

Timeshares: Takeaways from NTOA Conference; Advocate Discloses Federal Task Force on Timeshare Fraud; Florida Regulator Focused on Verbal Sales Misrepresentations; Owners Call for Legitimate Resale Market

Please note this version has been updated slightly for clarity.

Major Themes from Conference

Four major themes stood out at the Timeshare Owners Association Conference, which *The Capitol Forum* attended on February 21st outside Orlando, and which involved a robust discussion among consumer advocates and timeshare owners. Key takeaways include:

1. Regulatory attention is increasing in the timeshare industry at the state and federal levels.
2. Timeshare owners and consumer advocates are clamoring for a legitimate resale market to evolve, and businesses are looking to cash in on that opportunity.
3. Owners and advocates are questioning the utility of contracts in perpetuity.
4. The relationship between ARDA and consumer groups has become increasingly strained of late.

The Timeshare Owners Association Conference agenda can be seen [here](#).

We have written previously that an increase in regulation and enforcement surrounding marketing practices in the timeshare industry would create a serious threat to the current business model of most developers and operators in the industry. Any traction in the resale market would similarly disrupt the current prevailing business model.

Regulatory Attention is Increasing

NTOA discloses federal task force into timeshare fraud. NTOA chairman Greg Crist discussed the increase in regulatory focus on the industry at several different points throughout the conference. Mr. Crist said that NTOA is working with state and federal regulatory agencies on issues of high-dollar fraud. Mr. Crist added that he is in frequent communication with federal and state authorities and that the regulators prioritize complaints by the significance of the consumer harm. Significantly, Mr. Crist added that there is a federal task force looking into the timeshare industry. While it was unclear exactly what type of fraud the task force is focused on, he compared fraud in the timeshare industry to fraud in the multilevel marketing industry. Mr. Crist also added that regulators and law enforcers are overwhelmed with the number of complaints they receive regarding the industry.

Florida regulator explains state-level market oversight. We spoke with an official who works for the local Florida state regulator of the timeshare industry (the Florida Department of Business & Professional Regulation's Division of Florida Condominiums, Timeshares and Mobile Homes) who attended the conference who expressed his interest in maintaining his anonymity after our conversation. He explained that Florida received over 1,000 complaints in the timeshare industry last year and engaged in only "a handful" of enforcement actions. He explained that the bar is very high for bringing an enforcement action, as Florida law states there needs to be "clear and convincing" evidence of wrongdoing in the timeshare industry. The regulator also said that the timeshare industry is very important to the state of Florida and the enforcement priorities for the state are influenced by the views of the current Governor.

Importantly, the regulator said that recently his office has been paying close attention to whether or not timeshare companies are making misrepresentations during their 1-on-1 sales meetings to close customers. He made it clear that having a clause in a contract stipulating that customers cannot rely on verbal representations by salespeople is actually a red flag for regulators in that it causes them to think that the companies are in fact likely to make misrepresentations verbally if they include such clauses in their contracts. Stakeholders should view such a regulatory mentality as significant because many in the industry view clauses that say “do not rely on verbal presentations” as absolving companies of wrongdoing, not as attracting regulatory attention.

Further, state regulators have requested tapes of 1-on-1 sales conversations between large timeshare developers and their customers and have found numerous misrepresentations on these tapes. The regulator mentioned that the companies are taping the conversations to monitor and protect themselves, which is a curious statement given that it would seem to create additional liability for corporations if such tapes are acquired and found to contain misrepresentations. Lastly, the regulator mentioned that the state regulator first notified one company’s in-house counsel of misrepresentations on their tapes and subsequently, the regulator continued to receive complaints from the customers of the same operator.

In short, while state regulators in Florida are receiving complaints, their method of oversight and enforcement, which appears to mainly include a dialogue with corporate counsel, does not seem to be particularly aggressive or effective.

