Types of Real Property Ownership

Condominiums and Townhouses

Beyond single-family home ownership, there are other types of real property that a buyer may purchase. These properties may be ‘stacked vertically’, like condominiums; or positioned ‘side-by-side’ like townhouses. The buyer may be purchasing only the ‘air space’ between the walls, or the structure and ground under the structure. The buyer may be purchasing the unit for use year round forever or only for use a couple of weeks out of every year.

Condominiums

Condominium laws are horizontal property acts. The condominium owner owns a title only to his/her individual unit, and must be able to access the entire unit. A condo is sometimes referred to as an air lot, because owners do not own the land underneath them.

Depending on how title is transferred, one or more owners may hold ownership. Each tenant owns an undivided share of the common elements as ‘tenants in common’, which may include land, courtyard, lobbies, elevators, pools, and golf courses. A condo may be separately mortgaged, sold, or leased and each unit receives a separate tax bill. A default of the mortgage on one unit will cause a foreclosure of that unit only, not the entire building.

A Declaration of Condominium usually includes a third dimension (height) in their legal descriptions. A copy of by-laws that governs the homeowners association is included along with a survey of the property, boundary drawings and restrictive covenants controlling the rights of ownership.

The rules are administered by an Association of unit owners who are responsible for maintenance, repair, and cleaning of common areas. The association must also maintain additional insurance policies. The unit owners pay an association fee and may be responsible for special assessments collected by the homeowners association. The size of fee usually
determined by size of individual unit. If homeowners’ fees become delinquent, association can claim property and auction.

**Condominium Review**

* condominium laws are called horizontal property acts
* tenant owns fee simple title to each unit
* ownership may be held by one or more people
* tenant owns undivided share of the common elements (building and land)
* Common elements include land, courtyard, lobbies, elevators, pools, golf courses, etc.
* unit owners own common elements as tenants in common
* no right to partition
* no building style requirements
* Creating a Condominium
  * many states have adopted Uniform Condominiums Act (UCA)
  * created when owner or developer executed and records a Declaration of Condominium
  * Declaration of Condominium includes:
    * legal description
    * have a third dimension (height) in their legal descriptions
    * copy of by-laws
    * governs homeowners association
    * survey of the property
    * drawings including boundaries (includes height)
    * restrictive covenants controlling the rights of ownership
* may be separately mortgaged, sold, or leased
  * association may have right to first refusal
* each unit has a separate tax bill
* default of mortgage may cause foreclosure of that unit only
* administered by an Association of unit owners
  * may be governed by a Board of Directors
  * may manage property of its’ own or hire a property manager
  * association must enforce all adopted rules
  * association is responsible for maintenance, repair and cleaning of common areas
  * association must maintain additional insurance policies
  * unit owners pay an association fee and may be responsible for special assessments collected by the homeowners association
  * size of fee usually determined by size of individual unit
  * if homeowners fees become delinquent, association can claim property and auction
* Sometimes called air lots
* owners do not own the land underneath them
* limited common elements refer to common areas that have limited access to just one or two multiple owners, such as common walls or private parking spaces or storage units
Townhouse

Unlike a condominium, townhouse owners own the land below the unit, so they are never stacked on top of one another like a condominium. Like condominium owners, townhouse owners share ownership in common areas. Owners pay an association fee for common area and share in assessments.

Townhouse review

* owners own land below unit
* owners share ownership in common areas
* owners pay an association fee for common area and share in assessments
* never stacked on top of one another like condominium

TIME SHARES

Origin of Time-Shares: Time-share ownership is a concept that originated in the French Alps in the 1960’s”. It first became popular “when escalating property prices made it nearly impossible for most people to afford a full-time vacation home.” By splitting the vacation home into weeks, multiple owners could share in the home’s expense. These multiple owners share time and expense of the property and take turns occupying the property. “A ski resort developer in the French Alps innovatively marketed his resort by encouraging guests to "stop renting a room" and instead "buy the hotel".”

Affordability has always been a major selling point for time-share units. Time-share owners are able to use high-end resorts but share the cost of the mortgage, insurance, amenities and maintenance; with the remainder of the owners.

