

FAQs: Time-shares

Q. - What kinds of Time-share projects are regulated?

A. - Although there are many different kinds of time-share offerings, including timesharing of large resorts, motels or portions of large hotels or other types of commercial structures, homes, boats, ocean liners and even vehicles, the DRE only regulates the sale of Time-share interests in accommodations (“dwelling units”) in real property or in units or berths on a commercial passenger ship if the accommodations, units or berths have toilet facilities. There are two basic types of time-share interests over which DRE has jurisdiction – time-share estate interests and time-share use interests.

- Time-share estate refers to the right of occupancy in a time-share property coupled with an estate in real property. This type of Time-share interest is typically transferred to the purchaser by grant deed.
- Time-share use (or right to use) refers to an interest based on a purchase agreement between the seller and the purchaser in which the purchaser does not receive a deed to an interest. The purchase agreement may take different forms, such as a license or membership agreement. In any case, the purchaser does not receive an estate in or title to real property.

Public reports are required for both types of time-share interests if the offering involves 11 or more time-share interests having terms of at least four years in a time-share plan.

There are also variations on these two basic types of time-share interests:

1. Single-site time-share plans are offerings in which the right to use accommodations at a single time-share property. The time-share plan may include affiliation with an “exchange program” whereby owners of time-share interests may voluntarily exchange occupancy in the single-site time-share property with other time-share interest owners in other time-share properties through an exchange company.
2. Multi-site time-share plans are of two different types:
 - a. A “Specific time-share interest” means the right to use accommodations at a specific time-share property, together with the right to use accommodations at other time-share properties created by or acquired through the time-share plan’s reservation system. An owner of a specific time-share interest purchases a time-share interest in a specific time-share property, and has the right to use accommodations at that property. The arrangement involving the right to use accommodations at other properties is typically through a contractual arrangement or membership program (This program is often characterized by the Developer as a “Club” wherein a purchaser receives as part of the purchase, a membership in a Club.). This is not a voluntary arrangement. It is part of the purchase of the time-share interest. The contractual provisions and rights to reserve occupancy in the component properties and the costs of membership in the club payable by the purchaser are controlled entirely by the developer or a third party.

Owners of time-share interests in the specific time-share property have priority over other time-share interest owners in the other properties in making reservations for use of that specific time-share property for a period of time each year when reservations may be made for occupancy in the specific time-share property. When the reservation priority period expires, time-share interest owners in the specific time-share property must compete with time-share interest owners in all the other time-share properties for occupancy in the specific time-share property and all other component time-share properties that are part of the reservations system. Because time-share interest owners have no control over the arrangements for using the other time-share properties, the reservation arrangements for use of these properties could change or the right to use any or all of these other properties may be terminated at any time without the consent of purchasers. The developer may even terminate the club program if it chooses to do that. If the club program is terminated, however, purchasers will continue to have right to reserve and occupy the accommodations in the specific time-share property in which they purchased a time-share interest in accordance with the governing documents of the time-share plan.

b. A “non-specific time-share interest” means the right to use accommodations at more than one component property created by or acquired through the time-share plan’s reservation system, but no specific right to use any particular accommodations. An association of time-share owners controls the arrangements for the reservation system for use of the component sites.

Q. - Before a public report is issued by the DRE, how does the DRE qualify the Time-share offering?

A. - The Vacation Ownership and Time-share Act specifies numerous consumer protections that must be in place before a public report is issued. Among the most important protections are the requirements:

- That the developer shows that it has the ability to deliver title or other interest contracted for;
- That the property can be used for the purposes offered; and
- That financial arrangements have been made for construction and completion of all offsite improvements such as access streets, utilities, etc. and onsite facilities including any improvements to be represented as being included within the time-share property; and
- That the accommodations are suitable for occupancy or financial arrangements have been made to complete the accommodations to make them suitable for occupancy.
- The rights of owners to use and occupy the accommodations and use of amenities of the time-share plan must be stated in writing in an enforceable declaration of covenants, conditions and restrictions. (In an offering involving a “specific time-share interest in a multi-site time-share plan”, the requirement for an enforceable declaration does not apply to properties other than the specific time-share property.)

Q. - How is my purchase money protected? Do I have the right to cancel?

A. - There are certain purchase money protections that require that all monies paid by a purchaser are held in escrow until a seven day cancellation period has expired or the developer has made other financial arrangements acceptable to the DRE to protect purchase monies. After the seven day cancellation period passes, the purchase monies must stay in escrow or the other financial arrangements must continue until the improvements to the time-share plan have been completed and there are arrangements in place to secure the time-share interests against any adverse impact from any monetary blanket encumbrance, such as an existing blanket mortgage, against the time-share plan property.

