Registry Strives to Tame the Unburdening Beasts

By George Leposky, Editor

A company contacted me a year ago with an intriguing offer to extricate me from ownership of my timeshare unit-week. The company would take title to my week and assume responsibility for annual maintenance fees, property taxes, and any special assessments the homeowners’ association board might impose.

The nice lady with whom I spoke said all I had to do was give her firm a power of attorney. The firm would handle all details and cover all transfer fees and closing costs, including escrow; title search; estoppel verification; preparation, overnight delivery, and tracking of closing documents; title examination of the executed documents; county deed recording; and notification of the resort.

It seemed like a good deal—until she told me this unburdening service would cost me close to 90 percent of what I paid to buy the week three decades ago. Put another way, it was equal to seven years of my 2013 maintenance fees and taxes. I listened in disbelief. I wasn’t even sure I wanted to be extricated, and this high-cost escape route wasn’t appealing. I politely declined. Then, out of curiosity, I asked the nice lady what would happen to my week if I accepted her offer. She replied that the week would become part of a bulk transfer. “We will pay a third-party timeshare acceptance corporation three to eight times the amount of your maintenance fee. They will use it for rental and corporate travel,” she said.

A Black Hole

That explanation sounded fishy to me. The cash seemed to flow in the wrong direction. Later I realized that this unburdening company may not have intended to put my week to any worthwhile use or to pay its annual fees and taxes.

Although some participants in the unburdening business may resell certain highly desirable timeshares, other inventory for which little or no demand exists tends to fall into a black hole. Titles to such timeshares are typically transferred to shell corporations with no assets, or to individuals with limited financial capability.

Unburdening grew out of an earlier scheme that surfaced more than a decade ago, when scammers began contacting owners by postcard or phone to say, “We have a buyer for your timeshare,” and asked for an upfront marketing or brokerage fee. Trusting owners wrote checks and awaited the sale proceeds, which never arrived.

Unburdening first appeared in 2007 and 2008, when the Great Recession pinched the cash flow of many timeshare owners. Resorts couldn’t immediately tell what was happening, because unburdeners accept only timeshares on which all current fees and taxes are paid. That gives them up to a year before a resort sends a new bill to the new bogus owner, who doesn’t reply. When the new bill becomes overdue, it goes through in-house collection, and then to an outside collection agency, which returns it three to six months later after the collection agency can’t contact the new owner.

HOA boards victimized by this scheme eventually discover that the new non-paying owners can’t be located to collect the delinquent funds. Then the boards must spend money to foreclose upon and regain
title to these unit-weeks. Meanwhile, to sustain the resort, the remaining legitimate owners pay higher fees.

**Focus on Estoppel**

Among the first resorts to discover unburdening’s impact on their bottom line were several clients of Grant Wolf, Inc., a shared-ownership consulting firm based in Stateline, NV. Founded in 1985 by Peter W. Grant, president, and Richard S. Wolf, executive vice president, Grant Wolf has developed its own properties in North Lake Tahoe and Squaw Valley, CA, and through the years has provided communications management, inventory recovery, property renewal and other sustainability services to some 300 independent resorts and management companies.

Grant and Wolf began looking for ways to counteract the unburdeners. They focused initially on the estoppel aspect of timeshare transfer. “In the past,” Grant explains, “a typical escrow company would contact the resort and request an estoppel certificate, a statement of current status. The escrow company asks the HOA ‘Do you have a lien against this unit-week or are its payments up to date?’”

“Unburdening is clearly an intent to defraud these associations from their maintenance fees,” Wolf says. “These unburdening businesses take full advantage of the association by mimicking the practices of legitimate escrow agencies. Companies send the resort a blank estoppel request. They say, ‘Fill it out and send it back. We’ll notify you of the new transferee at some future date.’ At the bottom of the form is disclaimer language stating that you agree to accept the name of the future transferee without restriction.

“The HOAs never had a practice in place to deal with this. Resorts would issue estoppel certification without knowing who was going to be the new owner. They didn’t have good estoppel practices and procedures because they didn’t need them, and now all this suspect activity is going on.”

**Helping HOAs Adapt**

Wolf created a Best Estoppel Procedures and Practices Manual that resorts can use or modify for their resort’s unique circumstances to require basic information before issuing estoppel certificates. It includes language to implement a strong estoppel procedure through a resort’s rules and regulations or as board policy, and model forms and letters. Wolf recommends that associations require a pre-recording review of all conveyance documents to avoid common recording errors that can compromise the chain of title.

Resorts following the manual’s guidance will apply its recommendations in a uniform and non-discriminatory manner, requiring escrow companies and everyone else to fill out an internal transfer form, a simple membership application that applies even to intra-family transfers (such as a grandmother giving a unit-week to her grandson). The standard form asks:

- Who is the transferee?
- What is the transferee’s physical address? (A post office box, private mail drop, or vacant lot isn’t acceptable because the resort can’t execute legal service there if the new owner doesn’t pay.)
- Does the transferee have a bank account, and does that account contain cash?

“We worked with Bruce P. Grego, a former South Lake Tahoe city councilman with 35 years of experience as a timeshare association attorney,” Grant says. “He’s incensed by the damage these unburdening companies have caused. He says HOAs
are fiduciaries; they have a right, in fact, a responsibility, to maintain the resort’s roster with people they believe will pay the dues.”

