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Regulating Timeshare Interests in Minnesota: A Comprehensive Solution

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REGULATING TIMESHARE INTERESTS IN MINNESOTA: A COMPREHENSIVE SOLUTION

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I. INTRODUCTION

A. *Focus*

Timesharing has spread from the sandy beaches of this country's coastal resorts to the shores of Minnesota's 10,000 lakes.¹ Real estate timesharing is the division of a single condominium unit into fractional-

1. See Rosenblatt, *Timesharing: Representing Minnesota Developers and Buyers*, 51 HENN.

ized ownership, with each owner occupying the unit for a particular time period. Although graced with numerous attributes, timesharing involves various legal uncertainties. Effective legislation can resolve these ambiguities. A number of state legislatures have already enacted enabling and regulatory statutes that respond to these problems.² Minnesota, however, lacks a similar response.³

The Minnesota Legislature can benefit from the experiences of other states with timesharing, using those experiences to enact its own comprehensive legislation. The Legislature has the opportunity to act prospectively rather than reacting after problems emerge, to insure that timesharing in Minnesota avoids initial pitfalls.⁴ Such a response would

LAW. 15 (July-Aug. 1982); Eastman, *Time Share Ownership: A Primer*, 57 N.D.L. REV. 151 (1981); see also *infra* note 9 and accompanying text.

2. See Ingersoll, *State Regulation of Timesharing*, in THE LEGAL ASPECTS OF TIMESHARING 319, 323 (P.L.I. Real Estate Law And Practice No. 220, 1982).

3. Minneapolis attorney Frederick Rosenblatt noted that unlike conventional condominiums, timeshare interests in Minnesota are, "purely the creation of agreements, invariably set forth in recorded instruments. These instruments embody common law principles and concepts. In the absence of underlying statutory authority, all the appurtenant incidents of ownership — alienability, inheritability and rules of governance — are created, regulated and terminated by private agreement and documentation." Rosenblatt, *supra* note 1, at 26.

4. Minneapolis attorney Frederick Rosenblatt stated that:

Timesharing is a permanent feature on the national and international real estate landscape. Minnesota, like most states, has not enacted special legislation even though timesharing presents some unique legal problems. The creative application of common law principles to those problems has proven adequate for the time being, but it is possible that local experience with timesharing will create a need for legislation. If so, the model acts will provide an excellent starting point. Any timeshare legislation will have to be carefully tailored, however, to the special characteristics of Minnesota timeshare projects.

Rosenblatt, *supra* note 1, at 32; see also Podgers, *Two Groups Propose Time-Share Legislation*, 66 A.B.A.J. 543 (1980) (serious gaps exist nationally between timeshare ownership and timeshare regulation).

Minnesota State Senator Jack Davies proposed a contrary solution. He introduced Senate File 482, on February 26, 1981, during the regular session. The bill provided that, "an estate may not be created that gives an owner a fee interest in real estate for intermittent time periods of less than a year. A conveyance that purports to create an estate that violates this section shall not be recorded." S.F. 482, summarized in [1981-1982 Regular Sessions] MINN. SENATE (PHILLIPS LEGIS. SERV.) 4 (Feb. 26, 1981). The bill did not pass.

Mr. Davies opposes timesharing for several reasons. He indicates particular frustration with the economic impracticality of timeshare acquisitions by purchasers and great concern over the ultimate termination of the timeshare interest. Interview with Jack Davies, Professor of Law, William Mitchell College of Law (Feb. 17, 1983).

In 1980, the Minnesota Legislature adopted the 1977 Uniform Condominium Act, (Uniform Condominium Act, ch. 582, 1980 Minn. Laws 978) (current version at MINN. STAT. §§ 515A.1-101 to .4-118 (1982)), but failed to enact Section 4-103 which provided:

- (a) For purposes of this section, "time-share estate" means either:
 - (1) an "interval estate", meaning a combination of (i) an estate for years in a unit, during the term of which title to the unit rotates among the timeshare owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regu-

provide timesharing with some credibility,⁵ as well as providing timeshare purchasers and developers with a clear framework of their rights and obligations.

This Note examines the history, functions, and concepts underlying timesharing. It discusses the legal uncertainties involving timesharing and successful approaches pursued by other jurisdictions, including recent model legislation. It also intends to explain the timeshare concept and its application in Minnesota. Each individual must determine the possible consequences of purchasing a timeshare interest. As this Note

larly until the term expires, coupled with (ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by declaration or by the deed creating the interval estate;
or

(2) a "time-span estate," meaning a combination of (i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate, coupled with (ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.

(b) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by Section 4-102:

- (1) the total number of units in which time-share estates may be created;
- (2) the total number of time-share estates that may be created in the condominium;
- (3) the projected common expense assessment for each time-share estate and whether those assessments may vary seasonally;
- (4) a statement of any services not reflected in the budget which the declarant provides, or expenses which he pays, and which he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for each time-share estate;
- (5) the extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit;
- (6) the extent to which a suit for partition may be maintained against a unit owned in time-share estates; and
- (7) the extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

UNIF. CONDOMINIUM ACT § 4-103, 7 U.L.A. 197 (1977) (amended 1980) [hereinafter cited as U.C.A.].

Mr. Davies indicated one reason the legislature did not enact section 4-103 was that, at the time, the National Conference of Commissioners on Uniform State Laws was preparing a separate uniform timeshare act. Interview with Jack Davies, Professor of Law, William Mitchell College of Law (Nov. 18, 1982). In 1979, the National Conference of Commissioners on State Laws promulgated a uniform timeshare act. *See infra* note 260 and accompanying text.

5. *See* Davis, *The Second-Home Market, Time-Sharing Ownership — Legal and Practical Problems*, 48 ST. JOHN'S L. REV. 1183, 1192 (1974). *But see Timesharing Rules Proposed*, Wall St. J., Sept. 8, 1982, at 31, col. 1 (industry leader says industry must improve by self-regulation). *See generally* Podgers, *supra* note 4; Comment, *Legal Challenges to Time Sharing Ownership*, 45 MO. L. REV. 423 (1980) (legislation needed to overcome impediments to acceptance of timesharing).

concludes, such a determination can best be made within a clear statutory framework.

B. History

Timesharing as a real estate concept⁶ originated in Europe during the 1950's.⁷ It first appeared in the United States during the early 1970's, in a number of resort-dominated states.⁸ Timeshare ownership has recently spread to Minnesota.⁹

Timesharing was created to eliminate the need for resort owners to search annually for prospective users,¹⁰ providing continuity of users throughout the years. In 1974, however, timesharing became the pan-

6. Timesharing has been used in contexts other than real estate. Examples of other uses include boats, planes, and recreational vehicles. See Martin, *Time-Sharing in Colorado*, 11 COLO. LAW. 2804, 2804 (1982); Penwell, *Structuring Fee Time-Sharing Projects*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 57, 67 (P.L.I. Real Estate Law And Practice No. 220, 1982); *Fed Up With Dull Vacations? Now You Can Own a Piece of The Yacht*, Mpls. Star & Tribune, Feb. 16, 1983, at 2D, col. 1-3.

7. Ellsworth, *Condominiums Are Securities?*, 2 REAL EST. L.J. 694 (1974); Gunnar, *Regulation of Resort Time-Sharing*, 57 OR. L. REV. 31, 32 (1977); Hart, *A Method For Valuing Time-Share Intervals*, 10 REAL EST. REV., Summer 1980, at 107, 108; Pollack, *Time-Sharing, or Time Is Money But Will It Sell?*, 10 REAL EST. L.J. 281, 283 (1982); Rosen, *Structure That Conversion as A Cooperative?*, 10 REAL EST. REV., Fall 1980, at 35, 35; Rosenblatt, *supra* note 1, at 15; Smith, *Urban Time-Sharing: A Major Growth Area*, 12 REAL EST. REV., Summer 1982, at 69, 69; Comment, *Time-Share Condominiums: Property's Fourth Dimension*, 32 ME. L. REV. 181, 181 (1980); Annot., 6 A.L.R.4th 1288, 1289 (1981); see also Simonett, *The Footnote as Excursion and Diversion*, 55 A.B.A.J. 1141, 1141 n.1 (1968) (in Ambler-like fashion, the author describes the string cite, "While it does not pay to beat a dead horse, it is nevertheless quite an impressive sight to lay out a line of dead horses end to end.").

The Eurotel concept provided that vacationers enter into long term contracts, reserving space at selected resorts for a given week or weeks each year, over the course of a number of years. Catalina, *Real Estate Time Sharing: Protecting the Buyer*, 9 REAL EST. L.J. 144, 144 (1980). The interest is best described as a license to use the particular recreational facilities during the intervals purchased. *Id.*; see also *infra* note 34. For a current analysis of international timesharing, see Ellsworth, *Timesharing Internationally*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 441 (P.L.I. Real Estate Law And Practice No. 220, 1982).

8. See Eastman, *supra* note 1, at 151; Smith, *supra* note 7, at 69; Comment, *supra* note 7, at 181; Annot., 6 A.L.R.4th 1288, 1289 (1981). For discussions of timesharing developments in other states, see *infra* notes 256, 261, 292-97.

9. See Eastman, *supra* note 1, at 151; Rosenblatt, *supra* note 1, at 15 (focusing on need for Minnesota attorneys to familiarize themselves with timesharing because of its increasing use). Currently, timesharing projects exist in six Minnesota resort areas. Telephone interview with Ingmar Sollin, Research Analyst with the Minnesota Department of Tourism (Oct. 10, 1983).

10. Pollack, *supra* note 7, at 283. A major limitation on second home sales is the need for buyers to commit to a repetitive vacation pattern. The commitment is reinforced by the substantial financial obligation incurred in the purchase and maintenance of the unit. The financial obligation, repetitive vacation pattern, and the probability of limited personal use initially restricted the potential market. To broaden the market by reducing the continuing financial obligation, developers turned to timesharing. Gunnar, *supra* note 7, at 31.

acea for the depressed real estate market.¹¹ During that time, second homes were available only to the very wealthy.¹² Timesharing became the vehicle which permitted developers to expand their market to encompass people of lower income levels.¹³

C. Functions of Timeshare Ownership

Timesharing currently serves two functions: it permits developers to overcome the scarcity of prime resort property,¹⁴ and provides more potential purchasers with the ability to obtain a property interest in a second home. Therefore, timesharing is more prevalent today than ever before.¹⁵

During the past decade, the capabilities and attitudes of potential second home purchasers have changed.¹⁶ Although they have less disposable income available for leisure activity, second home purchasers have more time,¹⁷ and a greater demand¹⁸ for leisure activity. Timesharing

11. See Gunnar, *supra* note 7, at 32. "[I]n the last half of 1974 alone, twelve to fifteen time-sharing projects came on stream — despite adverse economic, financial, and market conditions." Ingleby, *Time-Sharing: New Hope for the Second-Home Industry?*, 5 REAL EST. REV., Spring 1975, at 96.

12. Ingleby, *supra* note 11, at 96. At the time, 30 to 40 percent of resort condominium purchasers had incomes of over \$50,000 a year, while less than one percent of American households earned that much. *Id.*; see Robbins, *The Recreation Condominium*, 1 REAL EST. REV., Fall 1971, at 5, 7; Comment, *New Ideas in the Vacation Home Market*, 48 ST. JOHN'S L. REV. 1203, 1203 (1974).

13. See Pollack, *supra* note 7, at 283; Comment, *supra* note 12, at 1204.

14. Gray, *Pioneering the Concept of Time-Sharing Ownership*, 48 ST. JOHN'S L. REV. 1196, 1196 (1974). In part, scarcity is overcome by tapping a new source of buyers. See Ingleby, *supra* note 11, at 96-97.

15. Oser, *Vacation Plan Offers Options*, N.Y. Times, April 11, 1982, § 8, at 1, col. 1. See generally Podgers, *supra* note 4; Smith, *supra* note 7.

One source estimated that at the end of 1981, 600 interval projects with 20,000 timeshare units were operating. *The Mortgage and Real Estate Executives Report*, Vol. 15, No. 7, June 1, 1982, at 2. Another source has stated that nearly 350,000 families have purchased timeshares to date. NAT'L L.J., May 10, 1982, at 34. Today, the timesharing industry has been estimated to generate \$1.3 billion a year. *Timesharing Rules Proposed*, Wall St. J., Sept. 8, 1982, at 31, col. 1.

16. Before timesharing, vacationers tended to travel long distances. High income, combined with the mobility and flexibility made possible by improved transportation facilities, made it feasible for many leisure-oriented people to do as they pleased. See Gray, *supra* note 14, at 1196; Comment, *supra* note 12, at 1203-04.

17. See Malleris, *Five Legal Hurdles in Time-Share Ownership*, 8 REAL EST. REV., Summer 1978, at 97; Mulligan, *The Resort Condominium*, 11 COLO. LAW. 2799, 2799 (1982); Varner, *Time-Shared Ownership*, 12 GA. ST. B.J. 75, 75 (1975).

18. See Clurman, *Are Condominium Units Securities?*, 2 REAL EST. REV., Spring 1972, at 18; Gray, *supra* note 14, at 1196. This demand was due in part to the growing mobility of the general population, which opened up formerly inaccessible recreation areas. Comment, *supra* note 7, at 182 n.9; Gunnar, *supra* note 7, at 31; Liebman, *Can Condominium Time-Sharing Work?*, 3 REAL EST. REV., Fall 1973, at 40, 41; Roodhouse, *Fractional Time-Period Ownership of Recreational Condominiums*, 4 REAL EST. L.J. 35, 36 (1975); see also Comment, *supra* note 12, at 1203-04.

harmonizes these conflicting demands by making second homes more affordable.¹⁹

As potential second home purchasers, residents of Minnesota and other Midwesterners can benefit from timesharing.²⁰ Economic conditions have deteriorated in recent years, as evidenced by rising transportation costs and decreasing amounts of disposable income.²¹ In response, people have reevaluated the way they spend their leisure time. Since traditional long-distance vacations are no longer easily affordable, people either remain at home or travel shorter distances from their homes.²²

Timesharing also benefits developers and resort owners.²³ There are

19. Timesharing is attractive to purchasers because it enables them to pay only a fraction of the total purchase price of the unit. For developers, timesharing creates a larger body of potential purchasers. Varner, *supra* note 17, at 75.

20. Timesharing programs provide a residential vacation unit in a desirable resort area at a predetermined initial cost. There is also a measure of control over the annual vacation cost and a sharing of fixed costs with other users of the unit. See Eastman, *supra* note 1, at 153. As one author has suggested:

The primary advantage of time sharing ownership is the low cost of the property interest purchased. A time-share estate owner also experiences the intangible satisfaction of owning a place of his own. He need not be concerned with making vacation reservations months ahead of time, nor is he subjected to escalating motel costs. Additional advantages of owning a vacation time-share estate include interest and real estate tax deductions, equity buildup, and the possibility of leveraged appreciation leading to a profit upon resale.

Comment, *supra* note 5, at 427-28; see also Simon & Rugani, *Counseling on Vacation-Property Time Sharing*, 2 CAL. LAW. 51, 51 (1982) (another advantage of timeshare ownership is its ability to avoid overcrowded accommodations).

