

Trust Vacation Ownership in the United States

At the New England regional meeting in December 2006, we asked several ARDA members who have experience in the trust vacation ownership to participate in a roundtable discussion to share their thoughts as to how this type of ownership regime operates and what advantages exist over the traditional deeded model. The participants were W. John Funk, Esq., an attorney with Gallagher, Callahan & Gartrell, P.C., who designed the first trust project in the United States in the early 1980s and represents resorts on how to use this ownership model; Joseph L. Berry, the developer of trust vacation ownership at the Eastern Slope Inn and Attitash Mountain Village in New Hampshire; Scott Dravis, vice president of resort operations for Vacation Resorts International, which implemented a trust conversion of a deeded project at Village Lodge Condominium in New Hampshire and manages trust resorts in other locations; and David Cox, president of FNTC America Trust Company, which specializes in providing trust and related services to timeshare resorts in the United States and is affiliated with First National Trust Company, the largest provider of trust services to European resorts.

Here are their answers to some FAQs about this model.



Left to right: John Funk, David Cox, Joseph Berry, Scott Dravis

What is trust vacation ownership?

Funk: This arises from the transfer by deed of legal title to the timeshare units of the resort to a trustee who holds the title for the benefit of vacation owners. Under the resort documents, each vacation owner owns a beneficial interest in the property and also a right to use the property in accordance with the program documents. The rights of each trust vacation owner are fundamentally the same as those of an owner of a deeded interest, except the owner gets a certificate of beneficial ownership versus a deed.

What are the advantages to the developer and the vacation owner?

Berry: One of the consequences of deeded ownership is that the title to the resort gets fractured among the many vacation owners. For example, if there are 100 units, there could be in excess of 5000 deeds. Each deed has to

be prepared and recorded in a registry of deeds, and transfer taxes and fees must be paid.

Trust ownership simplifies the process. The trustee is deeded whole ownership of the units, and one or more units can be conveyed at one time. This dramatically reduces conveying expenses, transfer taxes, recording fees, title insurance expense, and administrative overhead costs. Ownership is consolidated in the trustee, which facilitates the relationship with the local municipality for real estate tax purposes and the winding up of a resort, should that ever occur. The trustee issues a simple certificate to the vacation owner evidencing his/her ownership. The certificate can be transferred through the trustee by an endorsement of the certificate from the existing owner to the new owner without the need of legal counsel. It's a win-win for everyone.

How can you tell who owns the vacation interests?

Cox: The trustee maintains a register of owners. In the first instance, the developer owns all of the beneficial rights to the vacation interests. As sales proceed, the beneficial interests in the trust are transferred to the vacation owners. The trustee keeps a record of all vacation owners and their interests and manages the inventory to ensure that there is no duplication of sales or overselling. The trustee issues all certificates and processes changes in ownership.

What if the purchase is financed?

Berry: In a deeded program, the debt is secured by a mortgage, which adds additional preparation and recording expense. In a trust program, a security interest is granted in the financing document, and this is recorded in the records of the trustee. The vacation owner must clear the title if s/he wishes to sell the vacation interest. (continued p. 34)

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What if the vacation owner becomes delinquent in his/her obligations?

Dravis: If a vacation owner fails to pay assessments, the manager places a lien on the vacation interest in the register maintained by the trustee. The lien enables the manager to sell the vacation interest if the obligation is not paid under the rules of the Uniform Commercial Code (UCC). Likewise, if the vacation owner defaults in its purchase obligations, the holder of the financing can exercise its rights as a secured party under the UCC.

Is there a vacation owners' association?

Dravis: In the trust environment, the existence of a vacation owners' association may not be legally required. In effect, the trustee performs functions typically assigned to an association and is obligated to act in the best interest of the owners. However, as a general rule in our experience, we still think that it is highly advisable to have an owners' association play a role in the scheme. In particular, once a resort is past the development stage, the owners are responsible for the appointment of the trustee. In addition, the owners can provide direction and advice to the trustee through an association. Basically, it provides checks and balances. The great thing about trust ownership is that it is highly flexible and can accommodate a wide variety of models.

What type of involvement do owners want?

Berry: Our experience has shown that most vacation owners do not want to be involved in the day-to-day management of a resort—they have neither the knowledge nor the experience to do so. They simply want to have the vacation experience that was repre-

sented to them. In our case, we are still actively involved in the development and management of our resort. For this reason, we have found that the trust model works very well for us, so we do not have an owners' association at this time. If we want guidance from our owners, we simply ask them for their opinion.

Whether or not there's an association, what's the trustee's role?

Cox: It's important to have an independent professional trustee serving in that capacity. The trustee doesn't just have the responsibility of maintaining good records—the trustee has to be knowledgeable about the resort and its operations to act with the best interest of vacation owners in mind. In many cases, the trustee has the responsibility to appoint the manager. It is important to exercise due diligence in that task.

What if a timeshare resort is deeded but wants to convert to a trust model?

Funk: This can be accomplished by establishing a trust and causing deeded interests to be conveyed to the trustee, who then converts the deeded interests into beneficial interests. Each person acquiring an interest from the trust gets a certificate of beneficial interest, not a deed. It is important to understand that since the deeded owners have legal title, you cannot compel them to make the conversion. However, many see the wisdom of doing it and convert voluntarily.

How long can that take?

Dravis: Conversion is done gradually over a period of years. As a management company, we have used the opportunity of lien assessment foreclosures as a device to get legal title to deeded interests and then convey them in bulk to the trust for resale. It dramatically reduces the cost of resale programs. We see this as an exciting opportunity for owners' associations to regain control of delinquent inventory. Additionally, if you educate the

deeded owners, they can readily see the advantages of trust ownership. It saves them time and money. We have set up programs where they can easily convert at a reasonable cost.

Do trusts make it harder to close a deal with a consumer?

Berry: In our experience, no. In fact, our sales staff is trained to show the consumers it is a better form of ownership than a deed. If sales personnel have sold deeds in the past, they may initially resist because they were led to believe that it adds value to the product. But they quickly find that it is not an impediment, and, if properly explained, will even facilitate sales.

Does trust ownership help in addressing local tax issues?

Dravis: As a manager, the trust approach allows for one bill for the entire property taxes being presented to the trustee for payment. It certainly simplifies the relationship with the municipality. A further benefit is that if the whole ownership of a unit is transferred to the trustee, the unit is assessed in the same manner as other similarly situated whole ownership units. This avoids the timeshare inflation in real estate values—in other words, it decouples the real estate from the timeshare scheme.

Is this model commonly accepted in the industry?

Funk: Major financial institutions have been financing the acquisition, development, and construction of trust resorts and the hypothecation of consumer loans for many years. Also, the trust model is well-suited for points-based ownership regimes. It is a very adaptable product.

Overall, how does the trust approach compare with other models?

All: Favorably. The question really is: why are resorts using other models when this approach is available? ■