Q. - Generally, how is a time-share plan organized and how does it operate?

A. - The Business and Professions Code and the California Code of Regulations require that there be an organization of time-share interest owners established for the purpose of operating, managing, maintaining and controlling the uses of the time-share plan. This organization is typically in the form of a non-profit incorporated owners association in which each time-share interest owner becomes a member. Each time-share owner's interest in the time-share project, including his or her rights and remedies as a member of its association, will be controlled by governing instruments which generally include a Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation; and Bylaws. The provisions of these documents are, in most cases, enforceable in a court of law. Purchasers should study these documents carefully before entering into a contract to purchase. These documents control how one may use and occupy accommodations in a time-share plan.

In order to provide funds for both the operation and maintenance of the improvements and the administration of the time-share plan, including its management and reservation system, the association will levy assessments against your time-share interest. You must pay these assessments whether you use the project or not. If you become delinquent in the payment of assessments, the association may enforce payment through court proceedings or lien and foreclose on your interest leading to the loss of your time-share interest. The income and expenses of the association, including the amount of assessments you must pay on a periodic basis, usually annually, are shown in the budget of the time-share association. The public report must include a copy of the budget and the projected assessments for time-share interests. If you purchase a time-share interest and that time-share plan has had sales for a year or more, you should examine the current financial statements of the association to determine if the financial condition of the time-share plan is sound. For example, if the association's expenses exceed its income, or if there are insufficient reserves for the repair or replacement of major physical components of the time-share property, including the dwelling units, buildings and common areas, or if there are significant owner or developer assessment delinquencies, the project may be suffering problems that cannot be fixed without increases in assessments payable by non-delinquent owners.

Good management is vital to the success of a time-share plan. Because the project consists of non-resident owners, the association of time-share owners contract with a managing agent to perform the day-to-day tasks of running the time-share plan and administering the reservation system. A managing agent may be affiliated with the developer of the time-share program or may be a third party unrelated to the developer. The association generally has the authority to terminate the management contract for cause or to vote, by means of a vote of members of the association, not to renew the management contract on a periodic basis. These rights, however, may be limited if the time-share plan property is not located in California.

Time-share interest owners' ability to control their association may be extremely limited regardless of the type of time-share plan or where it is located. The developer typically controls of the association for a very long time due to the transient nature of time-share ownership. Until the time-share plan is mostly sold out, it is likely that the developer will have effective control of the association. Time-share plans with a large number of owners whose places of residence are widely dispersed will likely be more difficult to manage by its owners than smaller time-share plans whose owners live relatively close to the time-share property. If the time-share plan's property is located outside the State of California, the state's laws in which the time-share property is located may permit the developer to control the operation and management of the time-share plan with few or no provisions for any controls by time-share interest owners. California located time-share plans, and some out-of-state time-share plans include requirements for the establishment of time-share associations controlled by time-share interest owners, although the structural nature of time-share plans and the nature of its ownership will likely make it difficult to operate without a competent third-party managing agent that serves the needs of the time-share interest owners.

For these reasons, time-share interest owners should consider taking an active role in the affairs of the association to insure the integrity of the time-share interests, in those time-share plans that allow for ownership participation in operation of the association. One of the basic rights of time-share ownership is the right to vote on certain issues, and one of the most important votes an owner is entitled to cast is that vote to elect members of the association's Board of Directors. The Board of Directors of an association is empowered to do many things without the consent of owners. It will be controlled by the developer initially and, probably, for a long period of time. California law does require at least one director be elected by only non-Developer time-share owners. So, the purchaser of a time-share interest should consider serving on the Board of Directors in order to directly represent the purchasers' interests. Otherwise, a purchaser's control over the operation of the time-share plan is limited to voting as a member of association.

The documents governing the time-share plan should be examined very carefully to determine the means by which the time-share interest owners may or may not participate and assist in operation of the association and the time-share plan. These documents usually include the declaration of covenants, conditions and restrictions, bylaws, articles of incorporation for the time-share association, rules and regulations for operation of the reservations system, and management agreement. These documents will reveal who is entitled to control and manage the time-share plan, limits, if any on such controls, how the time-share plan is supposed to work, and what the rights and responsibilities of both time-share interest owners and the developer are. The voting requirements in the association, provisions for attendance and participation in regular and

special meetings of members and the board of directors of the association, limitations on increasing assessments and imposing other assessments without a vote of the membership, and provisions for voting to enact any material changes to the time-share plan management documents, are among the important matters that should be explained in the governing documents. The extent to which the developer will control the operation of the association and the time-share plan may also be shown through an examination of the governing documents.