Timesharing ownership provides flexibility and mobility. It offers the advantages of property ownership generally, such as the ability to sell, rent, donate, or bequeath. See Pollack, *supra* note 7, at 281. Timesharing permits flexibility, both horizontally and vertically within the same development, which allows families and friends to purchase units for the same or consecutive time periods. See Varner, *supra* note 17, at 77. This flexibility and mobility may be achieved through a number of exchange programs currently available. See Hart, *supra* note 7, at 107; see also Eastman, *supra* note 1, at 153-54 n.14; Pollack, *supra* note 7, at 289; Varner, *supra* note 17, at 77. For an analysis of exchange programs, see Davis, *Time-Sharing Networks*, 8 REAL EST. REV., Fall 1978, at 42; Langer, *Timesharing Exchange Services*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 265 (P.L.I. Real Estate Law And Practice No. 220, 1982); Penwell, *Exchange Programs*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 279 (P.L.I. Real Estate Law And Practice No. 220, 1982). See generally Boster, *Marketing the Time-Share Unit*, 5 REAL EST. REV., Spring 1975, at 104, 104-05 (comparing advantages of multiple ownership with timeshare ownership).

21. See Malleris, *supra* note 17, at 97; Mulligan, *supra* note 17, at 2801-02; Comment, *Time-Sharing: The Need for Legislation*, 50 UMKC L. REV. 302, 318 (1982).

22. One commentator stated: "The ideal recreation zone to accommodate this changing life-style tends to be approximately one hundred and fifty miles from large urban centers. This distance enables hurried urbanites to jump into their cars on Friday afternoon and arrive at the beach or ski slope within four hours." Comment, *supra* note 12, at 1203; see Comment, *supra* note 21, at 318. See generally *The Carriers' Kamikaze Attack on Air Fares*, Business Week, Oct. 18, 1982, at 46, col. 3 (long-haul airline ridership has declined).

23. For developers, one of the assets of timesharing is that it dramatically expands

approximately 1530 resorts in Minnesota.²⁴ Timesharing allows developers to use the remaining prime recreational real estate available in this state more effectively.²⁵ It helps developers overcome rising construction costs,²⁶ and provides a greater marginal return on their investments²⁷ than a conventional condominium.²⁸

D. The Concept of Timeshare Ownership

The old business adage "time is money"²⁹ applies to timesharing.³⁰ Time is not only applied in a philosophical context, but in a property one as well — timesharing. Many authors have referred to the division of property into units of time as property in the "fourth dimension,"³¹ or as "condominimizing the condominium."³²

their market by reaching out to purchasers of more moderate means. *See* Yurow, *Resort Condominiums: Rental and Time Sharing Programs; Tax and Securities Problems*, 33 INST. ON FED. TAX'N 1193, 1195 (1975).

Timesharing also allows developers to vary unit prices by season. Units sold for the most desirable time periods will command higher prices. Varying the unit prices increases the possibility of a complete sellout of all timeshare units. *See* Varner, *supra* note 17, at 77; *see also* Ingleby, *supra* note 11, at 97 (higher occupancy rate generated by timesharing increases use of other profit centers within resort complex).

24. Telephone interview with Ingmar Sollin, Research Analyst with the Minnesota Department of Tourism (Oct. 10, 1983). "Minnesota's tourist industry . . . brings about \$2 billion annually to Minnesota's economy, according to the latest figures from the State Department of Tourism. More than 105,000 people are employed in the industry, with annual payroll of \$735 million." Jones, *Long hot summer aids State resorts*, Mpls. Star & Tribune, Sept. 23, 1983, § B, at 5, col. 1.

25. *See* Gray, *supra* note 14, at 1196; *see also supra* note 14; *infra* notes 26-27 and accompanying text. *See generally* Rybak, *Even 10,000 lakes may not be enough*, Mpls. Star & Tribune, July 23, 1983, § S, at 1, col. 1 (increasingly difficult to locate available lakeshore property to purchase).

26. *See* Gunnar, *supra* note 7, at 31; Ingleby, *supra* note 11, at 96; Liebman, *supra* note 18, at 40; Comment, *supra* note 7, at 182-83; Comment, *supra* note 12, at 1203.

27. *Cf.* Comment, *supra* note 5, at 428. "The price markup of a unit sold may be from 15 to 100 percent higher than the selling price of a comparable nontime-sharing unit." *Id.*; Gray, *supra* note 14, at 1201 (value of timeshare unit 100 to 125 percent higher than conventional condominium). *See generally* Gray, *supra* note 14, at 1197; Ingleby, *supra* note 11, at 97 (by subdividing cost of unit ownership into time interests sufficiently priced in aggregate, developer may easily recoup investment).

28. Throughout this Note, "conventional condominiums" refers to the traditional method used in condominium developments where a building is subdivided into physical units, rather than temporal segments.

29. *See* Pollack, *supra* note 7, at 281 (citing Franklin, *Advice to a Young Tradesman* (1748), reprinted in BARTLETT, *FAMILIAR QUOTATIONS* 330b (1955)).

30. The term "timeshare" has been borrowed from the computer industry. *See* Gray, *supra* note 14, at 1197; Pollack, *supra* note 7, at 281; Rosenblatt, *supra* note 1, at 15; Comment, *supra* note 7, at 181.

31. *See* Pollack, *supra* note 7, at 281; Roodhouse, *supra* note 18, at 49; Comment, *supra* note 7, at 211-13. The fourth dimension, time, is added to the three traditional dimensions of property — breadth, depth, and height.

32. *See* Comment, *supra* note 12, at 1216.

The generic term "timeshare ownership"³³ describes a variety of methods developed to facilitate ownership of vacation homes.³⁴ Timesharing, in its most rudimentary terms, is a method whereby a number of persons own or have the right to use and possess a single piece of property at different times.³⁵ Specifically, timesharing involves two distinct forms³⁶ — interval estates and time span estates, as well as a third, somewhat obscure form — fee simple estates.

1. *Interval and Time Span Estates*

a. *Interval Approach*

The Uniform Condominium Act (UCA) defines an interval estate as:

[A] combination of (i) an estate for years in a unit, during the term of which title to a unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with (ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.³⁷

The interval method presumes an existing condominium,³⁸ which is then divided into smaller interests.³⁹

Under the interval approach, the owner acquires title to the property for a specified period of time each year⁴⁰ and a predetermined number of

33. See Eastman, *supra* note 1, at 152; Comment, *supra* note 5, at 427.

34. Several forms of timesharing represent nonownership interests. The primary forms in use today are vacation licenses, vacation leases, and club memberships. For a detailed explanation of these forms, see Davis, *supra* note 5, at 1184-85; Gunnar, *supra* note 7, at 33-34; Pollack, *supra* note 7, at 285-86; Yurow, *supra* note 23, at 1196; Comment, *supra* note 12, at 1211-15. See generally Davis, *Time-Sharing Ownership: Pitfalls and Possibilities*, 5 REAL EST. REV., Winter 1976, at 52-53 (advantages of nonownership forms compared with ownership forms). Recently, the protection provided to timeshare users through the use of non-disturbance clauses was rejected in *In re Sombrero Reef Club, Inc.*, 18 Bankr. 612 (Bankr. S.D. Fla. 1982). The impact of this decision could be devastating upon non-ownership timeshare developments. See Martin, *supra* note 6, at 2806.

35. For an in depth discussion of timesharing, see M. HENZE, *THE LAW AND BUSINESS OF TIME-SHARE RESORTS* (1982); 1 P. ROHAN & M. RESKIN, *CONDOMINIUM LAW AND PRACTICE* §§ 17C.01-.012 (1983) [hereinafter cited as ROHAN & RESKIN].

36. See also Rosen, *supra* note 7, at 37-38 (suggesting cooperative form is applicable to timeshare). But see Davis, *supra* note 5, at 1183-86 ("There are almost as many methods of conveying time-shared units as there are developers in the field").

37. U.C.A. § 4-103(a)(1) (1977); see *supra* note 4.

38. To establish a conventional condominium under the UCA, recording of the declaration or master deed is generally required. U.C.A. § 2-101 (1977). See generally Minnesota Uniform Condominium Act (MUCA), MINN. STAT. ch. 515A (1982).

39. Comment, *supra* note 7, at 201.

40. This period is normally two weeks. *Id.* at 201-02; see Davis, *supra* note 5, at 1187; Comment, *supra* note 5, at 427.

years.⁴¹ This interest is referred to as an estate for years.⁴² The owner also receives a remainder⁴³ in fee simple, which he takes as a tenant in common with other interval owners.⁴⁴

b. *Time Span Approach*

The UCA defines a time span estate as:

[A] combination of (i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate, coupled with (ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.⁴⁵

In essence, this method involves a common law tenancy in common,⁴⁶ coupled with an agreement between tenants⁴⁷ concerning the time each has the absolute right to use and possess the property.⁴⁸ In practice, the time span method works as follows: a conventional condominium project is established⁴⁹ consisting of the unit itself and an undivided interest

41. The recurring estates for years are usually designed to terminate at the expiration of the useful life of the condominium project. See Davis, *supra* note 5, at 1187; Eastman, *supra* note 1, at 153 n.1; Gunnar, *supra* note 7, at 33; Comment, *supra* note 7, at 201 n.135; Comment, *supra* note 5, at 427. At the end of the recurring estates for years, the interval owners can either reinstate the interval arrangement or seek partition of their interests. IC ROHAN & RESKIN, *supra* note 35, at § 17C.01[A]; see also Davis, *supra* note 5, at 1187 n.13; Eastman, *supra* note 1, at 153; Comment, *supra* note 7, at 211 n.135.

42. Comment, *supra* note 7, at 201; see Varner, *supra* note 17, at 75. An estate for years is defined as an estate whose duration is absolutely commutable in units of a year or multiples or divisions thereof. The estate for years can be a present or future estate. P. BERGIN & T. HASKELL, PREFACE TO ESTATES IN LAND AND FUTURE INTERESTS 41 (1966); RESTATEMENT OF PROPERTY § 19 comment a (1936).

43. The remainder is used to avoid problems with the Rule against Perpetuities. See Davis, *supra* note 5, at 1187; Eastman, *supra* note 1, at 153 n.11; Comment, *supra* note 5, at 427. The remainder also avoids the treatment of interval property as leased property. See Comment, *supra* note 7, at 204-07. The intent of the grantor to convey in fee as opposed to a lease, if set forth in an instrument of conveyance, should remove doubt as to creation of a lease. *Id.* at 203 n.142. See generally 1 ROHAN & RESKIN, *supra* note 35, at § 10.03[1] (restraints on alienation); Boyer & Spiegel, *Land Use Control: Pre-emptions, Perpetuities and Similar Restraints*, 20 U. MIAMI L. REV. 148, 156-66 (1965) (Rule against Perpetuities).

44. For general discussion and application of the interval estate method, see Davis, *supra* note 5, at 1187; Eastman, *supra* note 1, at 151-52; Martin, *supra* note 6, at 2805; Comment, *Timesharing: An Innovative Concept*, 1 MISS. C.L. REV. 439, 440-41 (1980) [hereinafter cited as Comment, *Innovative Concept*]; Comment, *supra* note 5, at 426-28; Comment, *supra* note 12, at 1216-21.

45. U.C.A. § 4-103 (1977); see *supra* note 4. For discussions of this approach, see Martin, *supra* note 6, at 2806; Comment, *Innovative Concept*, *supra* note 44, at 441.

46. See Varner, *supra* note 17, at 75 (state statutes on tenancy in common should be consulted).

47. See Comment, *supra* note 7, at 186-87.

48. Varner, *supra* note 17, at 75; see Comment, *supra* note 7, at 184-85; Comment, *supra* note 5, at 426.

49. See *supra* note 38 and accompanying text.

in areas of common ownership;⁵⁰ a percentage interest in each unit is then conveyed to the purchasers in fee simple,⁵¹ who take as tenants in common.

c. *Comparison of Approaches*

Several characteristics distinguish the interval and time span estate approaches of creating timeshare ownership.⁵² The time span approach uses a supplemental declaration. The declaration consists of various covenants, conditions, and restrictions entered into by the developer and the purchaser. The declaration establishes the rights and duties of each tenant in common *inter se*, including the periods set aside for exclusive occupancy.⁵³

Enforcement of supplemental declarations against subsequent purchasers is a problem because courts often refuse to uphold them.⁵⁴ Consequently, subsequent purchasers may take free from the impact of the declaration. Appropriate enabling legislation can eliminate this obstacle⁵⁵ and remove the instability of judicial determinations of reasonableness.⁵⁶ Statutory enforcement of supplemental declarations can improve

50. The areas of common ownership or "common elements" are defined in Minnesota Statutes section 515A.1-103(4). MINN. STAT. § 515A.1-103(4) (1982).

51. Comment, *supra* note 7, at 185.

52. See Comment, *supra* note 5, at 426-28.

53. See Comment, *supra* note 7, at 186.

54. The declaration can be enforced as a covenant running with the land or as an equitable servitude. Comment, *supra* note 12, at 1216. For a detailed analysis of these two methods of enforcement, see Comment, *supra* note 7, at 191-98.

A covenant running with the land is defined as a contract respecting the use of land which is enforceable against successors to the interests of the initial covenantees. See 5 R. POWELL, POWELL ON REAL PROPERTY, ¶ 670[2], at 4-5 (1981). To qualify as such, the declaration must meet four requirements: (1) that the covenant be in deed form; (2) that the parties intend to create a real covenant; (3) that the covenant touch or concern the land conveyed; and (4) that there be privity of estate. See *Allbright v. Fish*, 136 Vt. 387, 394 A.2d 1117 (1978) (court applied these requirements to find a valid covenant existed); 5 R. POWELL, *supra*, at ¶¶ 670-79.

An equitable servitude is defined as "A restriction on the use of land enforceable in court of equity. It is broader than a covenant running with the land because it is an interest in land." BLACK'S LAW DICTIONARY 484 (5th ed. 1979). It is based upon the equitable doctrine of notice. C. CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 170 (2d ed. 1947). Therefore, when a subsequent purchaser takes with notice of a covenant, he is liable to the same extent and in the same manner as the seller.

There are other problems with the supplemental declaration including destruction of the unity of possession and waiver of each co-tenant's right to seek judicial partition of the unit. Comment, *supra* note 7, at 187-90; see also *supra* note 41 and accompanying text (discussing interval estates).

55. The vulnerability of the supplemental declaration to disqualification as a real covenant or an equitable servitude underscores the need for legislation binding all owners of a unit held in tenancy in common to the declaration. Comment, *supra* note 7, at 200.

56. See *supra* note 55.

marketability, confirm the interest's value as security for financing purposes, and provide initial purchasers with adequate protection.⁵⁷

In contrast, the interval estate method allows purchasers to take in fee,⁵⁸ rather than by declaration.⁵⁹ The owner's fee, which is defeasible, is subject to a shifting executory interest.⁶⁰ The executory interest passes the fee to the next timeshare owner when the following time period commences.⁶¹ By taking his interest in fee, the interval estate purchaser becomes the sole owner of the unit during his period of occupancy.⁶² Furthermore, the interval estate purchaser's right to occupancy arises because of the ownership interest, rather than the time span supplemental declaration.⁶³ Finally, while the time span estate owner may be subject to another owner's federal tax lien,⁶⁴ the interval estate method protects its owners from federal tax liens resulting from another owner's deficiency.⁶⁵

2. *Fee Simple Estate*

The fee simple estate is an unconventional and seldom used timeshare method.⁶⁶ This method conveys a fee simple estate to each purchaser.⁶⁷

57. *Id.*

58. *See generally* 1C ROHAN & RESKIN, *supra* note 35, at § 17C.01[A]; Davis, *supra* note 5, at 1187.