Benefits of owning time-shares:

Time-share owners typically vacation in larger accommodation than vacationers renting a hotel room. Many time-shares include features such as full-service kitchens, elaborate master suites, additional bedrooms and bathrooms, and living rooms with fireplaces. They are typically found at large, high-end resorts that are in high-demand. The accommodations are predictable, dependable and consistent. Time-shares give the time-share owner the ability to stay in their unit for a full week. Depending on the increase or decrease in hotel accommodation expense over time, a time-share unit owner may be able to spend less money that he/she would have, had they rented a condo for the same 20 to 30 years that they spent paying for their time-share. A time-share owner has the use of common areas, which may include pools, spas, golf courses and clubs.

13 http://homebuying.about.com/cs/timesharebasics/a/ownership.htm 10/06
What is a Time-Share?

Dictionary.com defines ‘time-share’ as a plan in which persons share ownership or rental costs of a vacation home, especially a condominium; entitling each participant to use the residence for a specified time each year. While most time-shares are used for real property resort or hotel ownership, this all-encompassing definition opens the door for a time-share to be used for a variety of real and personal property; such as private jets and motor homes.

Types of Time-shares:

There are three general types of time-shares: interval ownership, vacation clubs, and points programs with a number of different combinations. One major distinction within the ownership types is whether or not the owner is buying a deed (i.e. real property ownership) or a lease (i.e. the right to use a property for a period of time), or a license (membership in a club).

Interval Ownership

Interval ownership interests can be arranged in a variety of ways. The interval (time period) can be a fixed week, a floating week, or a rotating week in every year. Interval interests may be purchased as a fractional deeded ownership, an estate, enabling the owner to benefit from owning real property; or leased as a right to use contract that terminates on a specific date. An owner may be able to deduct interest paid on the loan from their income taxes, and may be able to rent their interval, give it away or will it to his/her heirs.

Time-Share Financing

To purchase time-shares, many buyers will need financing. This financing can either be arranged by the company selling the time-shares, or arranged by the buyers themselves. The type of financing that is secured will depend on the type of time-share purchased. If real property (i.e. deeded time-share) is a major portion of the time-share’s value; financing options will increase, because mortgage instruments will be an option. If real property is not a major portion of the time-share’s value; financing options will decrease because unsecured financial instruments that don’t require real estate collateral will be the only choice.

15 http://dictionary.reference.com 10/06
Time-Share Interval Choices

**Fixed week**

A fixed week interval owner owns the same unit for the same, specific week each year. The calendar is broken into 52 weeks, minus any weeks needed for maintenance issues, and each week belongs to a specific time-share owner. Owner Breen may own week 30; while Owner Jensen owns New Years week, or week 1. Each year, the owners use the facility on the same week of the year. Most fixed weeks start on Friday, Saturday or Sunday.

**Floating week**

A floating week interval owner owns a specific number of weeks each year, usually during a given demand period each year (i.e. high demand, low demand, etc.). This type of ownership is appropriate for vacationers that aren’t sure of the date of their specific vacation week in the future, because it gives them the flexibility of selecting from a variety of dates.

**Rotating week**

A rotating week interval owner moves throughout the calendar to different, sometimes consecutive weeks. This doesn’t give time-share owners the flexibility of a floating week, because the dates are pre-arranged before the time-share is purchased, but it enables all time-share owners an opportunity to use key holiday weeks. For example, in 2007, Owner Jill Jones is scheduled to use week 14, and in 2008, Jill will use week 14.
Time-Share Interest Choices

Points Ownership

A points-based time-share interest enables the owner to purchase a specific number of points and then use them for several days at a resort, or a rental car or cruise. This may be a deeded or right to use interest. Points are a "currency" that represents timeshare ownership interest and are used to establish value for seasons, unit sizes, and resort locations.

Vacation Clubs

Unlike time-share interval ownership interests, vacation clubs time-share interests are usually a licensing arrangement. Vacation clubs are organizations that own time-share units in multiple resorts in various locations. As a member, the individual has a right to use the club and all of its amenities.

Exchange Programs

Owners of time-shares often can exchange or swap privileges with other time-share owners through an exchange program. Owner Brown deposits his 15th week in a Paris time-share resort with an exchange company and trades it for the 13th week in a Lake Tahoe resort. For this right, he will need to pay the exchange company a fee. A time-share owner may be free to establish a relationship with an exchange company of their choosing, or the specific exchange program may be a package deal with the purchase of the time-share.
What is not included?