Q. - What assurances are there that a purchaser's reservation request will be granted?

A. - For those time-share plans that require reservations in order to use and occupy accommodations, there is no guarantee that a purchaser's request will be granted. There are times during any given year when there will be high demand for use of any time-share property. For example, if the property is situated in the Lake Tahoe area, there will be extremely high demand for occupancy during the winter season. There also may be high demand for occupancy in the summer season and during certain holidays in that vicinity. There are other times of the year that demand for occupancy will not be as high. It is important that one make a reservation as earlier as possible to increase the likelihood of having the reservation request confirmed.

There is an important standard in California law that requires that the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given night must never exceed the total number of accommodations available for use during the year. This is characterized as a "one-to-one purchaser to accommodation ratio." This applies to all types of time-share plans including the reservation system for use of component sites of a multi-site time-share plan involving both specific and nonspecific time-share interests.

Q. - What aspects of time-share projects are not subject to DRE regulatory controls?

A. - The following aspects of time-share projects are not subject to DRE regulatory controls:

- Exchange Companies: Often, the primary incentive for purchasing a time-share interest is the opportunity for the owner to trade use of time owned in the time-share plan for the use of time in other resorts which have contractual relationships with an exchange company. Most time-share exchange companies are operated by the developers of the time-share projects. Other exchange companies are independent of the time-share developer.

DRE does not regulate exchange companies in any way nor require any assurances of future exchange program availability, except that DRE must ensure that the public report include disclosures regarding the exchange program if it exists as part of the time-share plan. Additionally, the developer is required by law to give purchasers, in writing, specific detailed information about the exchange program.

You should be aware, however, that under Section 11212(l) of the Business and Professions

Code, if a purchaser's total financial obligation for the exchange program exceeds \$3,000 for any individual, recurring time-share period, the offering is regulated as a time-share plan.

Because there is no guarantee that the project will remain affiliated with any particular exchange program and because they are unregulated, before entering into a contractual relationship, purchasers should use discretion in evaluating exchange programs offered in conjunction with a time-share offering.

- **Incidental Benefits:** As defined in Business and Professions Code Section 11212(m), an incidental benefit is an accommodation, product, service, discount or other benefit other than an exchange program, which is offered to a prospective purchaser of a time-share interest prior to the end of the rescission period. The incidental benefit is limited to three years or less, subject to renewal or extension. Incidental benefits are unregulated by the DRE and purchasers should be cautioned that the continued availability of the benefits should be carefully considered.

Incidental benefits may be offered only if all the following conditions exist: (1) the continued availability of the incidental benefit is not necessary for the use and enjoyment of the purchaser's use of an accommodation of the time-share plan in order for any accommodation or facility, (2) the use or participation in the incidental benefit is completely voluntary and payment for use is required only upon use or participation, and (3) no costs of acquisition, operation, maintenance or repair of the incidental benefit may be passed on to the purchasers as common expenses of the time-share plan.

Examples of incidental benefits may include discounted airline tickets, accommodations at hotels, discounts on car rentals and other items made available by the developer.

The Developer is required in accordance with Business & Professions Code Section 11237(a) to provide the purchasers a written statement that includes specific information about the Incidental Benefits to be offered as part of the time-share plan.

- **Short-Term Product:** A short-term product is the right to use accommodations on a one-time or recurring basis for a period or periods not to exceed 30 days per stay and for a term of three years or less. There must be a written agreement that all or a portion of the amount paid for the short-term product will be applied to or credited against the price of a future time-share interest or the cost of a future purchase of a time-share interest will be fixed or locked-in at a specified price. A short-term product is frequently used as a marketing tool to create customer interest in purchasing a time-share plan. The Department of Real Estate has limited authority over the regulation of short-term products.

Someone who purchases a short-term product has the right to rescind the contract and a 100% percent refund without deduction, until midnight of the seventh calendar day, or a later time as provided in the contract, following the day on which the contract is first made. The developer must provide persons with a written disclosure about the short-term product that includes the right of rescission, that reservations for accommodations are subject to availability and not guaranteed, that any specific blackout dates during which accommodations will not be available will be indicated, that if a person later purchases a time-share interest, the seven day cancellation right will apply following such purchase, that if a purchaser is unable to obtain a confirmed reservation for the short-term product, the developer shall attempt to provide the purchaser with a substantially similar alternative to the reservation requested. If the requested reservation or acceptable alternative reservation cannot be arranged, the purchaser will be

granted, if requested, a 12-month extension of the contract.

The developer must impound purchase monies paid for the short-term product in an independent escrow depository until the rescission period expires or post a bond or make alternative arrangements satisfactory to DRE in order to secure the purchase monies.

