description of any financing offered by the developer.
- Warranty terms and limitations provided by the developer.
- Any pending legal action that may affect the time-share units.
- Notice that the developer will deposit 50% of all time-share deposits in an escrow account.
- Any restrictions on the transfer of time-shares.
- Insurance coverage provided for the benefit of time-share owners.
- Financial arrangements for promised improvements.

- Possible financial liability for liens against a time-share unit.
- A time-share owner's rights and remedies if the owner is denied exclusive occupancy of the time-shared unit during the time-share period.
- Disclosures related to property condition if the property is more than 10 years old and is being converted to time-share use.

### ***“Exchange” Programs***

Some time-share developers offer “exchange” programs, in which time-share owners may exchange occupancy rights with other time-share owners. Developers sometimes overstate the potential for “exchanging” time-shares. A developer offering an “exchange” program must make written disclosures to each prospective time-share owner (see details in chapter 707). Disclosures must include:

- Whether participation is voluntary or mandatory.
- The name and address of the person operating the exchange program, and whether that person is connected with the developer.
- The number and location of participating time-share sites, the number of participating time-share units at each site, and the number of participating time-share owners at each site.
- The complete terms and conditions of the exchange program, including exchange procedures, fees, and guarantees if any.
- What happens if an exchange request cannot be honored.
- Information showing the number of exchanges have occurred, and the percentage of exchange requests that have been honored.

### ***“Multi-location” Programs***

Some time-share developers offer “multi-location” programs in which a time-share owner may occupy time-share units at more than one location. Developers sometimes overstate the potential to reserve the location of your choice. A developer offering a “multi-location” program must make written disclosures to each prospective time-share owner (see details in chapter 707). Disclosures must include:

- The complete terms and conditions of the multi-location program, including participation requirements, procedures for reserving occupancy at different locations, fees, and guarantees if any.

- Any conditions, limitations and priorities that apply.
- The number of time-share owners in the program.
- Participating locations, the number of time-share units at each location, and whether the developer owns those units.
- What happens if an occupancy request cannot be honored.
- Information showing the number of occupancy requests for each location, compared to the number honored.

### ***Campgrounds***

Campground time-shares are subject to the same requirements that apply to other time-shares. The following provisions also apply (see chapter 707 for details):

- Developers who offer “reciprocal” time-share arrangements with other campgrounds (owned by other developers) must maintain those arrangements, or provide equivalent alternatives if the arrangements are terminated.
- The law restricts changes in campground dues and membership rights that adversely affect time-share owners.
- A campground operator may, for certain reasons, terminate a time-share owner’s use of a campground. The operator must give the time-share owner prior notice and an opportunity to cure the problem. The operator must refund a reasonable share of the time-share owner’s investment.

### ***Warranties***

A time-share purchaser may hold a seller liable for broken warranties and sales promises, including promises to improve the time-share property. A seller implicitly warrants the construction, fitness, condition and legal use of the time-share property, unless the seller makes a specific disclaimer.

### ***Resale Disclosures***

A person reselling a time-share must disclose relevant legal interests and financial obligations that may affect the purchaser (see chapter 707 for details).

### *Advertising and Sales Practices*

A seller may not do any of the following in connection with the sale or offer of a time-share:

- Make any false, deceptive, or misleading statement.
- Represent that any discounts, special offers or purchase incentives are available only for the remainder of the day.
- Represent that an incentive has a specific value, unless it can be sold apart from the sale of a time-share.
- Misrepresent the resale value of a time-share.
- Represent a time-share as a financial investment.
- Misrepresent the identity, function, or authority of any salesperson.
- Make any statement that contradicts the terms of the time-share contract.
- Misrepresent the estimated length of any sales presentation.
- Contact a prospective purchaser, for the purpose of selling a time-share, without clearly identifying the seller and disclosing that purpose.
- Fail to include the following disclosure on any printed advertising material, including any material offering a prize or other incentive:

**THIS ADVERTISING MATERIAL IS BEING USED FOR THE PURPOSE OF SOLICITING THE SALE OF REAL PROPERTY OR INTERESTS IN REAL PROPERTY.**

- Fail to comply with the prize notice law, Wisconsin Statutes section 100.171. **For more information, see Consumer Law topic, *PRIZES AND SWEEPSTAKES*.**
- Ask a buyer to waive or certify a seller's compliance with chapter 707.

### ***Buyer's Right to Cancel***

- A buyer may cancel a time-share contract until midnight of the 5<sup>th</sup> business day following the date of the contract, or the date on which the seller gives the buyer the last of the documents required under chapter 707, whichever is later.
- The seller may not record any title, deliver any deed, or release any deposit until the cancellation period expires.
- The buyer may not waive the right to cancel.
- The buyer may give notice of cancellation by mailing or delivering the notice by the deadline date.
- The seller must refund all payments received from the canceling buyer. The seller must make the refund within 20 days after receiving the cancellation notice, or within 5 days after receiving funds from the buyer's cleared check, whichever is later. The seller may deduct a reasonable charge for length of stay plus any property damages if the buyer stayed in the property for more than 12 hours before canceling.

### ***Enforcement***

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) enforces the time-share ownership law. There is also a private remedy for consumers.

- An affected consumer, or class of consumers, may sue a violator for damages, injunctive relief, specific performance, rescission, costs and attorneys fees.
- DATCP or a district attorney may seek a court order enjoining law violations and ordering restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.
- DATCP or a district attorney may seek a court-ordered civil forfeiture of up to \$5,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.