59. *See* Comment, *supra* note 7, at 202. With interval ownership, possessory rights are established in the deed and not by the interval declaration. Comment, *supra* note 5, at 202 n.138.

60. A shifting executory interest is a real property interest which shifts title from one transferee to another. A fee simple subject to a shifting executory interest is an estate, whereupon the happening of an event specified in the instrument, the fee simple is automatically transferred to a third person, and not to the original grantor or the grantor's heirs. *See* 5 R. POWELL, *supra* note 54, at ¶ 779[3].

61. Comment, *supra* note 5, at 427.

62. *See id.* The time span purchaser, on the other hand, shares ownership with other tenants in common, having only the exclusive right of use during his allotted period. *See id.* at 426.

63. *See supra* note 59.

64. *See* Rosenblatt, *supra* note 1, at 31; *see also infra* note 225 (time span owners subject to others' tax liens).

65. *See supra* note 64.

66. *See* Comment, *supra* note 7, at 211 n.186. The author states:

The fee simple method appears to be a theoretical rather than actual method of creating time-share interests. There is very little discussion of this method of time-sharing in the topical literature. Fee simple is mentioned as a possible alternative method of creating time-share interests in Outen, but the author does not specify the extent to which this method is actually used. Fee simple is also discussed as a theoretical possibility in Roodhouse.

Id. (citations omitted). The fee simple method was recognized by the National Conference of Commissioners on Uniform State Laws in promulgating the Uniform Real Estate Time-Share Act (URETSA) in 1979. One year later, the Commissioners reconsidered their action and concluded that the uniform act should be promulgated as a model act for practical reasons. *See* MODEL REAL ESTATE TIME-SHARE ACT, Commissioner's Prefatory Note, 7A U.L.A. 259 (Supp. 1983) [hereinafter cited as MRETSA]. MRETSA includes a

As with the interval and time span approaches, it presumes an existing conventional condominium which is then divided into timeshare interests.⁶⁸ The developer conveys these interests to the purchasers in fee simple absolute.⁶⁹ In addition, a declaration is executed establishing the rights and duties of the new owners.⁷⁰

The fee simple approach is recognized by statute only in Utah⁷¹ and has several drawbacks.⁷² It ignores traditional common law principles of estates in land.⁷³ The estate or interest conveyed is time, rather than a conventional property interest.⁷⁴ The fee simple approach differs from the interval and time span approaches because the purchaser is not a joint owner of the property.⁷⁵

II. TIMESHARING'S PERPLEXITIES

Timesharing is not without its problems and legal uncertainties.⁷⁶ Ap-

relevant section providing for the fee simple method. *Id.* § 1-103(a); *see infra* note 270 and accompanying text.

67. *See Burek, Uniform Real Estate Time Share Act*, 14 REAL PROP. PROB. & TR. J. 683, 684 (1979); Comment, *supra* note 7, at 211.

68. *See supra* notes 38, 49 and accompanying text. In order to timeshare a condominium, one must establish a condominium from which time interests can be shared. Comment, *supra* note 7, at 211 n.187.

69. *See Burek, supra* note 67, at 684; Comment, *supra* note 7, at 684.

70. Burek, *supra* note 67, at 685-86.

71. UTAH CODE ANN. § 57-8-6 (Supp. 1981). Section 57-8-6 provides in relevant part:

The owner of a time period condominium unit shall be entitled to the exclusive ownership and possession of the physical unit to which his time period relates and shall be entitled to the use and enjoyment of the common areas and facilities during, but only during, such annually recurring part or parts of a year as described and define the time period unit concerned in the declaration.

Id.

72. *See* Comment, *supra* note 7, at 211.

73. *See id.*; Burek, *supra* note 67, at 684.

74. Time is the "fourth dimension" of property. *See supra* note 31. The conventional dimensions of property are breadth, depth, and height. *See id.* *See generally* Comment, *supra* note 7, at 211-17 (explanation of effect this unconventional interest has on traditional concepts of estates).

75. *See* UTAH CODE ANN. § 57-8-6 (Supp. 1981); Burek, *supra* note 67, at 684; Comment, *supra* note 7, at 211.

76. *See Trouble-Free Condominium Living?*, Wall St. J., November 28, 1978, *reprinted in* Ellsworth & Prendergast, *Securities Maze Awaits Resort Time-Share Offerings*, 10 REAL EST. REV., Spring 1980, at 59, 64. The article states:

Since 1975, lawsuits involving Florida condominium owners have tripled, according to lawyers who have surveyed court filings. The state's legislature has amended the condominium statutes nearly every two years. And 85% of all Florida appellate decisions in condominium law, which set legal precedent, have been written since 1976. . . . In some Florida condominiums, feelings run dangerously high. Unit owners bring their own lawyers and even court reporters to meetings, which often are attended by armed guards and rescue units because they are punctuated with fistfights, screaming matches and occasional heart attacks.

propriate legislation, however, can reconcile and ameliorate many of these concerns.⁷⁷ Further inquiry into these issues should demonstrate the ability of comprehensive legislation to resolve them.

A. Securities

In planning a timeshare development, developers⁷⁸ must be aware that the sale of units may be construed as a sale of securities.⁷⁹ If timeshare interests are considered securities, various federal⁸⁰ and state⁸¹ securities laws and regulations may apply.⁸² These laws will impose registration procedures, anti-fraud provisions, and licensing requirements on timeshare developers,⁸³ unless an exemption is available.⁸⁴

Id.

77. See *supra* notes 55-57 and accompanying text.

78. For purposes of this securities analysis, the term "developers" includes promoters as well.

79. See Ellsworth, *supra* note 7, at 694; Pollack, *supra* note 7, at 292; Comment, *supra* note 12, at 1206.

80. See Securities Act of 1933 (codified at 15 U.S.C. §§ 77a-77bbbb (1976 & Supp. V 1981)); Securities Exchange Act of 1934 (codified at 15 U.S.C. §§ 78a-78kk (1976 & Supp. V 1981)).

81. See Act of May 21, 1973, ch. 451, 1973 Minn. Laws 986 (codified at MINN. STAT. ch. 80A (1982)). For a general description of the securities statutes, see Lewis, *A New and Comprehensive Form of Securities Regulation in Minnesota*, 42 HENN. LAW. 6, 10 (Nov.-Dec. 1973).

Discussion of relevant federal developments should provide adequate insight into application of the issue in Minnesota. Minnesota Statutes section 80A.31 provides that, "Sections 80A.01 to 80A.31 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation of sections 80A.01 to 80A.31 with related federal regulation." Minn. Stat. § 80A.31 (1982) (emphasis added).

82. Malleris, *supra* note 17, at 100; Pohoryles, *Time-Sharing: How To Do It*, 6 REAL EST. REV., Fall 1976, at 23, 24; see Yurow, *supra* note 23, at 1219. See generally 3 H. BLOOMENTHAL, SECURITIES AND FEDERAL CORPORATE LAW §§ 2.15, 2.19[5] (rev. ed. 1983).

83. See Yurow, *supra* note 23, at 1219. The costs involved in registering securities can be considerable. As one author has stated:

The largest single expense in registering securities for public sale is usually the underwriters' compensation, which generally ranges from seven to ten percent of the offering price; the rest of the costs are more or less fixed. Legal fees are generally between \$40,000 and \$75,000. Accounting expenses vary widely but, if there were no prior audits, fees of \$35,000 to \$55,000 are not unusual. Printing expenses can also vary widely but typically are between \$25,000 and \$75,000. Thus, for a first public offering, total expenses in the \$200,000 range would be typical. Schneider & Manko, *Going Public - Practice, Procedure and Consequences*, 15 VILL. L. REV. 283, 298-300 (1970). The \$200,000 figure does not include such miscellaneous expenses as the SEC registration fee, insurance premiums (for protection against Securities Act liabilities), state filing fees (in each state where securities are sold) and stock certificates. In addition, the average first public offering normally requires two to three months of intensive work before the registration statement can be filed, followed by a waiting period of anywhere from two weeks to 100 days (depending upon the number of other recently filed registration statements) for SEC review and comment. If it needs to be amended, the

Although the sale of real estate, *per se*, is not a security within the meaning of the Securities Act of 1933,⁸⁵ "when condominium units are offered in conjunction with certain collateral arrangements a security may be involved."⁸⁶

In *SEC v. W.J. Howey Co.*,⁸⁷ the United States Supreme Court construed the interest conveyed in a land sales contract coupled with a service contract as an "investment contract,"⁸⁸ within the definition of a "security."⁸⁹ The Court held that an investment contract is "a contract,

final effective date of the registration statement may be six months or more after the preparation was begun. *Id.* at 296-300.

Comment, *Reinterpreting the "Section 4(1-1/2)" Exemption From Securities Registration: The Investor Protection Requirement*, 16 U.S.F.L. REV. 681, 684 n.19 (1982).

84. See 15 U.S.C. § 77d (Supp. V 1981); MINN. STAT. § 80A.15 (1982). None of these exemptions have been held to apply. California specifically exempts timeshare sales from the definition of securities under Corporate Code section 25100(f) of the California Corporate Securities Law of 1968. CAL. [CORP.] CODE § 25100 (West 1980); see Simon & Rugani, *supra* note 20, at 52.

85. See 15 U.S.C. §§ 77a-77b (Supp. V 1981); Clurman, *supra* note 18, at 21 (distinguishing condominium as residence versus security); Varner, *supra* note 17, at 78; Comment, *supra* note 12, at 1205. For an analysis of why real estate is not a security, see Rhoads, *California Real Estate Brokers Deal in Securities*, 11 REAL EST. L.J. 178 (1982).

86. Yurow, *supra* note 23, at 1219-20; see Comment, *supra* note 7, at 182 n.11. See generally Annot., 6 A.L.R.4th 1288, 1289 n.1 (1981) (timeshares have attracted SEC attention).

87. 328 U.S. 293, *reh'g denied*, 329 U.S. 819 (1946); see also *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344 (1943) (sales of oil leases were securities transactions under definition of investment contract).

88. *Howey* involved an offering of units of a citrus grove development coupled with a management contract to cultivate and market the produce for the investors. The Court permitted the SEC to enjoin the promoters from using the mails and instrumentalities of interstate commerce in the offer of these unregistered and non-exempt securities because this was a violation of the Securities Act of 1933. *Howey*, 328 U.S. at 300.

89. The Securities Act of 1933 provides that:

The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, . . . or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

15 U.S.C. § 77b(1) (Supp. V 1981) (emphasis added). The Minnesota Securities Act defines a security as:

any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; *investment contract*; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease . . . ; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security"

transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. . . ."⁹⁰ Following *Howey*, the SEC construed the definition of investment contracts to include offerings of resort condominiums pursuant to the Securities Act of 1933⁹¹ and the Securities and Exchange Act of 1934.⁹²

In 1973, the SEC issued Release No. 5347⁹³ which stated that condominium offerings, coupled with any of several collateral arrangements, would be viewed as an offering of securities.⁹⁴ The SEC then issued a number of "no action" letters, narrowing the scope of the Release.⁹⁵ In 1974, the SEC retreated from their previous position, announcing that they would no longer issue "no action" letters on condominium offerings.⁹⁶

does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

MINN. STAT. § 80A.14(18) (1982) (emphasis added).

90. 328 U.S. at 298-99.

91. 15 U.S.C. § 77b(1) (Supp. V 1981).

92. 15 U.S.C. § 78c(10) (Supp. V 1981). Specifically, the SEC informed a developer that the offer and sale of condominiums, combined with a rental option, was an offer and sale of a security. The SEC therefore obtained its first registration statement covering this type of offering. Comment, *Condominium Regulation: Beyond Disclosure*, 123 U. PA. L. REV. 639, 652 n.67 (1975) (citing Hale Kaanapali Apartment Hotel Development Co., Registration Statement No. 2-25489 (Apr. 13, 1967)).

93. SEC Securities Act Release No. 5347, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,163 (Jan. 4, 1973), reprinted in Penwell, *Structuring Fee Timesharing Projects*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 57, 195-98 (P.L.I. Real Estate Law And Practice No. 220, 1982).

94. The Release indicated that the SEC considered any of the following collateral arrangements offered in conjunction with the sale of condominium units as an offering of securities. These collateral arrangements include: (1) participation in a rental pool; (2) reference to potential economic benefits derived from efforts of developer or third party; and (3) mandatory rental arrangement where an exclusive agent is required. For an analysis of Release No. 5347, see Ellsworth & Prendergast, *supra* note 76, at 60; Gunnar, *supra* note 7, at 37; Pollack, *supra* note 7, at 293-94; Yurow, *supra* note 23, at 1221-22; Comment, *supra* note 12, at 1206-07.

95. Ellsworth & Prendergast, *supra* note 76, at 60; Gunnar, *supra* note 7, at 37. For examples of the "no action" letters, see SEC No-Action Letter, Sunriver Properties, Inc., [1973-1974 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,691 (Dec. 11, 1973); SEC No-Action Letter, Tahoe Donner Ski Bowl Condominiums, [1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,440 (July 18, 1973); SEC No-Action Letter, The Innisfree Corp., [1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,398 (April 5, 1973).

96. Ellsworth & Prendergast, *supra* note 76, at 60; Gunnar, *supra* note 7, at 38. The specific language was:

While no-action letters are limited to the facts presented and, even as to these, do not represent an interpretation of the law, the Commission is, nevertheless, concerned that inferences may be drawn from the issuance of no-action letters in this rapidly evolving area. Such inferences could lead to misunderstandings as to the Commission's position, and to contentions in future situations that the Commission had taken a position which it had not, in fact, taken. Consequently, the

One year later, the United States Supreme Court, in *United Housing Foundation, Inc. v. Forman*,⁹⁷ held that although the purchaser may have been motivated by the potential for profit at resale, the purchase of stock in a housing corporation was not a security.⁹⁸ The key to *Forman* was that the buyer had entered into the arrangement to consume the property.⁹⁹

When a buyer purchases a timeshare unit for personal residential use, it is not a security.¹⁰⁰ Since timesharing units are offered and purchased primarily for personal recreational reasons, they should not be classified as securities.¹⁰¹ Classification of a timeshare offering as a sale of securities may be avoided by taking a few simple precautions.¹⁰² These measures include: (1) eliminating any guarantee of profit upon resale;¹⁰³ (2) avoiding any rental arrangements;¹⁰⁴ and (3) requiring that units be owner-occupied when purchased.¹⁰⁵ Nevertheless, "every offeror should seek qualified advice at an early stage of project evolution to determine whether securities problems exist, and if so whether it is possible to struc-

Commission has directed its staff not to issue no-action letters in this area, and to advise that no-action letters issued in the past in this general field do not extend beyond the particular issues involved and should not be relied upon by any other person or by the persons receiving prior letters for any other offerings.

SEC No-Action Letter, *In re Tropics International*, 252 SEC. REG. & L. REP. (BNA) C-1 (May 6, 1974), reprinted in Gunnar, *supra* note 7, at 38 n.36.

97. 421 U.S. 837 (1975).

98. *Id.* at 858.

99. Pollack, *supra* note 7, at 293.

100. *See id.* at 294.

