

Consumer Alert and Warning Regarding Timeshare Resale Fraud

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The California Department of Real Estate (DRE) is issuing this alert and fraud warning because of a growing number of scams being perpetrated against timeshare owners in connection with "timeshare resales".

As a result of the current economic climate, there are timeshare owners who are desirous of selling their timeshares as soon as possible. Some owners may have concluded that their timeshares no longer suit their needs. Others may be facing foreclosure. Others may be convinced that there are buyers interested in their timeshares. And others may simply want to avoid paying maintenance and special assessment fees.

Types of Scams

While there are almost endless variations of timeshare resale fraud, the following are three of the common fraudulent practices that the DRE has seen:

1. Unlicensed, unregulated, and illegitimate timeshare reseller fraudsters pose as and use the identities of legitimate and licensed real estate brokers, thereby providing a false sense of security, and then demand the payment of monies up front (at times via wire transfer to accounts in a foreign country) in connection with the purported resales. No services of any kind are actually provided (see the discussion below regarding the requirement for the timeshare resale agents to be "licensed").
2. Scammers target timeshare owners (a number of whom are senior citizen retirees) and falsely tell those owners that the "agent" has found a "ready and willing" buyer for their timeshares (which in some cases may not currently be listed for or be for sale). In certain cases investigated by the DRE, the scammers were operating from and based outside of California, but they were using a mailing address in California. Oftentimes, the address was simply a mail drop. Moreover, a number of timeshare owners have reported that some frauds have promised to sell the timeshares within a set period of time.
3. Fraudsters pose as timeshare buyers and use such advertising slogans as "Will Buy Your Timeshare for Cash", "Timeshares Wanted", or something similar, to lure timeshare owners, and then ask the owners for "a small amount of" money

(which is often times \$1,000 or more) up front to process the paperwork for the transfer. Once those monies are paid, the owners never hear from the scammers again.

The false and misleading sales pitches in scams 1 and 2 above, which are typically made from telemarketing boiler rooms using scripts and smooth-talking fraudsters, usually tell the owners that the "resellers" will successfully sell the timeshare(s), and that the owners need only forward to the calling company modest "legal and processing" fees and "closing costs" which can be in any amount, but appear to fall in the average range of \$1,000 to \$3,000.

Because of the anonymity of the Internet and mass marketers, a timeshare resale scam can be started and operated with a website anywhere in the United States or in other countries. Such a scam can be operated by a group of telemarketers who set up accounts for the receipt of payments from timeshare owners/sellers who are fraudulently enticed to authorize payments to the fraudsters.

In addition to asking for and charging advance (non-refundable and upfront) fees for "legal and processing" matters and "closing costs", the frauds may ask for and charge advance fees for "advertising", "marketing", "escrow", "appraisal", or some other supposed services.

Some Important Points Re: Licensure and "Advance Fees" in California.

1. Licensure --

In California, only licensed real estate brokers (or salespersons employed and supervised by the brokers) may list and sell "timeshares for resale".

As noted above, in many cases unlicensed perpetrators of fraud, who promise success as a result of their timeshare resale services, ask for and collect monies up front, and simply pocket the monies paid in advance by the timeshare owners.

No License Required for Pure Advertising -- it is important to note that no real estate license is required, and fees can be collected in advance, for pure advertising services. It is much like paying a newspaper or Internet advertising website for their services in "advertising" the availability of timeshares.

2. Advance Fees --

Advance fees for resale services may lawfully be collected by a real estate broker (or salesperson working with the broker) from a timeshare owner *only where* (i) a written Advance Fee Agreement – with necessary supporting materials -- has been submitted to and reviewed by the Real Estate Commissioner/DRE, (ii) a No-Objection Letter is issued by the department to the

broker, and (iii) the advance fees are properly handled and accounted for as "Trust Funds" belonging to timeshare owners.

A violation of the rules on advance fees constitutes grounds for disciplinary action against a real estate licensee, as well as grounds for criminal proceedings. Also, it should be noted that the issuance of a "no-objection" letter does not constitute the Department's approval and/or endorsement of the advance fee agreement, supporting materials, or the services to be rendered. If a licensee were to suggest such approval and/or endorsement, that would be a misrepresentation.

What You Can and Should Do to Protect Yourself and Avoid Becoming a Scam Victim.

