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10 Questions for a Timeshare Resale Broker

By Scott Kilpatrick

According to many consumer spending reports, in today's economy, people are very cautious about purchasing goods and services right now. The timeshare resale market is one place where you want to ensure that your dollars are working for you. If you need to get your timeshare property sold, here are ten good questions to ask a timeshare resale broker in order to feel more confident that you are making a wise decision.

1 - How long have you been in business?

The length of time that a timeshare resale broker has been in business speaks volumes about the stability of their organization as well as the morality of their practices.

2 - How much have you sold?

A good marker of success can be established by the volume of sales the company has under its belt yearly, quarterly or since the inception of the company. It is a good idea to ask how much the company has sold in volume within a time frame, or simply ask how many closings the company has made within a period of time.

3 - What is your incentive to sell?

Many resale companies charge an upfront fee to add your property to their resale inventory. This is not an incentive to sell, but a fee that covers items such as advertising your property on the resale market. A timeshare resale broker should have a motivation, such as sales commission, to ensure there is an incentive to get your property sold. Without it, there is no driving force to promote your timeshare in front of potential buyers. There needs to

be an incentive for a sales agent to solicit potential buyers and offer your property to those looking to buy on the resale market. The last thing you want is your property sitting in a resale broker's inventory and not getting worked.

4 - What is the size of your sales staff?

If you have found a timeshare resale broker that has an incentive to sell your property, another good indication of the potential to get your property sold will be the number of sales agents at a resale broker's office. Since commission based sales agents are motivated by a percentage or fee awarded for each sale, a large group of sales agents in one office is indicative of the amount of sales and closings taking place at the resale broker's office. A resale company must remain a profitable business in order to employ the technology and services to move timeshare properties on the resale market.

5 - Can you guarantee the sale of the property?

Asking a timeshare resale agent if the sale of your property can be guaranteed is a good way to quickly determine if the sales agent you are working with has integrity. If the answer is "yes" to a guaranteed sale, then you should take your business elsewhere. There is no way to guarantee the sale of a timeshare property. You may encounter a money back guarantee, but be sure you understand the terms completely and do not assume it means you will get your money back if you're dissatisfied with the results you are getting. Like most guarantees, expect them to be bound by terms and guidelines.

6 - How much of the sales process can you complete?

The paperwork that involves recording deeds, transferring ownership, escrow, and other documents associated with the timeshare resale process can be quite burdensome. Determining if a timeshare resale broker handles all of the sales process from inquiry to closing is a good indication that lends credence to their expertise, dependability and legitimacy. Inquiring about the sales process in its entirety will

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How Developers can regain control of an Association and what you can do to prevent it

By Walter Anderson

One of the main values of timeshare ownership has always been that, ultimately, the individual owners controlled the operation of the properties when they elected a majority of the members of the Board of Directors. The owner-elected Board then makes decisions related to the maintenance and operation of the property, including determining what the maintenance fees would be and, most importantly, monitors the financial aspects of the resort.

The Board elected by the individual owners is in a position to protect the individual owner's rights when the Developer or Management Company is not performing. Clearly, without this oversight, the Developer or Management Company is free to do whatever it wants.

There is little question that a Developer should be able to control the management of a resort during the selling phase to ensure that the resort is operated in a manner that allows him to sell what he created. Most Master Deeds and Bylaws provide that the Developer can elect the Board of Directors until all but a few of the units are owned by him. Some states, such as Florida, have enacted laws require the turnover of control to the individual owners as the property is sold, with a final time period for transition.

Without owner oversight, the Developer/Manager is free to use Association funds to upgrade and maintain portions of the property used for sales that an owner-controlled Board might recognize had no reasonable benefit for the existing owners.

Without oversight by an owner-controlled Board, a Developer can change all the signage on a property to reflect a change in ownership or name of the Developer and charge the cost (which can be many thousands of dollars) to the Association based on the premise that the signs are on Association property.

Without oversight, the Association's insurance can include coverage, with its related premium, for materials and activities, including business interruption insurance and building contents that would not be on the site if it were not for sales activity.

Without ownership control of the Board, the owners who are paying the maintenance fees do not have control over how their money is being spent or how their resort is being maintained and operated.