All resorts charge time-share unit owners an annual maintenance fee. This fee covers items like maintenance on the unit, upkeep of the common areas, labor charges, golf course fees, pool maintenance fees, etc. Time-share owners may also be required to pay annual property taxes and occasional special assessments. A special assessment is the term used to designate a unique monetary charge, for an improvement that has been done on a property. Typical assessment improvements include pavement, curbs, gutters, streetlights, and driveways. Time-share owners may also get assessed for items like beach erosion, when owning time-shares at beachfront properties; and replacement sod for golf course resort properties.

In addition to the above mentioned fees, time-share purchasers are also responsible for mortgage interest payments, when the units have been financed. Any changes that a time-share owner needs to make will also cost them. Exchange company fees and conversion fees, charged if time-share owners convert weeks to points; are also potential expenses.

Trade Organizations

There are many trade organizations catering to the time-share industry. Some trade groups are designed to aid consumers, and yet others are designed to assist with the needs of real estate time-share professionals. Since the time-share industry expands beyond borders, many trade organizations specialize within countries other than the United States of America and some are international in scope. The two largest trade organizations are the American Resort Development Association [http://www.arda.org](http://www.arda.org) and the National Association of Realtors (NAR) [http://www.realtor.com](http://www.realtor.com).

The American Resort Development Association

A trade organization called [The American Resort Development Association](http://www.arda.org) (ARDA) identifies itself as the main trade organization in the United States for the time-share industry. This Washington, DC based trade organization, established in 1969, "promotes the growth and development of the timeshare industry through advocacy, networking, alliances with organizations, outreach, informational tools, and professional and educational development".  

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16 [http://www.arda.org/Content/NavigationMenu/Membership/WhoWeAre/Who_we_are.htm](http://www.arda.org/Content/NavigationMenu/Membership/WhoWeAre/Who_we_are.htm) 7/24/2007
Cooperative Apartment Buildings:

Not commonly used in Nevada, but important for a licensee to be able to define is a cooperative. “A Cooperative apartment, commonly referred to as a co-op, are the most prevalent form of home ownership in New York City, accounting for approximately 80% of all resident-owned apartment buildings in the Borough of Manhattan.

A cooperative is a building or complex owned by a corporation and operated for the benefit of persons living in the building. Co-op owners, often referred to as shareholders because each owner receives shares of stock based upon unit size, are entitled, by reason of a proprietary lease, to the exclusive use of a certain dwelling unit of space.

The home value of the unit is based upon the number of shares allocated to that space, along with location of the building and services offered. The cooperative is operated by a Board of Directors, elected annually by the shareholders at their annual meeting. The members of the Board act like the corporate officials of a business, except that they are unpaid volunteers and do not strive to make a profit or suffer a loss. They set all policy decisions for the property. In addition, they determine the monthly fees, referred to as maintenance expenses, used to pay for the staff and upkeep of the building, and for taxes.

The ownership of a co-op apartment is considered personal property, as opposed to real estate, and no property title or deed is transferred.”\(^{17}\)

Cooperative Review

- corporation holds title to the land and the building
- tenants own shares of stock in the corporation
- apartment price = stock price
- only one owner - the corporation
- maximum of one mortgage
- shareholders receive a proprietary lease (owner's lease) that gives them the right to occupy a unit
- corporation has only one asset - the building
- corporation pays for maintenance of building including:
  - real estate taxes
  - mortgage payments
  - insurance
  - repair and maintenance of building
- corporations by-laws determine operation and management
- transfer of shares in the corporation:
  - may require approval of Board of Directors including proof of financial ability of tenant
  - may require sale of stock back to the corporation at the original purchase price
- tenants pay association fees
- defaults are against the corporation and all shareholders, not one individual unit holder
- all shareholders must share equally in all debts
- Advantages:
  - lenders will accept building as collateral for mortgage
  - easy transferable shares allow lower-income buyers to participate
  - shareholders have some control over the property
  - shareholders participate in mortgage interest tax deductions
  - owners enjoy freedom from maintenance
- licensees selling cooperatives may need a Security’s license because they are selling stock, not real property interests