As a timeshare owner, you really need to always be wary and cautious when thinking about retaining the services of people and companies offering assistance in the areas of timeshare resales.

Also, and importantly, you should request a copy of the reseller agent's written contract that you will be required to sign and a written disclosure of all fees and costs, and you are wise to never pay for services or assistance in advance of the performance of services. It is extremely risky to do so.

Check with the developer of your timeshare unit or interests and ascertain if they offer a resale or buyback program, or are associated/affiliated with a broker to handle resales.

Further, you may be able to do some of the services yourself.

If you choose to use the timeshare resale services of third parties for a fee, ask them questions, lots of questions, and then verify, verify, and still verify some more. Please see below for a list of suggested questions.

Check them out on the DRE website, at www.dre.ca.gov. Make certain that they are licensed by the State of California. If they are licensed, see if they have been disciplined. Because of the first scam discussed above, where frauds are posing as legitimate licensees, get the name of the person calling or making the solicitation (e.g., the broker or salesperson they purport to be), look them up on the DRE website, locate a phone number for the licensee, call the licensee at that number, and verify that the person who contacted you actually works at the number you called.

Check them out through the Better Business Bureau.

Check them out through a Google, Facebook, or related search on the Internet. You may be amazed at what you can and will find out doing such searches. Often consumers who have been scammed will post their

experiences, insights, and warnings long before any criminal, civil or administrative action has been brought against the scammers.

Always obtain information on the purported buyer(s), and make certain that the payments you make before services are rendered are placed in an independent trust account or “escrow” of your choice so that your monies are “secured” until release.

The purpose of the next section (“Suggested Questions to Ask”) is to give you some specific, detailed questions that you can ask of those people and entities who/which have offered to assist you in selling your timeshare.

Remember that legitimate service providers should not mind the questioning and scrutiny. We understand that this list of questions may be bothersome, difficult, or intimidating for many people to ask. But we include all of them because the more you ask, and the more they answer, the more comfort you will have that you are dealing with a reputable agent and service provider. Even reputable licensees may be “put off” by having to answer all of the questions, but we believe that legitimate and reputable reselling agents will treat you with respect and understand your concern to make sure that you are not being taken advantage of with regard to your timeshare resale.

Suggested Questions to Ask (This list is not exhaustive, but it will give you information on which you can make a reasoned decision. Also, it will make the telemarketer know that you are not an easy “mark”).

1. Are you licensed by the California Department of Real Estate? If not, why not? What exemption from the licensing laws do you claim? The licensure requirement cannot be emphasized enough. If they are licensed, ask them for their DRE Real Estate License Number, and check to see if they have been disciplined by the Department (go to www.dre.ca.gov).

As noted above, if the person is a real estate salesperson, he or she must work through a real estate broker. Therefore, you will want to question a real estate salesperson about the identity and experience of his or her broker, and then check on the broker’s license at the DRE website shown above. If the salesperson says that he or she can do the work independent of a broker, do not work with or hire that person.

2. How many timeshare resale transactions have you *successfully* performed? Make certain to get specifics, and then do further checking.

3. Do you have a list of current and past “satisfied” timeshare customers? If so, get it and call them. Ask them if they would use this person or entity again. Do your own background check. And note that even if the person or company is “highly recommended” by so-called satisfied customers, the risk of a scam is not eliminated entirely. For instance, the person(s) providing the positive reference

could be the scammer's friend, a family member, and/or a co-conspirator in the fraud.

4. Do you have a list of business and banking references? If so, get the list and check them out.

5. How long have you been providing timeshare resale services? Alternatively, you can ask, how long have you been in this business?

6. Are you a specialist in the area of timeshare resales? If the answer is yes, ask what specialist qualifications do you have and what does that mean? And what course of study did you undertake to become certified or specialized?

7. What are you actually going to do to market and sell my timeshare? What specific services will you be providing? Get that in writing, and take the time to fully understand what the contract says and what the end result will be before proceeding with the services. Remember to always ask for and demand copies of all documents that you sign.

8. Where and when was your business formed? Ask this question where there is a corporation or other form of business entity involved. You can then look at the website of the California Secretary of State to verify that information and/or to determine if the business is able to operate lawfully in the State of California. You can also check on the agent or agents for service of legal process, and the current status of that business entity. The Secretary of State's website is www.sos.ca.gov.