The Ever-elusive Quest for a Legitimate Resale Market

Consumer advocates say resale market development is top priority. Greg Crist said that the number one complaint that NTOA receives is related to there not being a legitimate re-sale market. In previous conversations, Mr. Crist has explained that advocates are working to produce studies and otherwise facilitate the development of the re-sale market.

Gary Prado from RedWeek explained that if the timeshare industry “embraced an aftermarket, there would be more trust” of the industry within the owner community. He explained that the lack of an aftermarket is what drives the \$1 price points that can be seen on eBay.

Frank Debar from the Florida Timeshare Owners Group added that resorts that buy back timeshares for nothing except the cost of transfer fees undercuts owners on the resale market. Perhaps the biggest applause of the day occurred when one advocate said that the one hope he has for the industry to improve its reputation and relationship with owners would be for every resort to open a resale operation for their owners.

Profile of Weholi, new entrant into timeshare resale market. Lastly, we spoke with the Thorsten Wieting, CEO of [Weholi](#), which is a Swiss company that is driven to establish a legitimate timeshare resale market in the U.S. Weholi’s entry to the U.S. is fairly recent, and its success is by no means a foregone conclusion, but the company’s attempts to create a liquid resale market seem compelling. Mr. Wieting said that the company’s European investors give the company a very comfortable cash position with which to aggressively enter the U.S. market.

For example, the company was willing to announce a potentially costly promotion at the conference—for customers interested in selling or renting a timeshare, Weholi would guarantee the sale or rental of that timeshare, and if

Weholi were unable to sell or rent the timeshare, the company would pay for the owner's annual maintenance fee. The success of Weholi may depend on how sophisticated the company is when handling developers' efforts to impair the value of resold timeshares. In fact, the complication of dealing with timeshares appears to be a competitive advantage for Weholi, as Mr. Wieting explained that other online vacation platforms, such as Airbnb and VRBO, stay away from timeshares because of the complexity of the relationship between owners and developers.

Utility of Perpetual Contracts Thrown into Question

Perpetual contracts. Owners and advocates also mentioned that the perpetual nature of the timeshare contract should be reevaluated. Greg Crist from NTOA explained that establishing shorter contract terms was the most important change that should be made to the industry to improve it.

As the industry has moved to points systems, and as maintenance fees have increased, costs and access issues appear to be causing owners to challenge whether or not a perpetual timeshare agreement makes economic. Also, the age of timeshare owners is causing owners to raise questions about inheritance of timeshare properties. One owner firmly declared that, on the advice of legal counsel, his children would not be forced to inherit his timeshare upon his death. Others in the audience expressed concern that children would be left with a timeshare property that they would not use and could not afford. As the average age of timeshare owners increases—experts we interviewed estimate the average age of timeshare owners to be in the early to mid 60s—we would expect an increase in questions by owners about inheritance and the enforceability of a perpetual contract.

ARDA and ARDA-ROC Face Resistance

ARDA vs. the owners. Advocates at the NTOA conference explained that the relationship between ARDA and the timeshare owner community is increasingly strained. Mr. Debar, citing recently-passed legislation in Florida that contained allegedly pro-industry provisions at the expense of consumers, said that his group no longer has a relationship with ARDA “because they lobbied against owner interests. He followed up that with the statement, “we don't support them and they don't support us,” which received loud audience applause. Mr. Debar even called for customers to pay attention to what they sign and to make sure that they uncheck the box in all timeshare contracts that ops the customer into an agreement to send money to ARDA-ROC.

Greg Crist from the NTOA said the organization's relationship with ARDA is “very political” and almost “requires diplomatic relations.” He said that NTOA maintains a relationship with ARDA because the dialogue allows for an exchange of information that is mutually beneficial.

Gary Prado of Redweek said that he has tried to work with ARDA, that they are still members, but that they have not been helpful in efforts to develop a resale market. He said that if owners call ARDA and ask what to do to sell an unwanted timeshare, ARDA recommends that the owner call a real estate agent. Mr. Prado concluded that such a recommendation is “as if they don't want a central marketplace to get rid of your timeshare.”