101. *See* Fleming & Keane, *Securities Implications of Time Share Condominium Offerings: A Fresh Look*, 55 FLA. B.J. 467, 471-72 (1981); Pollack, *supra* note 7, at 294; Yurow, *supra* note 23, at 1224. *Contra* Comment, *supra* note 5, at 440 n.86 (sale of timeshare estates may be classified as sale of securities) (citing Byrne, *Securities Regulation of Time-Sharing Resort Condominiums*, 7 REAL EST. L.J. 3 (1978)). For discussions of the effect of securities regulation on resort condominiums, see Clurman, *Condominiums as Securities: A Current Look*, 19 N.Y.L.F. 457 (1974); Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective*, 62 GEO. L.J. 1403 (1974); Comment, *Looking Through Form to Substance: Are Montana Resort Condominiums "Securities"?*, 35 MONT. L. REV. 265 (1974); Note, *Securities: Another Way to Regulate the Resort Development Boom*, 27 OKLA. L. REV. 104 (1974); Note, *Shares of a State-Subsidized Non-Profit Cooperative Housing Corporation Are Securities Under Federal Securities Law*, 53 TEX. L. REV. 623 (1975).

102. *See* Pollack, *supra* note 7, at 294; Varner, *supra* note 17, at 78. *See generally* Byrne, *supra* note 101, at 3 (analysis of the tools developers use to avoid securities regulation).

103. *See* Pollack, *supra* note 7, at 294. *See generally* Comment, *supra* note 12, at 1209-10 (guaranteed profits to purchaser will bring about SEC enforcement).

104. *See* Pollack, *supra* note 7, at 294; Yurow, *supra* note 23, at 1223. *See generally* Comment, *supra* note 12, at 1206 (rental pools will trigger SEC scrutiny).

105. These precautionary measures can easily be implied from SEC Release No. 5347. *See supra* note 93 and accompanying text. One author has suggested a restriction upon purchasers, forbidding or limiting transfer of the unit. *See* Byrne, *supra* note 101, at 8-9. One may begin to wonder how deep the fear of SEC involvement runs in the hearts of developers.

ture the offering so as to avoid such problems."¹⁰⁶

B. Restrictions on Conversion to Timesharing

As timesharing becomes more prevalent, existing condominiums may be converted to timeshare units.¹⁰⁷ Partial conversion of a condominium complex, particularly if many of its present owners use their units as permanent residences, may disrupt the quiet enjoyment of their property.¹⁰⁸ In *Laguna Royale Owners Association v. Darger*,¹⁰⁹ a California court recently addressed the issue of whether a condominium association could restrain a timeshare conversion. The court held the association could not prohibit conversion of a single condominium unit into a timeshare estate.¹¹⁰ The *Darger* court found that the association could not reasonably restrain the creation of multiple ownership of undivided interests, stating:

[M]ultiple ownership has no necessary connection to intensive use. Twenty, yea, a hundred persons could own undivided interests in a condominium for investment purposes and lease the condominium on a long-term basis to a single occupant whose use of the premises would probably be less intense in every respect than that considered "normal and usual."¹¹¹

Darger indicates that, absent specific legislation, condominium associations may be unable to prevent conversions of existing units into

106. Ellsworth & Prendergast, *supra* note 76, at 64; see Varner, *supra* note 17, at 78.

107. See Comment, *Proposed Legislation for Property's Twilight Zone: Time Sharing in Georgia*, 34 MERCER L. REV. 403, 410 (1982) [hereinafter cited as Comment, *Twilight Zone*]; Comment, *Timesharing: A Unique Property Concept Creates The Need for Comprehensive Legislation*, 25 ST. LOUIS U.L.J. 629, 650 (1981) [hereinafter cited as Comment, *Unique Property*].

108. See *infra* note 110.

109. 119 Cal. App. 3d 670, 174 Cal. Rptr. 136 (1981). For an analysis of *Darger* and its potential impact on timesharing, see August, *Clockwork Condo: The Timesharing Condominium Stumbles Into Court*, 11 REAL EST. L.J. 203 (1983).

110. *Darger*, 119 Cal. App. 3d at 688, 174 Cal. Rptr. at 147. In *Darger*, the owners of one condominium unit assigned part of their interests to three other couples on a timesharing basis. *Id.* at 678, 174 Cal. Rptr. at 141. The other condominium owners in the complex attempted to prevent the assigning owners from engaging in the timeshare scheme. *Id.* at 677-78, 174 Cal. Rptr. at 141.

Although the majority held the timeshare conversion permissible, Justice Gardner dissented, stating:

The use of a unit on a time sharing basis is inconsistent with the quiet enjoyment of the premises by the other occupants. Time sharing is a remarkable gimmick. P.T. Barnum would have loved it. It ordinarily brings enormous profits to the seller and in this case would bring chaos to the other residents. Here we have only four occupants but if this transfer is permitted there is nothing to stop a more greedy occupant of a unit from conveying to 52 or 365 other occupants.

If as an occupant of a condominium I must anticipate that my neighbors are going to change with clocklike regularity, I might just as well move into a hotel — and get room service.

Id. at 689, 174 Cal. Rptr. at 148.

111. *Id.* at 685, 174 Cal. Rptr. at 145.

timeshare interests.¹¹² Minnesota needs legislation that will permit associations to protect an owner's quiet enjoyment of his property by prohibiting timeshare conversions of less than all the units in a condominium.

C. Marketing and Sales

Developers should consider the effects of timesharing on the marketing and sales of their units. As the foregoing securities analysis revealed, developers must refrain from holding out units as investments and insinuating that a potential for profit exists in order to avoid the cost of securities registration.¹¹³ A developer should market his product solely on the basis of its consumer use benefits.¹¹⁴

To insure zealous and effective advocacy of timesharing's consumer use benefits, developers should design a marketing strategy.¹¹⁵ They should carefully consider unit composition and design,¹¹⁶ and exercise care in selecting a site.¹¹⁷ The site should reflect both proximity and accessibility¹¹⁸ to the market. To identify a class of potential purchasers, developers may study market profiles.¹¹⁹ They should consider the length and types of seasons available,¹²⁰ as well as the availability of natural physical amenities.

Timeshare projects result in more sales at an average higher profit

112. See Comment, *Unique Property*, *supra* note 107 at 634-35 (discussing another timesharing conversion case, *Homeowners Ass'n v. Big Canoe Corp.*, No. C-65248 (Ga. Super. Ct. Oct. 24, 1980)). See generally August, *supra* note 109, at 207-08 (converting existing condominiums into timeshare units raises mixed use considerations). For a thorough analysis of mixed use considerations, see Lundquist, *Mixed Use Condominiums Under the Minnesota Uniform Condominium Act*, 10 WM. MITCHELL L. REV. — (1984).

113. See *supra* note 103 and accompanying text; see also Davis, *supra* note 5, at 1190-91; Varner, *supra* note 17, at 109.

114. See Boster, *supra* note 20, at 106-07; Comment, *Regulating Vacation Timesharing: A More Effective Approach*, 29 U.C.L.A. L. REV. 907, 919 (1982).

115. See Boster, *supra* note 20, at 105; Davis, *supra* note 5, at 1190.

116. See Boster, *supra* note 20, at 106 (design should be comparable to hotels).

117. See Boster, *supra* note 20, at 105; Varner, *supra* note 17, at 109.

118. Varner, *supra* note 17, at 109.

119. See Davis, *supra* note 5, at 1191-92. Davis discussed a market profile completed by the Interval Corporation which revealed that the average buyer was in his late thirties to early forties, well educated, and interested in cash sales. *Id.*; see also Comment, *Innovative Concept*, *supra* note 44, at 439 (most timeshare purchasers have families).

120. See Boster, *supra* note 20, at 105-06; Varner, *supra* note 17, at 109. One author has suggested that the best season for timesharing is the year-round season, such as is found in tropical or arid states. Davis, *supra* note 5, at 1190.

Types of seasons go hand in hand with the pricing of each share. Each season should have its own timeshare composition and price because the unit owner is, in essence, purchasing the use rather than the unit. Furthermore, differential pricing can be used to solve the problem of selling less desirable off-season shares. Many projects have failed because of attempts to force owners to take less desirable shares when seeking to purchase more desirable ones. Boster, *supra* note 20, at 106.

than do traditional condominium projects.¹²¹ In turn, brokers' and agents' median sales commissions are decreased, thus increasing the developer's fixed costs.¹²² The developer can offset these costs with an "on site" sales program.¹²³ The price of each timeshare unit will reflect the increased sales expenses and the additional costs of mass marketing¹²⁴ and unit furnishings.¹²⁵ In formulating a sales strategy, developers must consider the special features of timesharing.

The unique nature of timesharing is the greatest hurdle developers must overcome in marketing this product.¹²⁶ Before reaching the merits of particular projects, marketing strategies and sales techniques should initially focus on educating the public on the concept of timesharing.¹²⁷ Legislation can facilitate this educational process by making timesharing a subject of public debate.¹²⁸

D. Financing

The availability of financing for developers and timeshare owners is uncertain. Innovative lending practices would help to promote the growth and development of timesharing.¹²⁹ Since lenders hesitate to

121. Although timeshare sales cost much more than ordinary condominium unit sales, the developer can increase his profits by fractionalizing the units and marking up each unit above the whole unit cost. The aggregate of the timeshares in a unit, when sold, may amount to a price two and a half to three times more than it would have been had it been sold as a single unit to a single buyer. Pollack, *supra* note 7, at 287; see also Boster, *supra* note 20, at 107 (developers have generally marked timeshare prices up 25 to 50% over whole unit prices).

122. Boster, *supra* note 20, at 107; see Pollack, *supra* note 7, at 287.

123. See Davis, *supra* note 5, at 1190-91. The cost of educating sales persons to the concept of timesharing also raises the developer's fixed costs. Pollack, *supra* note 7, at 287.

124. See Boster, *supra* note 20, at 107.

125. Pollack, *supra* note 7, at 288. The resulting inflated purchase price does not seem to deter buyers. See Boster, *supra* note 20, at 107. Thomas J. Davis, Jr. offered a rationale for the purchasers' acceptance of this markup:

The analogy is to a man desiring two eggs with no place to store any he does not use. Would he be best advised to buy a dozen for a dollar, or two for fifteen cents each? If his need is for only two, buying the dozen would cost him an average of fifty cents a piece for the two he used since he would waste the rest. Even though the per unit price of the eggs bought individually is higher, they are clearly the best buy for his purposes. Such is the case in time sharing. The buyer buys only what he needs, paying the developer a premium for the additional effort involved.

Davis, *supra* note 5, at 1191.

126. See Varner, *supra* note 17, at 109.

127. See *id.*; see also Davis, *supra* note 5, at 1192; Pollack, *supra* note 7, at 287 (discussing need for public information regarding timesharing).

128. See Comment, *supra* note 5, at 439-41 (usefulness of legislation).

129. See Boster, *supra* note 20, at 107-08. "Indications are that once the time-sharing concept is understood and the project and shares properly appraised, lenders will judge a timesharing development just as any other — on the basis of project quality, feasibility, marketability, and developer strength." *Id.* at 108.

finance these projects primarily because of their novelty,¹³⁰ comprehensive timeshare legislation can have tremendous impact in the area of financing. Legislative enactment of a comprehensive statutory framework governing timesharing would encourage lending institutions to finance this concept of second home ownership,¹³¹ and reassure them that timeshare projects are not necessarily high risk investments.¹³²

1. Construction Loans

Until timesharing becomes more common in Minnesota, lenders will not have performance records from which to gauge their financing decisions. Consequently, developers will have to be creative in their financing proposals. Their proposals should include a plan for an alternative use of the project, such as an apartment complex or a traditional condominium project.¹³³ The plan may employ one of two methods of alternative financing — the “phase in” method or the “release” method.

130. Varner, *supra* note 17, at 78; see also Boster, *supra* note 20, at 107; Davis, *supra* note 5, at 1187; Thomas, *The Permanent Lender's Role in a Condominium Project*, 1982 A.L.I. - A.B.A. *Course on Real Est. Condo. and Planned Unit Devel.* 267, 269-70; Comment, *supra* note 21, at 313 (lenders hesitant to finance timesharing projects).

Lenders, whether they are “innovative” or not, base their decisions on their ability to measure the prospective risk involved. Two tools they use to measure this risk are the loan-to-value ratio in the proposed mortgage and previous foreclosure experience with similar mortgaged property. See E. FIEDLER, *MEASURES OF CREDIT RISK AND EXPERIENCE* 10 (1971). Timesharing provides lenders with little, if any, experience from which to determine the amount of risk involved.

131. See Varner, *supra* note 17, at 78.

132. See Comment, *supra* note 5, at 440 n.85 (citing Roodhouse, *supra* note 18, at 40).

A careful examination of the general underwriting of the condominium documents should reassure lending institutions. One author has suggested a checklist that lenders may follow. This checklist includes: (1) the length of the developer's control period; (2) the rights retained by the developer; (3) maintenance arrangements; (4) a guarantee that the developer will complete the project; (5) warranties of units and common elements; (6) restraints on alienation; (7) a proposed operating budget; (8) the adequacy of insurance; and (9) marketing scheme. Thomas, *supra* note 130, at 272-76. For an analysis of loan underwriting of timeshare projects, see Bilbray, *Legal Aspects of Real Estate Timesharing Right To Use Structures and Club Membership*, in *THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING* 211, 227-34 (P.L.I. Real Estate Law And Practice No. 220, 1982).

133. See Varner, *supra* note 17, at 78. Thomas Davis, Jr. set forth the rationale underlying this practice, stating:

[T]he construction loan on a time-sharing development can be compared to many other developments. Generally, a time-sharing development looks like something else. It looks like a hotel or a condominium project or a detached housing resort development. Financing will be structured as some percentage of total projected sellout. Due to the newness of time-sharing and the uncertainty in lenders' minds as to the potential market, an alternate use for the project should be determined in the event the time-sharing marketing effort fails. If there is no *convertibility factor*, the lender could end up with a very unhappy situation.

Davis, *supra* note 5, at 1187 (emphasis added).

a. Phase In Method

Developers have used the phase in method successfully to solicit financing in new markets.¹³⁴ Under the phase in method, the developer provides that all sales will be conditional until a designated percentage of the development is sold within a given time period. Once the developer sells this percentage of units, the conditional sales become final and future sales are unconditional. If the developer fails to obtain the necessary percentage of sales within the prescribed time, he must convert the project to the proposed alternative use.¹³⁵

b. Release Method

The release method also involves the alternative use theory. Although it has rarely been used, the release method is feasible.¹³⁶ Under this method, the developer offers a diversified project¹³⁷ in which a limited number of units are conditionally designated for timeshare sales. If the market adequately proves itself, clear title is conveyed to the purchasers by obtaining releases of the timeshare units from the lien of the blanket mortgage.¹³⁸

134. See Davis, *supra* note 5, at 1188; Martin, *supra* note 6, at 2805. This approach is cautious to the extent that the developer reduces the number of units committed to timeshare before determining the market's receptivity to the concept. See Ingleby, *supra* note 11, at 102; Martin, *supra* note 6, at 2805. For a successful example of this method, see 1 ROHAN & RESKIN, *supra* note 35, at § 17C.02[1] ("phase in" method used by Innisfree Corporation in Brockway Springs project).