Warning Signs: Are there Surefire Ways or Red Flags to Detect Fraud?

Fraudsters are good at what they do. Many are sophisticated rings using fake websites, large boiler rooms, and important sounding names. Others are just rogue criminals on their newest scam. They all continue to adapt and modify their schemes as soon as their last ones became ineffective.

It is really difficult to identify a "surefire" way to detect fraud in the area of timeshare resale fraud. But there are some red warning flags to look out for so that you do not become the latest casualty of the scammers. Those things include:

1. Requests for upfront payments (advance fees) before any services have been provided.

2. Requests that you pay only in cash, or by wire transfer, or by money order or a certified bank or cashier's check. These forms of payment provide little if any recourse for you in the event you have paid a scammer. It should be noted that if you pay by credit card, you may be able to challenge the charge (if fraudulent) through your credit card company. Talk with your credit card company about their policies in this regard.

3. An unwillingness to meet in person, to give you a business phone number, an actual physical business office address, and/or to provide you with a business card.
4. Advice that you do not need to read or understand an agreement, or any other document, that you have been asked to sign. Be skeptical of claims that “it is just a bunch of legalese”. Always remember that you should not be pressured into entering into any agreement, or to sign any document, that you do not read and understand. If you need to, consult with a lawyer.
5. Claims from the timeshare reselling agent that the market for your timeshare, or timeshare resales generally, is “on fire”, “hot”, “extremely active”, or some similar catch phrase.
6. Unqualified guarantees or promises that the timeshare reseller can get your timeshare sold (and often within a certain period of time), or “money-back” guarantees with respect to those monies you are asked to pay upfront.
7. Requests that you provide personal financial information, including a bank account and/or credit card number, over the phone or over the Internet.
8. Advice that you can simply “walk away” from your timeshare by transferring it to some third party.
9. Statements that you must act immediately, or without any delay.
10. Advice that you should not talk with your family, attorney, accountant, and/or anyone else.
11. Use of a Post Office (“P.O.”) box.
12. The use of lofty or complicated language that you cannot understand.

Conclusion.

Fraud by predators in the area of timeshare resales requires that you be skeptical, proceed cautiously and do your homework. Do not become the next victim of timeshare fraud.

There are legitimate, reputable, licensed and competent professionals in the field. If you need or want their assistance, you need to do some homework.

Other Important Resources and Cautionary Notes for Timeshare Owners Who Want to Sell Their Timeshares:

The American Resort Development Association, the industry group that represents timeshare developers, has issued a series of advisories on resales to help consumers and timeshare owners. Those advisories can be accessed at www.ardaroc.org/roc/resource-library/default.aspx?id=2787&libID=2807.

The office of the Florida Attorney General has issued alerts on timeshare resale fraud, and they can be accessed at www.myfloridalegal.com/timeshares.

What You Can Do If You Have Been Scammed (Or if You Become Aware of the Timeshare Resales Scam)? Please report the fraud and file complaints with:

1. The DRE if a real estate licensee is involved, or if the timeshare resales agent is unlicensed. If the person or company is unlicensed, the DRE will file a Desist and Refrain Order. If the person or company is licensed, the DRE will commence disciplinary action, http://www.dre.ca.gov/cons_complaint.html.
2. The California Attorney General, at www.ag.ca.gov/consumers.
3. The District Attorney, Sheriff, local police and local prosecutor in your community.
4. The Federal Trade Commission, at www.ftc.gov. They track and civilly prosecute timeshare resales scammers.
5. Federal Bureau of Investigation (FBI), at www.fbi.gov.
6. The Better Business Bureau in your community.

Lastly, consider filing a Small Claims Court action. These are informal courts where disputes are resolved quickly and inexpensively by a judge. As of the date of this warning and alert, you can recover up to \$10,000 in Small Claims Court. You represent yourself, and can request a judgment for money damages. If your judgment is based on fraud, misrepresentation, or deceit, or conversion of trust funds, and the judgment is against a real estate licensee, DRE has a Consumer Recovery Fund that may be able to pay your claim. Go to the DRE web site at www.dre.ca.gov, and look under the tab for "Consumers". Also, the California Secretary of State has a "Victims of Corporate Fraud Compensation Fund" that provides restitution to victims of corporate fraud. Go to the Secretary of State's web site at www.sos.ca.gov/vcfcf for more information.

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