- Out-of-Country Time-Share Plans: If the time-share plan properties are located outside the boundaries of the United States, the Department of Real Estate has no jurisdiction over those offerings. This applies to any single-site time-share plan, to any multi-site time-share plan involving a specific time-share interest in which the specific time-share property is located outside this country, and a multi-site time-share plan involving a nonspecific time-share interest in which all time-share properties are located outside the boundaries of the United States.

California law does not provide for rescission rights for the purchase of out-of-country time-share plans, however, if an out-of-country time-share plan is marketed in California, the sales agents must have California real estate licenses.

The purchase agreement and any advertising or printed material regarding the time-share plan must include disclaimers as prescribed by Section 11225(e) of the Business and Professions Code.

- Low-Priced Time-Share Plans: Time-share plans in which the purchaser's total financial obligation is equal to or less than \$3,000 during the entire term of the time-share plan are not regulated by the Department of Real Estate.

Q. - What is a Time-share "Points" Program?

A. - There is another variation of time-share programs that is becoming more popular, especially in time-share plans in which purchasers have the right to reserve occupancy in more than one resort. Rather than the purchasers having the right to reserve a week every year or every other year in a resort, a certain number of "points" are assigned at the time of purchase to each purchaser. Point systems are structures for flexible use whereby the value of the use right of a time-share interest owner is expressed in terms of points rather than in increments of time.

The product sold to a time-share purchaser may consist of a time-share estate or a time-share use, however, the value of reservation rights is entirely a function of the points the purchaser receives at the time of purchase. The number of points conveyed to a purchaser is typically shown in the purchase agreement. In some cases, they may be indicated on the Grant Deed, if the offering is a time-share estate offering. The number of points assigned to a purchaser does not change as long as the purchaser owns the time-share interest or unless he or she purchases additional points.

In a points-based time-share plan, the more points a purchaser buys, the more flexibility he or she has in using the interest. In projects that involve more than one resort, a purchaser with a large number of points will have reservation rights to longer use periods in a wider variety of unit-types during the more popular seasons of the year than a purchaser of a smaller number of points.

Point valuations for each accommodation, season and resort are typically established in the governing documents for the time-share plan. Points-based programs may include the right of the operator of the reservation system for the project to make changes, subject to certain limitations, to point valuations for units in a resort. Such changes may affect the ability of time-share interest owners to reserve occupancy in those accommodations. Developers prefer to include the right to change point valuations in the event that use patterns of accommodations change over time.

However, California law includes some protections regarding the right to change point valuations. First, no change exceeding 10% per year in the manner in which points may be used may be made without the assent of at least 25% of the votes of time-share interest owners, other than the developer. No time-share interest owner may be prevented from using a time-share plan as a result of changes in the way in which point values may be used. In the event of changes in point values, no interest owner shall be prevented from using his or her home resort as provided in the purchase contract that he or she signed for the purchase of the time-share interest.

Q. - What should prospective Time-share purchasers keep in mind?

A. - Prospective time-share purchasers should inspect the time-share property before making a purchase decision and not rely on the representations made in the sales office. At the very least, purchasers should thoroughly read the public report in addition to all time-share related documents concerning the purchase, including the purchase agreement, Declaration of Covenants, Conditions and Restrictions (CC&Rs), Bylaws, and Rules and Regulations so that there is a complete understanding of the rights, obligations, and restrictions of ownership.

If a purchaser is contemplating the purchase of a time-share interest, he or she should not expect there to be an absolute right to use any other time-share project that is affiliated by means of an exchange company arrangement, a reservation system through a membership program, or contract with other member time-share projects (if the purchase involves a specific time-share interest in a multi-site time-share plan). There is no guarantee that an exchange company or a membership program involving other time-share projects will continue to exist in order to provide the reservation services promised. The companies offering these programs may go out of business or terminate their exchange programs or membership programs for any number of reasons. Also, they may discontinue their affiliation with the time-share plan in which a person owns a time-share interest. A time-share purchaser should rely only on the continuing rights he or she has with regards to the time-share plan in which he or she has an ownership interest.

Purchasers should also be cognizant of the fact that in time-share plans where one must reserve occupancy, one is competing with other owners for occupancy. Some periods of the year are in high demand and may not be readily reserved unless the purchaser reserves space at the earliest time possible.

Any questions about a particular time-share plan that is subject to a public report or is being marketed in California should be referred to the Department of Real Estate.

OTHER WEBSITES OF INTEREST

- [California Office of the Attorney General](#)
- [California Department of Consumer Affairs](#)
- [California Department of Corporations](#)
- [California Department of Fair Employment and Housing](#)
- [California Secretary of State](#)
- [Arizona Department of Real Estate](#)
- [Florida Division of Real Estate](#)
- [Hawaii Department of Real Estate](#)
- [Nevada Division of Real Estate](#)
- [Texas Real Estate Commission](#)