135. See Ingleby, *supra* note 11, at 102; Martin, *supra* note 6, at 2805. Ingleby, however, raised a significant concern. He stated that a "developer [using this method] could well face serious problems from disgruntled purchasers. A change of the rules of the game in midstream always raises the specter of lawsuits and rescissions by unhappy buyers." Ingleby, *supra* note 11, at 102. These problems are alleviated by incorporating the procedures of the purchase into the instrument and providing an escrow account for deposit of purchase money. See *infra* note 140 and accompanying text.

136. See Davis, *supra* note 5, at 1188. Davis suggested that:

A very crucial part of the loan package will be the provisions for release of the units from the construction or other underlying mortgages. Ideally, the lender will release on a per time period basis. A more conservative lender will release on a per unit basis, an arrangement which can be worked with but which takes considerably more planning.

Id. For a general discussion of the release method, see Martin, *supra* note 6, at 2807.

137. A diversified project is a development that includes forms of recreational housing other than timeshare units. These forms may include hotel arrangements or conventional condominiums.

138. Eastman, *supra* note 1, at 161. Eastman noted that:

When an entire project is subject to a lien of blanket mortgage, the lender normally will require full payment of the portion of the mortgage attributable before it will issue partial releases for the individual apartment units. The same practice does not apply however, in the sale of a time unit (which is less than the ownership of the entire interest) in that apartment.

Id. But see Varner, *supra* note 17, at 78. Mr. Varner pointed out that, "such a method complicates the wording of the release provisions since the projected time-sharing sales price is normally a multiple of the nontime-sharing sales price. Consequently, release pro-

Lenders should be willing to finance timeshare projects that use one of these methods. The phase in and release methods permit lenders to view the property interest in conventional terms.¹³⁹ Should default occur, the lender can foreclose on physical units, rather than diverse time periods in a number of units. Furthermore, purchasers are adequately protected from losing their equity since they pay their purchase money into escrow until clear title is conveyed.¹⁴⁰

2. End Loans

End loans, which are loans made to ultimate purchasers, are difficult to obtain because of the uncertainties of timesharing. In a timeshare unit, the security interest upon foreclosure is the time period itself.¹⁴¹ Only one proven method currently exists to overcome the lender's reluctance to accept this interest. This method involves a conventional suretyship relationship¹⁴² in which two persons are liable for the mortgage debt — the timeshare owner and the project developer.¹⁴³ The developer acts

visions and similar items cannot be based in any standardized manner on loan ratios." *Id.* at 78, 109. Mr. Varner gave the following example demonstrating his objection:

[I]f the projected nontime-sharing sales price is \$40,000 for 5 physical units, or \$200,000, and assuming the loan ratio is 80% or \$160,000 and the usual release criterion used by the lender is 125% of the loan, the amount needed to release one physical unit would be \$40,000 (1/5 80% of \$200,000 = \$32,000 x 125% = \$40,000). If the projected time unit sales price is \$4,000 for a two-week period per year for the usable life of the facility, the average down payment, 25% and the goal is to sell 25 time units per year per physical unit, a complete sell out of one physical unit would not be sufficient to release that unit. (25% x \$4,000 x 25 units = \$25,000).

Id. at 110 n.15.

139. See *supra* note 130 and accompanying text. See generally Varner, *supra* note 17, at 78 (financing the development).

140. See *Timesharing Rules Proposed*, *supra* note 5. Deposits of money into escrow in real estate transactions in Minnesota can fall within the scope of two statutes. The first, Minnesota Statutes section 515A.4-108, provides that:

Any earnest money paid in connection with the purchase or reservation of a unit from a declarant shall be escrowed and held in this state in an account, savings deposit or certificate of deposit designated solely for that purpose in an institution whose accounts are insured by a governmental agency or instrumentality until (1) delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under the purchase agreement or reservation; or (3) delivered to the purchaser.

MINN. STAT. § 515A.4-108 (1982). The second, Minnesota Statutes section 82.24, entitled *Trust Account Requirements*, pertains to brokers and salespersons of real estate. It requires stricter scrutiny of escrow accounts than section 515A.4-108. See *id.* § 82.24. Section 82.24 also permits trust accounts that maintain interest bearing funds. See *id.* § 82.24, subd. 7.

141. See Boster, *supra* note 20, at 107.

142. See *id.* See generally A. STEARNS, LAW OF SURETYSHIP (5th ed. 1951) [hereinafter cited as STEARNS]. Other methods to secure end loans do exist. See generally *Financing Real Estate During the Inflationary 80's*, 1981 A.B.A. SEC. REAL PROP. PROB. & TR. LAW. These methods, however, involve forms of security other than the timeshare interest and are outside the scope of this Note.

143. See STEARNS, *supra* note 142, § 11.8, at 459.

as the personal surety,¹⁴⁴ guaranteeing the timeshare owner's debt to the lender. Should the timeshare owner default rather than foreclose, the lender can compel the developer to repurchase the defaulted interest.¹⁴⁵

The concern over the availability of end loan financing may be unwarranted. Timeshare interests are relatively inexpensive.¹⁴⁶ Many purchasers may choose to acquire their interests outright, rather than financing them.¹⁴⁷ If some form of financing is desired, the term of the arrangement should be relatively short,¹⁴⁸ reasonably, no longer than five years.¹⁴⁹ Comprehensive timeshare legislation would eliminate the need for many of these creative financing approaches by defining the nature of the security interest and helping to ensure project stability.¹⁵⁰

144. Personal surety is defined as "[t]he engagement of a person to be answerable for the debt, default or miscarriage of another." *Id.* § 1.3, at 2.

145. For an analysis of options available to a mortgagee in enforcing a guaranty, see MINNESOTA BANKERS ASS'N, REAL ESTATE LENDING PROCEDURES AND FORMS MANUAL 11-7 (1982). These options are: (1) foreclose the mortgage by advertisement and commence a separate action against the guarantor for any deficiency; (2) foreclose the mortgage by action and name the guarantor in the same lawsuit; and (3) sue the guarantors first and obtain a judgment against them, foreclosing upon the property only if the judgment is unsatisfied. *Id.*

146. Costs can range from \$2,000 to \$10,000 per share. Boster, *supra* note 20, at 105.

147. For a different perspective, see Ingleby, *supra* note 11, at 102. He stated:

Some financing arrangement is essential in most time-sharing developments. Few time-sharing interests are sold at such a low price as to not warrant some sort of financing. Many and perhaps most Americans are used to financing any purchase costing more than a few hundred dollars. As noted by the developer of Kona Billfisher, a project that has offered reasonable interest terms but no financing: "Financing must be provided. We had gone to market thinking that all buyers would pay cash because of the low price tag." To prospective purchasers who are used to buying their cars, furniture, and major appliances on time, the \$2,055 price tag of a time-sharing interest is an amount that must be financed if a sale is to be made.

Id.

148. See *supra* note 146 and accompanying text. The low cost can mean that a shorter period of amortization is feasible.

149. Ingleby, *supra* note 11, at 102. Ingleby raised another alternative method of providing financing stating: "One developer is seeking to solve the financing problem in his development by converting the existing interim financing on the project to permanent financing and offering prospective buyers real estate contracts (land contracts) rather than mortgage financing." *Id.*

150. See *supra* note 130 and accompanying text. According to one commentator, a client interested in purchasing a timeshare interest:

[s]hould be advised that the usual incidents of ownership or real estate, such as the ability to borrow against his interest, will be severely curtailed due to the limits of the interest, lack of an established secondary market and the lack of familiarity by many lenders with timesharing concepts.

Straw, *Representing a Purchaser of a Time Share*, 11 COLO. LAW. 1543, 1548 (1982).

In the absence of comprehensive timeshare legislation, timeshare projects can fail miserably, affecting not only purchasers, but lenders who have taken mortgages on timeshare interests. For an example of a New York timeshare development's demise and the effect on secondary market mortgagees, see Mpls. Star & Tribune, Feb. 23, 1983, at 6B, col. 5-6; *id.*, Mar. 2, 1983, at 5B, col. 3; *id.*, Mar. 9, 1983, at 3B, col. 4-6, 4B, col. 3-4.

E. Title Insurance

The validity and applicability of title insurance to timeshare units is somewhat uncertain.¹⁵¹ Lenders, purchasers,¹⁵² and developers¹⁵³ generally prefer a title insurance policy.¹⁵⁴ Thus, title insurance is commonly used in timeshare projects.¹⁵⁵ Usually, an abstract of title on the underlying real estate will not be furnished for each timeshare interest, since "[t]he cost of furnishing a separate abstract for each week — 52 for the year — for each apartment would be prohibitive."¹⁵⁶ Some timeshare policy provisions are similar to those covering traditional condominium units.¹⁵⁷ Other provisions need to be specifically tailored to accommodate the timeshare concept.¹⁵⁸ A timeshare title insurance policy should address matters concerning tax liens,¹⁵⁹ holdover owners,¹⁶⁰ and partitions.¹⁶¹

State statutes governing condominiums,¹⁶² recordation,¹⁶³ and waiver of the right to partition¹⁶⁴ should be consulted. In Minnesota, these statutes are silent with respect to timeshare interests.¹⁶⁵ Enactment of timeshare legislation that delineates the incidents of timeshare ownership will promote the availability of title insurance.

151. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01H, at 17C-4.34; Comment, *supra* note 5, at 439-40. See generally Certilman, *Special Title Problems Relating to Community Association Housing*, in TITLE INSURANCE: SPECIAL PROBLEMS 93 (1980) (recognizes timesharing's unique features affecting title insurance); Eagan, *Title Insurance for Condominiums*, 14 HASTINGS L.J. 210 (1963) (analysis from title insurer's perspective).

152. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01H, at 17C-4.35.

153. *Id.* at 17C-4.34.

154. *Id.* at 17C-4.35. But see Straw, *supra* note 150, at 1545. "Title insurance is not always provided by the developer due to the tremendous aggregate cost." *Id.*

155. Eastman, *supra* note 1, at 161.

156. *Id.*

157. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01[2], at 17C-4.34.

158. See *id.*

159. See *id.* at § 17C-4.34; Pollack, *supra* note 7, at 289-90.

160. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01H, at 17C-4.34; Eastman, *supra* note 1, at 162.

161. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01H, at 17C-4.34; see also *supra* note 54 and accompanying text (discussing supplemental declarations).

162. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01H, at 17C-4.34.

163. See Varner, *supra* note 17, at 77.

164. See 1 ROHAN & RESKIN, *supra* note 35, § 17C.01H, at 17C-4.35.

165. In order to effect a valid contract of title insurance, the insured need only have an interest in the property so that he would suffer a pecuniary loss if the title were clouded or defective. Rove, *Claim Against the Title Insurer*, in TITLE INSURANCE IN MAJOR REAL ESTATE TRANSACTIONS 239, 252-53 (P.L.I. Real Estate Law And Practice No. 144, 1978) (citing Empire Devel. Co. v. Title Guar. and Trust Co., 225 N.Y. 53, 121 N.E. 468 (1918); Wheeler v. Real Est. Title Ins. and Trust Co., 160 Pa. 408, 28 A. 849 (1914); 9 APPLEMAN, INSURANCE LAW AND PRACTICE, § 5204 (1943)).

F. Management

Due to the large number and transient nature of timeshare owners, good management¹⁶⁶ is more critical to timeshare condominiums¹⁶⁷ than for traditional condominiums.¹⁶⁸ Developers should select an appropriate management vehicle,¹⁶⁹ which may be either internal or external.¹⁷⁰ The external, professional management, approach is preferable because it requires little owner involvement.¹⁷¹ Developers may include this management vehicle in the declaration.¹⁷²

166. See Boster, *supra* note 20, at 108; Pollack, *supra* note 7, at 288-89; Rosenblatt, *supra* note 1, at 30 (management is essential factor in timeshare projects because it maintains value of units). Greater reliance on external management may, however, make timeshare interests securities under the *Howey* test. See *supra* notes 78-106 and accompanying text.

167. See Rosenblatt, *supra* note 1, at 30. Rosenblatt stated:

In a condominium, owners are continually in residence, or at least in ownership, and have an incentive to take a role in Association affairs. Of course, some owners are more active than others. An Association of timeshare owners is, because of the substantially larger membership, more unwieldy. Furthermore, only a minority of owners are simultaneously in residence and it may be hard to establish broad Association participation.

Id.; see also Boster, *supra* note 20, at 108; Pollack, *supra* note 7, at 288 (timeshare owners, as compared to traditional condominium owners are extremely transient). Boster noted that, "[i]n a time-sharing project, where the number of individual owners can exceed 10,000 and where (during the season) there is virtually 100 percent occupancy of each unit by several different owners, management can make or break a project very quickly." Boster, *supra* note 20, at 108.

168. See Ingleby, *supra* note 11, at 102. Ingleby believed that there were only three basic approaches to timesharing management: (1) lease arrangements; (2) trust indentures; and (3) pure agencies. He concluded that the pure agency form has the fewest disadvantages. *Id.* Impliedly, Ingleby must have assumed that only external management was appropriate because he avoided discussion of available internal approaches. See *infra* notes 170-71 and accompanying text.

169. See Varner, *supra* note 17, at 109. For an insight into characteristics of the internal approach, see Scavo, *Legal Aspects of Timeshare Owners Association: The Lawyer's Role in Document Drafting and Formation of the Association*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 505 (P.L.I. Real Estate Law And Practice No. 220, 1982).

170. Professional management is preferable because timeshare owners are only present at the project a few weeks each year, making it difficult for them to monitor day to day operations. See Boster, *supra* note 20, at 108; Rosenblatt, *supra* note 1, at 30. Another reason for professional management is that "a timeshared building must be operated as a first class hotel or motel with numerous employees to maintain the building and the units and to arrange for the transition of ownership and use on a recurring basis." Straw, *supra* note 150, at 1547. The internal method, though not preferable, remains viable. See Varner, *supra* note 17, at 109. The internal method involves management by an owners' association. This method is difficult to use in a timeshare project. See *supra* note 168 and accompanying text.

171. See Rosenblatt, *supra* note 1, at 30. A declaration is the "underlying organic 'constitution'" of both condominiums and timeshare projects. *Id.* at 15. "[M]any declarations require mandatory professional management. Other developers, while in favor of professional management, prefer a Declaration which allows the Association a free hand in deciding whether to hire outside professional help." *Id.* at 30.

172. See Boster, *supra* note 20, at 108; Pollack, *supra* note 7, at 288-89. See generally

A variety of management functions should be determined at the outset to prevent subsequent problems.¹⁷³ These functions include: (1) refurbishing and repairing the units and common elements;¹⁷⁴ (2) paying for materials and labor;¹⁷⁵ (3) paying taxes and assessments;¹⁷⁶ (4) paying for accounting and legal services;¹⁷⁷ (5) providing insurance coverage;¹⁷⁸ (6) enforcing covenants, conditions, and restrictions of the association;¹⁷⁹ and (7) assessing and collecting fees to pay for these activities.¹⁸⁰ Once the proper management vehicle and its appropriate functions are determined, the timeshare condominium should operate efficiently.

G. Tax Aspects

The tax consequences of timeshare development and ownership present a number of interesting issues. Examining the appropriate basis for real estate tax purposes,¹⁸¹ the tax advantages for income tax purposes,¹⁸² and the effect of tax liens,¹⁸³ assists in unraveling the timeshare concept.