What is of even more concern are Developers who seek to regain control by electing owners who are disinterested, or worse, the Developer's employees. If the Developer/Management Company's activities are being questioned by the owner-controlled Board, the Developer/Management Company may move to remove the Board rather than address the issues.

There have been a number of ways Developers regained control of a Board even when they did not have a majority of the Board. These include:

1. Having the proxy state that "If no name is given on the proxy, the Management Company or Developer will have the proxy for the owner and can cast the owner's vote as it chooses." Since there are generally many more proxies submitted than owners attending Annual meetings, this provides the Developer/Manager with an overwhelming number of votes.

2. At the time of purchase, have the new purchasers sign a long term proxy to the Developer. The Developer can then cast the owner's vote as it chooses until and unless the owner issues a new proxy or attends the meeting.

3. The Developer/manager creates a proxy that states that "this proxy can only be used for determining a quorum." Because the Developer generally will have several hundred voting interests, either through purposely retained unit/weeks or mortgage foreclosures, the Developer can have a majority of the votes of those present at the meeting. Even if there are several thousand proxies given to the owner-controlled Board that would vote for owner representation on the Board, these votes cannot be counted, and the Developer can select owners or employees that they have undue influence over.

4. A number of Developers are contacting fixed week owners and converting them into Club Programs and, as part of the conversion process, the owners are assigning their voting rights to the Club or, in some cases, deeding their ownership interest to the club. The Developer then uses the votes assigned to the club to elect a Board of its choosing.

5. A Developer of a points program declares that it has one vote for a relatively small number of points or the smallest points package being sold, when the provisions of the Documents provides that each purchaser has only one vote regardless of the number of points. This can create a situation where the Developer has many times the voting power of an owner for the same number of points owned or percentage of ownership of the resort.

6. The Developer obtains unit weeks that have delinquent maintenance fees from the Association and instead of selling them, puts them into a club and retains the voting rights. If the Developer

obtains voting rights of 51% of a quorum of the owners (which can be as little as 8% of the ownership), they may be able to elect their own staff to the Board unless a large percentage of the owners return their proxies and assign their voting rights to the owner-controlled Board.

There would be little to say if a Developer had a majority of the total ownership interests in a resort. In that situation, the Developer would have every right to elect a majority of the Board Members. But, this is not what is happening. Because the quorum of members of Timeshare Associations is generally low, often at 15% or less of the membership, a Developer through the methods above, can have the majority of the votes at a meeting while actually owning only a small percentage of the total ownership himself.

There are several things that an owner-controlled Board can do to protect the owners against having a Developer retake control of the Board from the individual owners.

1. The Developer/Manager should not be able to manipulate the owners to their benefit by modifying the proxy. The Board should pass a resolution that the proxy format must be approved by the owner-controlled Board. The Board can then specify that, if no name is filled in on the proxy, the Board will have the right to vote the proxy. The proxy must also not have a provision that restricts its use to just being used for obtaining a quorum.

2. The Board can also make a concerted effort to get the owners to all send their proxies back in to the owner-controlled Board. This can be done with the notice of the annual meeting and in newsletters and other mailings.

3. Contact all owners and inform them that if they are considering converting their ownership interest into a club program, they check to determine if they are giving up their voting rights. Further, advise the owners that they should take into consideration, when joining a club program which does not let the members retain their voting rights, that they are giving up any oversight protection they had and are relying on the Developer (and any other entity to which the Developer sells their club) to maintain and operate the Club with no oversight by the members.

4. Have the Association attorney review the documents and ensure that the meeting and notice is proper and correct and retain all voting rights with the owners.

5. Have the Association attorney attend the meeting. This can protect the Association from the Developer/Manager seizing control from the owner-controlled Board with a questionable interpretation of the documents or state statutes. Once a Developer/Manager regains control of the Board and Association funds, it can be very difficult for the owners to again control the Board without expensive legal action.

It should be remembered that once an individual purchases a timeshare interest whether it is a unit week or points or some other variation of ownership, it is no longer the Developer's property, it belongs to the individual owner and not to the Developer. The owners should be the ones who determine which owners will represent them as Board Members. Any attempt by a Developer/Manager to regain control of a Board through manipulating an election raises the question of the Developer/Manager's motives and the ethics they are exhibiting.