A beta test began in the spring of 2012 when five resorts implemented these estoppel practices and procedures, resulting in a volley of attorney letters from the unburdeners, and a return volley from attorney Grego. “In a year and a half,” Grant says, “these HOAs have not issued an estoppel certificate to anyone who has not properly completed the paperwork.”

Checking the Data

When an escrow company did provide a name and information, what could the resorts do with it? No timeshare-specific search function existed. The resorts consulted Google, Yahoo, and other public search engines; and specialized services such as LexisNexis, which are expensive. This research yielded a maze of information, not necessarily relevant.

Wolf developed a targeted and cross-referenced search capability. “It’s not just data, it’s relevant information. Now we can find a transferee’s timeshare activity, how many intervals they’ve taken title to—whether they’ve purchased two or three, or if they have 20 or more, have owned them for a while, and have been reported by other subscribers as being delinquent,” Wolf says.

“We can prepare a report stating what we know about them, and perhaps classify them as suspect. HOAs can paper their files with these reports to show they’ve done due diligence, and they can ask the escrow company to explain why a transferee owns 47 timeshare intervals, to have them demonstrate financial capability to pay their assessments. In most cases the escrow companies cease communication.”

The search capability and results database comprise the Timeshare Transfer Registry. To subscribe to it, HOAs pay $47.50 a month. When a search is ordered, if someone already searched the entity in question, a copy of the existing report costs $1.45. A new search and report costs $9.50. The unburdeners are a moving target, with new entities constantly appearing, so the registry’s database continues to grow and already contains nearly 1,000 original entries.

“The subscription pays for itself exponentially,” Grant says. “The unburdeners are saying, ‘Don’t take a week from certain resorts. These guys will give you grief.’ The transfer activity at subscribing resorts has slowed down, and the number of maintenance fees we’re preserving or protecting is quantifiable.”

In recent months, the unburdeners began recording transfers without an estoppel certificate. County recorders accept such requests when the paperwork includes a deed and power of attorney. To combat this practice, attorney Grego filed a lawsuit on behalf of two California resorts, Americana Vacation Club and Stardust Vacation Club, seeking to enjoin 85 defendants (including about 20 of the most active unburdeners in the industry) from recording deeds in El Dorado County, CA, that don’t comply with the resorts’ transfer policies.

Collaboration with ARDA-ROC

One of the registry’s beta testers was a resort managed by Defender Resorts, Inc. Based in Myrtle Beach, SC, Defender manages 23 timeshare resorts along the U.S. eastern seaboard and in the Cayman Islands, St. Maarten, and the U.S. Virgin Islands. Its chairman and chief executive officer, Ken McKelvey, also chairs the American Resort Development Association
McKelvey has strong feelings about the unburdeners. “Every time one of these transfers takes effect, it’s a whammy on every owner,” he says. “Any resort management entity should be deeply vested in trying to stem this tide. We see what we’re doing to build cases against these people and stop this terrible practice as part of our job.”

As reported in the June/July 2012 issue of TimeSharing Today, ARDA-ROC formed a transfer company task force to deal with the problem. One of its first projects was to be a database of unburdening entities. Then the task force realized that Grant Wolf already had such a database.

Discussions were held. In March 2013, ARDA-ROC abandoned its own project, issued a strong statement of support for the Timeshare Transfer Registry, and contributed funds it had allocated for database development to help Grant Wolf create the registry’s Web site, www.ttregistry.com. Each registry member is encouraged to upload its existing suspect member information to the registry’s central database. The registry gave ARDA-ROC member HOAs a discounted subscription price, $37.50 a month. By mid-May, five weeks after its launch, registry membership had grown 600 percent, from five to 30 resorts.

ARDA-ROC has lobbied the Colorado, Florida, Massachusetts, and South Carolina legislatures to pass laws circumscribing the unburdeners’ practices. “These are the four states with the most legacy resorts that these entities are attacking,” McKelvey explains.

“The legislation is our attempt to say that no one should be a party to a transaction the result of which is the placement of the timeshare interest in an entity that has no intention of paying the maintenance fees or honoring the obligations of ownership. The language in each state is a bit different, but all of them seek to cause these folks to stop their unfair and deceptive trade practices. I intend to build cases against some of these guys, show them the laws on the books, and encourage the regulators to help me stop these people.”

At this writing, the Colorado law passed, the Florida bill awaited the governor’s signature, the South Carolina law was pending in the Senate, and the Massachusetts law was in conference committee.

The Defeedback Alternative

In part, the unburdeners thrive due to a lack of alternative timeshare transfer opportunities. One way to address this issue is for HOAs to adopt policies to accept direct defeedbacks from owners who no longer want their timeshares. In so doing, the HOAs regain control without foreclosure expense, and can rent or resell the units to generate future revenues.

Defender Resorts has had a formal defeedback program since 2008. Each resort’s board sets its own defeedback fee, ranging from estimated closing costs to a year or two of maintenance fees. “The program requires the owner to be involved,” McKelvey says. “He needs to demonstrate to us that he has tried to sell it by advertising it or putting it on eBay, and that he has also tried to give it to someone.”

“We’re trying to encourage resorts to adopt their own policy for defeedbacks,” Grant says. “To be silent is not a policy. Many resorts are afraid to state publicly that they will take defeedbacks for fear of creating an influx of defeedback inventory.”

“We’ve not seen the influx,” McKelvey says.