Davis, *supra* note 5, at 1192-93 (detailed checklist for determining management functions).

Management functions can be set forth in the declaration. See Rosenblatt, *supra* note 1, at 30. They can also be determined by vote of the association of timeshare owners. "Since it is almost a certainty that a small percentage of the owners will be present at any owners association meeting, the management will normally have a large proxy vote." Varner, *supra* note 17, at 109. Another approach, "[g]iven the unwieldy nature of a timeshare Association, [is to] utilize powers-of-attorney." Rosenblatt, *supra* note 1, at 30. "Each owner executes such a power in favor of a designated person, often the outside manager." *Id.*

173. Pollack, *supra* note 7, at 288.

174. *Id.*

175. Pollack, *supra* note 7, at 288.

176. *Id.*; see *infra* notes 184-88 and accompanying text. See generally Davis, *supra* note 5, at 1193 (to determine whether taxes should be component of the fee one should ascertain whether local real estate taxes are assessed separately to unit or interest, or to entire project as a whole). For further discussion of real estate taxes, see *infra* notes 184-98 and accompanying text.

177. Pollack, *supra* note 7, at 288-89.

178. *Id.* See generally Kenyon, *Insuring the Condominium*, 19 PRAC. LAW. 13 (1973) (insurance in relation to condominium developments).

179. Pollack, *supra* note 7, at 289. The simplest way for management to collect fees is to impose a lien on the timeshare interest for all delinquencies. See Varner, *supra* note 17, at 77-78. The developer must "prepare penalty and enforcement procedures that will protect nondelinquent owners from the arrearages of others." Davis, *supra* note 5, at 1192.

180. See Davis, *supra* note 5, at 1193-94; Pollack, *supra* note 7, at 289-90.

181. See Pollack, *supra* note 7, at 290. "The tax angles alone used to make the purchase of a vacation home an attractive investment. . . . Unfortunately, Congress has taken away some of the favorable tax breaks available to owners of vacation or resort condominiums" KEY TAX ANGLES TO CONSIDER BEFORE INVESTING IN CONDOMINIUMS AND COOPERATIVE APARTMENTS ¶ 7 (P-H Tax Savings Series no. 14, 1980) [hereinafter cited as KEY TAX ANGLES].

182. See Malleris, *supra* note 17, at 100; Pohoryles, *supra* note 82, at 23.

183. Davis, *supra* note 5, at 1193; Pollack, *supra* note 7, at 290-91.

1. Real Estate Taxation

For real estate tax purposes, local tax assessment policy determines whether: (1) each time period is assessed individually;¹⁸⁴ (2) each unit is assessed individually;¹⁸⁵ or (3) the project is assessed as a whole.¹⁸⁶ In the latter two instances, taxes must be prorated to the individual timeshare as they are in conventional condominiums.¹⁸⁷ Tax assessment valuation must also take into account the effects of seasonal demand.¹⁸⁸ Prime season timeshares should bear a proportionately higher tax than off-season timeshares because of their greater value.¹⁸⁹

The appropriate basis for assessing the timeshare tax valuation is an unresolved issue. There are three alternatives. The first and least desirable is unit sellout price.¹⁹⁰ The sellout price is inflated¹⁹¹ far above the intrinsic value of comparable non-timeshare units.¹⁹² The second alternative applies the basis of an analogous non-timeshare unit.¹⁹³ This approach is also undesirable because it ignores the sale price of the actual unit assessed.¹⁹⁴

The third alternative taxes the actual value acquired by the purchaser.¹⁹⁵ This alternative best reflects the interest involved and is favorable to all parties. Its basis takes into account the duration of the interest and its relative seasonal value.¹⁹⁶ This alternative provides the appropriate basis upon which to assess the timeshare unit's tax valuation.¹⁹⁷ Minnesota needs legislation that allows fractionalization of tax assessments to permit timeshare owners to receive separate taxation of their interests.¹⁹⁸

184. Davis, *supra* note 5, at 1193.

185. *Id.*

186. Pollack, *supra* note 7, at 290-91.

187. See Davis, *supra* note 5, at 1194. This is the major problem with traditional square footage assessments. See *id.*

188. See Pollack, *supra* note 7, at 290-91; see also *supra* note 120 and accompanying text (discussing seasonal effect on timeshare unit pricing).

189. See Varner, *supra* note 17, at 109. But see Davis, *supra* note 5, at 1194 (percentage of sales price is soundest course).

190. The value of the individual shares, when totaled, exceeds the value of the unit itself. See *supra* note 125 and accompanying text.

191. See Varner, *supra* note 17, at 109.

192. See *id.*

193. See *id.*

194. See *id.*

195. This approach would provide local tax authorities with a basis representing the full value of the condominium.

196. Although interests vary, the typical length is two weeks. See *supra* note 40 and accompanying text.

197. The unit basis is derived by adding together the number of interest values. For a general discussion of interest valuation, see Davis, *supra* note 34, at 53-54; Hart, *supra* note 7, at 110-11.

198. See Davis, *Real Estate Time Sharing in Florida--A Practitioner's View*, 57 FLA. B.J. 116,

2. Tax Advantages

Once the appropriate tax basis is determined,¹⁹⁹ timesharing presents no unique tax problems.²⁰⁰ Owners,²⁰¹ however, will need to determine

119 (1982); Johnakin, *Legislation For Time Share Ownership Projects*, 10 REAL PROP. PROB. & TR. J. 606, 610 (1975); Malleris, *supra* note 17, at 100; Comment, *supra* note 21, at 312.

Minnesota Statutes section 515A.1-105(a) provides that condominium units are separate parcels of real estate for purposes of taxation. MINN. STAT. § 515A.1-105(a) (1982). Without such legislation, the convenient method of taxing the entire parcel may be used by taxing authorities. As one author has noted:

If prophylactic legislation was necessary to protect condominium unit owners from this hazard, similar legislation is needed for time share owners *a fortiori*. Even without the benefit of such legislation, condominium unit owners could probably have argued successfully that a condominium is merely a novel form of subdivision, and that the tax authorities are therefore obliged to assess the units separately just as they would the individual lots in a traditional subdivision. (A problem would still remain with respect to the common elements.) But the time share owners of a vacation home cannot make a similar argument. Whether ownership is structured under a time-span scheme or an interval scheme, the fact remains that each vacation home comprises a single parcel of real property. Without legislation expressly requiring the fractionalization of tax assessments, time share owners would have no more right to separate taxation of their time share estates than would any other individuals who own different estates or interests in the same property. Tenants in common are not entitled under any state law to separate assessment and taxation of their undivided interests, and time share owners would not be entitled to any different treatment unless special legislation were enacted for their benefit.

Johnakin, *supra*, at 610. For an example of the special legislation advocated by Mr. Johnakin, see Colorado Revised Statutes section 38-33-111(3), which provides:

With respect to each time share unit, each owner of a time share estate therein shall be individually liable to the unit owners' association or corporation for all assessments, property taxes both real and personal, and charges levied pursuant to the project instruments against or with respect to that unit, and such association or corporation shall be liable for the payment thereof, except to the extent that such instruments provide to the contrary. However, with respect to each other, each time share owner shall be responsible only for a fraction of such assessments, property taxes both real and personal, and charges proportionate to the magnitude of his undivided interest in the fee to the unit.

COLO. REV. STAT. § 38-33-111(3) (1982).

199. For income tax purposes, the actual basis is the cost of the timeshare interest.

200. See Davis, *supra* note 5, at 1193; Yurow, *supra* note 23, at 1217. This is because the vast majority of timeshare interests are acquired primarily for personal use. *Id.*; see also *supra* note 101 and accompanying text (timeshare units are not securities because they are purchased for personal use).

201. This Note focuses on individuals who own timeshare units for personal use rather than for business purposes. Units used for business purposes have peculiar tax advantages, such as: (1) they are depreciable; (2) they permit an investment credit, see Yurow, *supra* note 23, at 1215-17; (3) hobby loss deductions are available, if the units are used for business and personal purposes; and (4) the units' expenses may be treated as business expenses. See Davis, *supra* note 5, at 1194 n.25; Pollack, *supra* note 7, at 290.

The Internal Revenue Service has proposed regulations to section 280A that would significantly alter the current tax treatment of timesharing interests. See 45 Fed. Reg. 52399 (1980) (to be codified at 26 C.F.R. pt. 1) (proposed August 7, 1980). Section 280A of the Code generally disallows deductions for the business use or rental of a "dwelling unit" which the taxpayer uses as a residence. See I.R.C. § 280A(a) (1976 and Supp. IV 1980). Under the proposed regulations, it is unclear whether a timeshare interest would

the portion of owning, operating, and maintenance expenses that are deductible for income tax purposes.²⁰² Subject to certain limitations,²⁰³ section 183(b) of the Internal Revenue Code²⁰⁴ provides that individuals may take deductions when they are engaged in an activity not for profit.²⁰⁵ Since timeshare ownership is largely an activity not engaged in for profit,²⁰⁶ owners will be unable to offset losses from the ownership and operation of the property against taxable income from other sources.²⁰⁷ Thus, maintenance charges will generally be non-deductible.²⁰⁸

be considered a "dwelling unit," or if it would fall into the category of exceptions created for hotels, motels, and similar establishments. See Vogel, *The Tax Consequences of Time-Sharing*, 10 J. REAL EST. TAX'N 323, 336-37 (1983). The characterization of the unit will determine whether expenses associated with the business use of the unit are deductible. The proposed regulations affect the characterization of the owner's interest in the timeshare unit, by providing that "each of the persons with an interest in the unit subject to the time sharing arrangements shall be considered to have a continuing interest in the unit regardless of the terms of the interest under local law." Prop. Treas. Reg. § 280A-3(f)(3), 45 Fed. Reg. 52399 (1980). This definition ignores the temporal nature of a timeshare interest, expanding the owner's interest from the actual one or two weeks which he owns, to a year long continuing obligation. See Vogel, *supra*, at 337.

This Note does not focus on tax advantages available in non-ownership arrangements. Vacation license or right-to-use timesharing present many problems, particularly from the developer's perspective. See Davis, *supra* note 34, at 53-54; Pollack, *supra* note 7, at 290-91; Yurow, *supra* note 23, at 1200, 1218-19.

Under a timeshare ownership program, a developer "would appear to be in essentially the same tax position as any other condominium seller. In computing his profit on the sale of an undivided interest in a condominium unit, he would deduct the portion of the costs allocable to such undivided interest." *Id.* at 1217; see Davis, *supra* note 34, at 53.

202. Yurow, *supra* note 23, at 1205. For an analysis of tax advantages available to timeshare condominium associations, see Simon, *Legal Aspects of Timeshare Owners Associations*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 517, 524-26 (P.L.I. Real Estate Law And Practice No. 220, 1982).

203. See Yurow, *supra* note 23, at 1205.

204. Internal Revenue Code section 183(b) provides:

(b) DEDUCTIONS ALLOWABLE — In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

- (1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and
- (2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

I.R.C. § 183(b) (1976).

205. An activity not engaged in for profit is defined in Internal Revenue Code section 183(c) as "any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212." I.R.C. § 183(c) (1976). For the effect of the Regulations and case law on activities not engaged in for profit, see Yurow, *supra* note 23, at 1208-15.

206. See Yurow, *supra* note 23, at 1208-15.

207. *Id.* at 1205.

208. See KEY TAX ANGLES, *supra* note 181, at ¶ 12.1 (only maintenance charges for common elements clearly not deductible); Bush, *Planning to Meet Problems of Nonbusiness*

Owners may take real estate tax²⁰⁹ and interest²¹⁰ deductions. Uninsured casualty losses²¹¹ should also be deductible.²¹² Since it is unlikely the unit would ever serve as a residence, the tax deferral rules on sale or exchange of a residence would not apply.²¹³ Upon resale, the timeshare interest should receive capital gains treatment.²¹⁴ The effect of these tax consequences is negligible because the value of the timeshare itself is minimal.²¹⁵

3. Federal Tax Liens

The threat of federal tax liens is a problem with many forms of joint ownership.²¹⁶ Section 6321 of the Internal Revenue Code²¹⁷ imposes a tax lien for unpaid federal taxes in favor of the United States.²¹⁸ Once

Residential Property; Co-ops; Condominiums; Non-Exotic Realty; Exotic Types of Real Property; Time-shared Property; Domicile and Conflicts of Laws, 35 INST. ON FED. TAX'N 1403, 1419 (1977); Pollack, *supra* note 7, at 291 (citing *Vacation Home*, MONEY, Oct. 1978, at 59).

209. I.R.C. § 183 (1976); see KEY TAX ANGLES, *supra* note 181, at ¶ 3.1; Bush, *supra* note 208, at 1419; Davis, *supra* note 5, at 1194; Pollack, *supra* note 7, at 290; Yurow, *supra* note 23, at 1217.

The deduction of real estate taxes is set forth in Internal Revenue Code section 164(a)(1). See I.R.C. § 164(a)(1) (1976). To insure that the complete deduction is used, the timeshare owner should make certain that taxes paid on common elements are prorated and deducted. This deduction is often overlooked when the common elements and the unit are separately assessed. See KEY TAX ANGLES, *supra* note 181, at ¶ 13.1.

210. I.R.C. § 183 (1976); see KEY TAX ANGLES, *supra* note 181, at ¶ 13.2; Bush, *supra* note 208, at 1419; Davis, *supra* note 5, at 1194; Pohoryles, *supra* note 82, at 23; Pollack, *supra* note 7, at 290; Yurow, *supra* note 23, at 1217.

The deduction for mortgage interest payments is set forth in Internal Revenue Code section 163. See I.R.C. § 163 (1976). It is important to note that "an interest deduction is also permissible where the [timeshare] owner assumes pro rata an existing mortgage secured by the entire complex, not just the unit." KEY TAX ANGLES, *supra* note 181, at ¶ 13.2 (citing Rev. Rul. 64-31, 1964-1 C.B. 300).

211. I.R.C. § 165(c)(3) (1976).

212. I.R.C. § 183 (1976); see KEY TAX ANGLES, *supra* note 181, at ¶ 3.3. Examples of casualty losses include fire, tornado, flood, or vandalism. *Id.* Casualty loss deductions are set forth in Internal Revenue Code sections 123 and 1231. I.R.C. §§ 123, 1231 (1976 & Supp. V 1981).

213. See Davis, *supra* note 5, at 1194.

214. Pollack, *supra* note 7, at 290 (quoting Davis, *supra* note 5, at 1194). The timeshare interest meets the definition of a capital asset. Davis, *supra* note 5, at 1194 n.29; see Hart, *supra* note 7, at 110.

215. Pollack, *supra* note 7, at 291; see Straw, *supra* note 150, at 1543 (average price of timeshare equivalent to medium-priced automobile); *supra* note 146 and accompanying text.

216. See Davis, *supra* note 5, at 1187; Eastman, *supra* note 1, at 153; Malleris, *supra* note 17, at 10-11; Rosenblatt, *supra* note 1, at 31; Comment, *Innovative Concept*, *supra* note 44, at 441-42; Comment, *supra* note 5, at 428; Comment, *supra* note 21, at 304; see also Pollack, *supra* note 7, at 289-90 (threat of federal tax lien creates title insurance problems). For a detailed analysis of the nature and history of the impact of federal tax liens upon joint ownership arrangements, see Comment, *supra* note 5, at 429-31.

217. I.R.C. § 6321 (1976).

218. *Id.*; see Comment, *supra* note 5, at 429.

triggered,²¹⁹ the lien attaches to "all property and rights to property . . . belonging to . . . [the person] liable to pay any tax."²²⁰ Section 7403 of the Code²²¹ provides that a court may sell any property that the taxpayer has an interest in to satisfy the lien.²²² This presents a clear threat²²³ of forced judicial sale²²⁴ to timeshare owners in a time span

219. See W. PLUMB, *FEDERAL TAX LIENS* 10 (3d ed. 1972) (extensive survey of formalities required to impose lien).

220. Comment, *supra* note 5, at 429 (quoting I.R.C. § 6321 (1976)) (emphasis added).

221. I.R.C. § 7403 (1976 & Supp. V 1981).

222. Comment, *supra* note 5, at 429. The government is authorized to bring an action "to enforce the . . . lien . . . or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability." I.R.C. § 7403(a), *reprinted in* Comment, *supra* note 5, at 429 n.27 (emphasis added).

223. See *supra* note 216 and accompanying text.

224. To prevent foreclosure and sale of the unit, it would be practical for the co-owners to purchase the delinquent owner's interest to avoid losing their interests. Comment, *supra* note 5, at 431. If not, the United States, as a creditor, may foreclose and redeem.

Internal Revenue Code section 7425(a) provides, in part, that liens must be discharged by:

Judicial proceedings. — If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title —

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

I.R.C. § 7425(a) (1976) (emphasis added). In Minnesota, the law governing judicial foreclosure is found in Minnesota Statutes sections 581.01 to .12.

Minnesota Statutes section 581.10, entitled *Redemption by mortgagor, creditor*, provides that "Creditors having a lien may redeem in the order and manner specified in section 580.24 . . ." MINN. STAT. § 581.10 (1982). Minnesota Statutes section 580.24 provides:

If no such redemption be made by the mortgagor, his personal representatives or assigns, the senior creditor having a lien, legal or equitable, upon the mortgaged premises, or some part thereof, subsequent to the mortgage, may redeem within five days after the expiration of the redemption period specified in section 580.23; and each subsequent creditor having a lien in succession, according to priority of liens, within five days after the time allowed the prior lienholder, respectively, may redeem by paying the amount aforesaid and all liens prior to his own held by the person from whom redemption is made; provided that no creditor shall be entitled to redeem unless within the period allowed for redemption he file for record notice of his intention to redeem with the county recorder of each county where the mortgage is recorded.

arrangement.²²⁵

The IRS, in a private letter ruling,²²⁶ has mitigated the threat of these liens.²²⁷ The ruling stated that the IRS "does not expect to partition timeshare projects and that it will seek to enforce its lien only against the delinquent taxpayer's individual interest."²²⁸ Since foreclosures pursuant to federal tax liens are rare,²²⁹ the likelihood of such a sale is minimal.²³⁰

III. SOLUTION — COMPREHENSIVE LEGISLATION

Minnesota needs legislation to resolve these uncertainties and lay to rest the warranted apprehensions presented above.²³¹ The Legislature may approach this task by promulgating regulations,²³² enacting en-

MINN. STAT. § 580.24 (1982) (emphasis added).

Internal Revenue Code section 7425(d) provides that the United States may redeem "within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer." I.R.C. § 7425(d) (1976) (emphasis added). The redemption period specified in Minnesota Statutes section 580.23(1) is six months, which pursuant to Code section 7425(d), would control. Therefore, the United States would be compelled to follow the procedure.

225. Owners in a time span arrangement, *see supra* notes 45-51 and accompanying text, are candidates for the impact of federal tax liens because they own their interests jointly, as tenants in common. *See supra* notes 64-65 and accompanying text. On the other hand, owners in an interval estate arrangement, *see supra* notes 37-44 and accompanying text, appear to avoid the impact of federal tax liens because they hold an estate in fee. At least two authors in this area have adopted the view that interval owners are free from federal tax liens because satisfaction of the lien can only be accomplished by sale of an interest in the property, not the property itself. *See* Eastman, *supra* note 1, at 153 n.12 (citing Outen, *Interval Titles and Title Insurance*, LAW TITLE NEWS, Mar.-Apr. 1976, at 7); Comment, *supra* note 5, at 428 n.21; *cf.* Rosenblatt, *supra* note 1, at 31 n.47 (recognizing but not explicitly ratifying the position taken in the Comment).

226. Rosenblatt, *supra* note 1, at 31.

227. *Id.* (citing Internal Revenue Service, Priv. L. Rul. No. 7831029 (May 4, 1978)).

228. Rosenblatt, *supra* note 1, at 31; *see* United States v. Eaves, 499 F.2d 869 (10th Cir. 1974) (section 7403 authorizes but does not mandate sale to satisfy federal tax lien of a single covenant).

229. *See* W. PLUMB, *supra* note 219, at 3.

230. Comment, *supra* note 5, at 431. The author points out that if judicial foreclosure is sought, courts should consider a number of factors unique to timesharing, such as the innocence of co-tenants, hardships, administrative cost, inconvenience, and economic impracticality of selling all the interests in a unit. *Id.*; *see* Davis, *supra* note 5, at 1183; Varner, *supra* note 17, at 78 n.9.

231. *See* Simon & Rugani, *supra* note 20, at 52. Legislation will "provide the attorney with a helpful checklist of relevant factors and possible mechanisms for assuring adequate protection for the time-share purchaser." *Id.*; *see also* Davis, *supra* note 198, at 117; Johnakin, *supra* note 198, at 607, 612; Malleris, *supra* note 17, at 101; Comment, *supra* note 7, at 217; Comment, *supra* note 21, at 302 (where timesharing legislation is absent, wholesale application of numerous provisions produces awkward interpretations, leaving timesharing dependent upon common law principles for validity).

232. *See* Catalina, *supra* note 7, at 146; Gunnar, *supra* note 7, at 41.

abling legislation,²³³ or adopting a comprehensive model act.²³⁴

A. Regulations

Federal,²³⁵ state,²³⁶ and local governments²³⁷ have promulgated regulations on timesharing through administrative rulings²³⁸ and statutory enactment.²³⁹ These deal primarily with deceptive sales practices and developer undercapitalization.²⁴⁰ The regulations, like many other consumer protection laws, focus on procedural rather than substantive as-

233. See Comment, *supra* note 7, at 217.

234. See Burek, *supra* note 67, at 690; Podgers, *supra* note 4, at 543-44; Annot., 6 A.L.R. 4th 1288, 1289 n.2 (1981).

235. Regulation of timesharing at the federal level includes involvement of the Securities and Exchange Commission. See Catalina, *supra* note 7, at 149; Eastman, *supra* note 1, at 158-59; Gunnar, *supra* note 7, at 41; Annot., 6 A.L.R. 4th 1288, 1291 (1981); see also *supra* notes 78-106 and accompanying text (discussing SEC involvement). The Federal Trade Commission is also involved in regulating many aspects of timesharing. See Bloch, *Regulation of Timesharing*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 289 (P.L.I. Real Estate Law And Practice No. 220, 1982). A number of other federal authorities are involved, including the Department of Housing and Urban Development, the Department of Justice, and the Federal Home Loan Bank Board. *Id.* at 383, 387-88.

236. See Ingersoll, *supra* note 2. The author provides a national survey of the state regulatory response to timesharing either through direct or indirect application of various registration laws. See *id.* at 323. For a similar survey, see Bloch, *supra* note 235, at 295-96.

237. See Bilbray, *Local Controls of Timesharing*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 451 (P.L.I. Real Estate Law And Practice No. 220, 1982); Martin, *supra* note 6, at 2807-08; Mulligan, *supra* note 17, at 2802; Penwell, *supra* note 20, at 65; Straw, *supra* note 150, at 1544.

238. See Catalina, *supra* note 7, at 146; see, e.g., FLA. STAT. ANN. ch. 718 (West Supp. 1982); FLA. ADMIN. CODE Rule 2-23.01 (1982).

239. See Catalina, *supra* note 7, at 146; see, e.g., S.C. CODE ANN. §§ 27-32-10 to -230 (Law. Co-op. Supp. 1982).

240. Catalina, *supra* note 7, at 146. Incidents of deceptive trade practices in the timeshare area occur with considerable frequency. One such incident arose in Hawaii, where the solicitation of timeshare purchasers was described as follows:

Besides the ever-present B-girls flaunting their wares beneath the graceful palms of Kalakaua Avenue and the shadowy youths tempting passersby with whispered offers of choice marijuana buds, the tourist must run a gantlet of sidewalk hawkers standing in booths and packed seven or eight to a block in some areas. The pitchmen promise all sorts of good things in return for just a few minutes of your time listening to a real-estate spiel.

Would you like a rental car for \$5 a day? How about free tickets to the Don Ho Show or Germaine's luau? Do you like macadamia nuts? We'll give you a case of them free. Two cases. Some pineapples, maybe? Just give us 90 minutes of your time. We want to tell you about a great opportunity to save money. You can just go to our party, listen to the talk and leave. No gimmicks, no pressure. We'll even refund your cabfare if you go.

This is the siren song of the condominium time-share salesman, and it has helped to ruin hundreds of vacationers' dream trips to Hawaii.

Zonana, *Waikiki's Pitchmen for Time-Sharing Resorts Leave Many Disgruntled Buyers in Their Wake*, Wall St. J., Mar. 10, 1983, at 46, col. 1. Arguably, Minnesota has a statute which could regulate this type of practice. See MINN. STAT. § 325D.44, subd. 1(9)-(12) (1982).

pects of timeshare transactions.²⁴¹

Minnesota has a similar regulatory response in the Minnesota Subdivided Land Sales and Practices Act (Act).²⁴² Although the Act does not specifically address timesharing, a number of Minnesota timeshare projects are being regulated under it.²⁴³ The Act authorizes the Com-

241. For example, these statutes require developers to presubmit plans, documents, and detailed information about offerings; give adequate warning to buyers concerning their liabilities under the by-laws; allow a cooling off period during which the buyer may rescind the contract; refrain from deceptive trade practices; and maintain funds in escrow to protect purchasers' rights in case of developer insolvency. *See, e.g.*, FLA. STAT. ANN. chs. 718, 721 (West Supp. 1982); S.C. CODE ANN. tit. 27, ch. 32 (Law Co-op. Supp. 1982).

242. MINN. STAT. §§ 83.20-42 (1982). For an analysis of the Act, see Comment, *Cubes of Air: Planning A Condominium Development Under The Minnesota Act*, 1 WM. MITCHELL L. REV. 89, 112-15 (1974).

243. The issue is raised, but not answered, in Rosenblatt, *supra* note 1, at 26 n.16. To fall under the purview of the Act, the concept of timesharing must fall into the definition of "subdivision," as provided in section 83.20(11) of the Act:

"Subdivision" and "subdivided land" means any land wherever located, improved or unimproved, whether adjacent or not, which is divided or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising and disposition by a single subdivider or a group of subdividers. If the land is designated or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

MINN. STAT. § 83.20(11) (1982) (emphasis added).

It appears that a developer creating a project from the ground up would come under the scope of the Act, but if an existing condominium, apartment, or hotel complex were divided into timeshares, it is questionable whether the Act would apply. In timesharing, time and not "land" is being divided. *See* Rosenblatt, *supra* note 1, at 26 n.18. "[T]here are sound reasons why a timeshare project which does not intensify the use of the land should not be considered a subdivision for local zoning purposes, and the law remains unsettled in Minnesota." *Id.* at 26; *See* Board of County Comm'rs v. Colorado Bd. of Assessment Appeals, 628 P.2d 156 (Colo. App. 1981) (timesharing neither changes nor increases use of land). *But see* Cal-Am Corp. v. Dep't of Real Estate, 104 Cal. App. 3d 453, 163 Cal. Rptr. 729 (1980) (for regulatory purposes timesharing is considered a subdivision in sales of vacation memberships); Town of Tuftonbuoro v. Lakeside Colony, Inc., 119 N.H. 445, 403 A.2d 410 (1979) (for local zoning purposes subdivision occurs upon creation of timeshare project).

According to Ms. Lorraine Rowe of the Securities and Real Estate Division of the Minnesota Department of Commerce, the policy in Minnesota is to treat timesharing as a subdivision of land. This policy was formulated approximately six years ago by the Commissioner of the Securities and Real Estate Division. Of six timeshare developments within Minnesota to date, two are regulated under the Act and four are exempt under Minnesota Statutes section 83.26(1)(g). Telephone interview with Lorraine Rowe, Securities and Real Estate Division, Minnesota Department of Commerce (Mar. 4, 1983).

Section 83.26 (1)(g) provides that the Act does not apply:

If the land is located within the corporate limits of a municipality as defined in section 462.352, subdivision 2, or within any subdivision located within a town or municipality located within 20 miles of the city limits of a city of the first class or within three miles of the city limits of a city of the second class, or within two miles of the city limit of a city of the third or fourth class in this state. The commissioner may, by written rule or order, suspend, wholly revoke, or further

missioner of Securities and Real Estate to administer its provisions²⁴⁴ using designated enforcement powers.²⁴⁵ The Act focuses on procedures and consumer protection.²⁴⁶ Like similar regulatory schemes in other states,²⁴⁷ the Act does not provide a comprehensive solution to timesharing's unique problems.

B. Enabling Legislation

Many states, including Minnesota,²⁴⁸ have conventional condominium²⁴⁹ enabling legislation.²⁵⁰ These acts arguably apply to timesharing without specifically providing for it.²⁵¹ Yet, they still subject timesharing to numerous other statutory provisions and common law principles to determine its viability.²⁵² The application of condominium legislation to timeshare interests is presently a question of statutory construction.²⁵³ Silent enabling legislation and a scarcity of case law²⁵⁴ subject timesharing to varied treatment within and between jurisdictions.²⁵⁵

Other states expressly recognize timesharing within their enabling acts.²⁵⁶ Statutory recognition eliminates some unwarranted apprehen-

condition this exemption, or may require, prior to the first disposition of subdivided lands, such further information with respect thereto as may be necessary for the protection of purchasers consistent with the provisions hereof.

MINN. STAT. § 83.26(1)(g) (1982).

The cost to the developer of a timeshare project that is not exempt from the Act is \$250 plus \$1 for each unit or interest, with a maximum fee of \$2,500. *Id.* § 83.23(2).

244. *See* MINN. STAT. § 83.21 (1982).

245. *See id.* § 83.35.

246. *See, e.g., id.* § 83.24 (public offering statement); *id.* § 83.27 (inquiry and examination); *id.* § 83.28 (sales contract—rescission); *id.* § 83.32 (inspection of records); *id.* § 83.37 (penalties—civil remedies).

247. *Cf.* Eastman, *supra* note 1, at 160-61 (applicability of North Dakota's Land Subdivision Act to timesharing); Gunnar, *supra* note 7, at 35 (Oregon's subdivision control laws and timesharing). For a discussion of the effect of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701-1720 (1976 & Supp. V 1981), see Note, *S.275 - The Interstate Land Sales Full Disclosure Act*, 21 RUTGERS L. REV. 714 (1967).

248. *See* MINN. STAT. §§ 515A.1-101.4-118 (1982).

249. A conventional condominium is divided into three dimensions: height, breadth, and depth. *See supra* note 31 and accompanying text.

250. An enabling statute, in its rudimentary definition, is one that "confer[s] new powers." BLACK'S LAW DICTIONARY 472 (5th ed. 1979).

251. Comment, *supra* note 7, at 217; *see* Eastman, *supra* note 1, at 154-56; Rosenblatt, *supra* note 1, at 27 (it is possible to prepare and record joint declaration creating both condominium and timesharing interest); *see also supra* note 3 (discussing creation of timeshare interests).

252. Comment, *supra* note 7, at 217; *see* Malleris, *supra* note 17, at 101; Rosenblatt, *supra* note 1, at 26.

253. Comment, *supra* note 7, at 217.

254. *See* 1 ROHAN & RESKIN, *supra* note 35, § 16.02, at 16-8; Comment, *supra* note 7, at 220. The timeshare concept is a recent phenomenon in the United States. As a result, there is little case law on the subject.

255. *See* Comment, *supra* note 7, at 220.

256. *See, e.g.,* CAL. BUS. & PROF. CODE § 11003.5 (West Supp. 1983); COLO. REV.

sions based on misconceptions of timesharing, but falls short of providing a comprehensive solution to the many legal issues involved.²⁵⁷ Enabling legislation pertaining to conventional or timeshare condominiums offers an incomplete and inadequate solution.

C. Comprehensive Legislation — The Model Real Estate Time-Share Act

As an alternative, the Legislature could enact a comprehensive piece of legislation that satisfies both the regulatory and enabling goals of other jurisdictions. Moreover, comprehensive legislation can identify and reconcile the unique problems that timesharing presents. In particular, comprehensive timeshare legislation can avoid the confusion caused by the myriad regulations, laws, and authorities presently governing timeshare projects.²⁵⁸

There are presently two model acts available for adoption throughout the country.²⁵⁹ The first, the Model Real Estate Time-Share Act

STAT. §§ 38-33-110 to -111 (1982); FLA. STAT. ANN. § 718.1045 (West Supp. 1983); ME. REV. STAT. ANN. tit. 33, § 588 (Supp. 1982-1983); N.M. STAT. ANN. § 47-7A-3 (1982); R.I. GEN. LAWS § 34-36.1-1.03 (Supp. 1982); UTAH CODE ANN. § 57-8-3 (Supp. 1981). For a survey and comparison of state legislative responses to timesharing, see Bloch, *supra* note 235, at 295-96; Comment, *supra* note 7, at 222-36.

257. See Pollack, *supra* note 7, at 295 (laws not appropriate or adequate to govern timeshares); Comment, *supra* note 5, at 442-43 (regulations a step in right direction but lack comprehensiveness needed to resolve problems associated with timesharing). As one author has noted:

The myriad [sic] of legal and practical problems associated with timesharing have [sic] attracted regulatory interest, but the regulatory agencies' responses have aggravated the industry's problems. The variety of regulations promulgated and applied to timesharing demonstrate the urgent need for a single comprehensive approach. Moreover, the patchwork of agencies is inadequate to deal with the problems associated with timesharing, thus hindering its acceptance. The confusion creates a favorable environment for the few unscrupulous developers who structure projects to avoid all forms of registration. Although regulatory interest is instigated by these developers, the fragmented state of current regulation prevents regulatory forces from reaching the very activities they hope to control.

Comment, *Unique Property*, *supra* note 107, at 642 (footnote omitted). Thus, the author concludes comprehensive legislation is the only solution. *Id.* at 644.

258. See Gunnar, *supra* note 7, at 44-45; see also Davis, *supra* note 199, at 120 (discussion of various laws affecting timeshare projects in Florida); Martin, *supra* note 6, at 2809 (myriad of federal, state, and local laws have impact on timesharing); Comment, *supra* note 21, at 307-08 (variety of regulatory schemes creates confusion). One commentator has stated:

The present confused, duplicative, and often conflicting regulations are self-defeating. They result either in legal avoidance of salutary regulations or a lack of enforcement. In addition, the excessive costs of complying with a multitude of regulations are passed on to the purchaser. Thus neither the public nor the industry is benefited by the present situation.

Gunnar, *supra* note 7, at 45. Comprehensive timeshare legislation is considered "a blessing when viewed by practitioners in states without any clear cut legislative view of where timesharing actually fits." Davis, *supra* note 198, at 117.

259. See Podgers, *supra* note 4, at 543. For analyses and comparisons of the two pieces

(MRETSA),²⁶⁰ was adopted by the National Conference of Commissioners on Uniform State Laws. The second, the Model Time-Share Ownership Act (RTC/NARELLO),²⁶¹ was jointly adopted by the Resort Timesharing Council of American Land Development Association and the National Association of Real Estate License Law Officials.

MRETSA can better fulfill the state's needs. MRETSA borrows from, and is drafted to complement the UCA²⁶² (the model for the MUCA).²⁶³ MRETSA synthesizes many problem areas addressed by various states,²⁶⁴ and anticipates "future problems which will arise as time-share ownership becomes more prevalent."²⁶⁵ MRETSA focuses on the larger goal of interstate uniformity.²⁶⁶ As compared to the RTC/NARELLO,²⁶⁷ MRETSA provides balanced protection of pur-

of model legislation, see Pollack, *supra* note 7, at 295-301; Rosenblatt, *supra* note 1, at 32; Comment, *Unique Property*, *supra* note 107, at 644-52.

260. MRETSA, §§ 1-101 to 5-110 (Supp. 1983). For the history of the model act, see *supra* note 66.

261. RTC/NARELLO Model Time-Share Act (1979), reprinted in M. HENZE, *supra* note 35, app. 5. A revised discussion draft has been sent to industry leaders for comment. Rosenblatt, *supra* note 1, at 32. The RTC/NARELLO Act has been the model for timeshare legislation adopted in South Carolina and Nebraska. Penwell, *supra* note 6, at 64. See Nebraska Time-Share Act NEB. REV. STAT. §§ 76-1701 to -1741 (1981); S.C. CODE ANN. §§ 27-32-10 to -230 (Law Co-op. Supp. 1982). RTC/NARELLO is to be submitted in Colorado and Nevada. Penwell, *supra* note 6, at 64.

262. MRETSA Commissioner's Prefatory Note, 7A U.L.A. 259 (Supp. 1983); see Catalina, *supra* note 7, at 148. The Uniform Condominium Act of 1977 was revised in 1980 for adoption by the states. A number of states have adopted in whole or in part versions of the Uniform Condominium Act. See U.C.A. §§ 1-101 to 5-110 (1977).

263. MINN. STAT. §§ 515A.1-101 to .4-118 (1982); see Rosenblatt, *supra* note 1, at 32.

264. MRETSA Commissioner's Prefatory Note, 7A U.L.A. 259 (Supp. 1983).

265. *Id.*

266. *Id.* The Prefatory Note states:

Uniform legislation appeared desirable for many reasons. Uniformity is important to the multi-state purchasers and national lenders who find it difficult to assess the appropriateness of varying real estate documents and financing arrangements in the several states. Uniformity is particularly important with regard to timeshare ownership because most real estate timesharing involves recreational or resort property, and consequently more multi-state relationships exist than with other types of real estate. Moreover, multistate exchange programs for time-share owners have been introduced and are being rapidly expanded. Consequently, uniformity appeared especially desirable in view of the fact that a higher proportion of purchasers in timeshare properties is likely to be from outside the state in which the property is located than in any other type of real estate sales. The desirability of uniformity will become even more important as timesharing, in all of its various forms, continues to become more widespread.

Id.

267. For a comparison of the two Acts, see *supra* note 259. The revised draft of the RTC/NARELLO Act, *supra* note 261, provides more detail for management responsibilities, advertising standards, and purchaser cancellation rights. Rosenblatt, *supra* note 1, at 32 (citing 3 TIME-SHARING LAW REPORTER BRIEFS, at 9 (April 1982)); NAT'L L.J., at 34-35 (May 10, 1982)).

chasers and developers²⁶⁸ and strong regulatory measures.²⁶⁹

MRETSA addresses many important corollary concerns of timesharing. It recognizes the fee simple timeshare interest,²⁷⁰ commonly referred to as the chronometric fee.²⁷¹ MRETSA also addresses the conversion problem by requiring that owners of at least eighty percent of the units consent to the conversion to timesharing.²⁷² It includes provisions for termination of timeshare interests²⁷³ that remedy the problems associated with the right to partition.²⁷⁴ In addition, MRETSA addresses the consumer protection concerns²⁷⁵ raised in many state regulatory efforts,²⁷⁶ and provides separate assessment for tax purposes.²⁷⁷

268. See Pollack, *supra* note 7, at 297; see also Catalina, *supra* note 7, at 148 (MRETSA addresses every aspect of timesharing from nature of interests created to consumer protection).

269. See Podgers, *supra* note 4, at 544.

270. MRETSA § 1-103(a) (Supp. 1983). This section provides in relevant part:

[N]otwithstanding any contrary rule of common law, a grant of an estate in a unit conferring the right of possession during a potentially infinite number of separated time periods creates an estate in fee simple having the character and incidents of such an estate at common law, and a grant of an estate in a unit conferring the right of possession during [5] or more separated time periods over a finite number of years equal to [5] or more, including renewal options, creates an estate for years having the character and incidents of such an estate at common law.

Id. This concept is recognized only in Utah. See UTAH CODE ANN. § 57-8-6 (Supp. 1981) (reprinted *supra* note 71); *supra* notes 66-75 and accompanying text.

271. See Comment, *Innovative Concept*, *supra* note 44, at 445; Comment, *supra* note 21, at 315. The Commissioners' comment to section 1-103 of MRETSA states that the "One purpose . . . is to assure that a time share estate for years is recognized by the courts as a single estate for years, with all the usual common law incidents thereto." MRETSA § 1-103 Commissioner's comment (Supp. 1983).

272. See MRETSA § 1-201 (Supp. 1983); see also Comment, *Twilight Zone*, *supra* note 107, at 411-12 (discussing owners' consent to conversion). A number of states that have timeshare legislation place some form of restriction on the conversion of existing units to timeshare estates. *Id.* at 411; see, e.g., FLA. STAT. ANN. §§ 718.1045 to .110(8) (West Supp. 1982); HAWAII REV. STAT. § 514E-5 (Supp. 1981); NEB. REV. STAT. §§ 76-1701 to -1741 (1980); VA. CODE §§ 55-360 to -400 (1981).

273. MRETSA § 2-105 (Supp. 1983). This provision deals with the harsh reality that timeshare interests are estates for years, terminable by terms of the conveyancing instrument. It also recognizes that certain owners (forming a majority) may choose to terminate and convey the remainder of their estates in the unit to prospective purchasers. *Id.* MRETSA requires approval by eighty percent of the timeshare owners and a termination agreement before an estate may be conveyed. See *id.* § 2-105(b),(c). See generally Burek, *supra* note 67, at 686; Comment, *supra* note 21, at 316 (analysis of MRETSA's termination provision).

274. To effect termination, a partition must expressly be provided for in the timeshare instrument. MRETSA § 2-104 (Supp. 1983).

275. *Id.* §§ 4-101 to -117 (Supp. 1983).

276. See *supra* note 240 and accompanying text.

277. See MRETSA § 1-103(b) (Supp. 1983). Section 1-103(b) provides:

Each time-share estate constitutes for all purposes a separate estate in real property. Each time-share estate [other than a time-share estate for years] must [not] be separately assessed and taxed. [Notices of assessments and bills for taxes must

Several MRETSA provisions remove timesharing from the guise of securities regulation.²⁷⁸ It defines an "offering" as "any advertisement, inducement, solicitation, or attempt to encourage any person to acquire a timeshare, *other than as a security for an obligation.*"²⁷⁹ It contains an optional provision stating that timeshare interests are not securities for state law purposes.²⁸⁰

In the area of financing,²⁸¹ MRETSA specifically provides for the rights of secured lenders²⁸² and helps to alleviate lenders' concerns over the unique nature of the interest used to secure their loan.²⁸³ MRETSA provides for escrow accounts²⁸⁴ in a provision similar to its counterpart in the MUCA.²⁸⁵

MRETSA offers a unique solution to the problems of owner input and control²⁸⁶ in the management area.²⁸⁷ It permits timeshare owners to exercise a significant measure of self-government²⁸⁸ through initiative, referendum, and recall.²⁸⁹ This approach solves the problems involved in maintaining a board of directors.²⁹⁰ Finally, MRETSA provides that

be furnished to the managing entity, if any, or otherwise to each time-share owner, but the managing entity is not liable for the taxes as a result thereof.]

Id. (state has discretion to include bracketed material). On the issue of tax assessment policies for timesharing purposes, see *supra* notes 184-98 and accompanying text.

278. For a discussion of the applicability of securities regulations to timesharing, see *supra* notes 78-106 and accompanying text.

279. MRETSA § 1-102(8) (Supp. 1983) (emphasis added); see also *id.* § 1-102(19) (timeshare owner means "a person who is an owner or co-owner of a time-share other than as a security for an obligation").

280. *Id.* § 4-105. The MRETSA provides the state with optional language to construe the timeshare interest in terms other than as a security. *Id.*

281. See *supra* notes 129-50 and accompanying text.

282. MRETSA § 2-107 (Supp. 1983). MRETSA provides:

The time-share instrument may require that all or a specified number or percentage of the mortgages or beneficiaries of deeds of trust encumbering units or time-shares approve specified actions of the unit owners, time-share owners, developer, or managing entity as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of any association by the unit owners, time-share owners, or both, or their elected representatives, or (ii) prevent any association from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to Section 3-108.

Id. See generally Burek, *supra* note 67, at 686 (discussing this provision).

283. See *supra* notes 167-80 and accompanying text.

284. MRETSA § 4-108 (Supp. 1983).

285. See MINN. STAT. § 515A.4-108 (1982), reprinted *supra* note 140.

286. See Catalina, *supra* note 7, at 149.

287. See *supra* notes 167-80 and accompanying text.

288. See *id.*; Burek, *supra* note 67, at 689; Rosenblatt, *supra* note 1, at 32.

289. MRETSA §§ 3-114 to 3-117 (Supp. 1983).

290. The Commissioner's comment to sections 3-114 to 3-117 of MRETSA states:

The reason for resorting to these devices is the impracticality of assuring self-government for time-share owners through the usual techniques that are employed in projects occupied by year-round residents. In most such projects, it is possible for the unit owners to become well acquainted with one another and to

liens imposed by the managing entity attach to the delinquent owner's timeshare rather than the entire unit,²⁹¹ thus enhancing management's ability to levy and collect assessments.

IV. CONCLUSION

Comprehensive timeshare legislation merits careful consideration by the Minnesota Legislature. Such examination will reveal that timesharing is a workable concept and is becoming an increasingly popular alternative in recreational housing. Minnesota will inevitably require legislation to avoid predictable legal dilemmas and to assuage the justifiable apprehensions which accompany timesharing.

The timeshare experience of other states can serve as a foundation for possible approaches to these problems. Five states have enacted comprehensive timeshare legislation within the past two years — Florida,²⁹² Hawaii,²⁹³ Nebraska,²⁹⁴ Tennessee,²⁹⁵ and Virginia.²⁹⁶ With its own comprehensive timeshare plan, Minnesota can become part of the movement;²⁹⁷ enacting a concise statutory framework, capturing its share of a billion dollar industry,²⁹⁸ and providing its citizens with an innovative

elect from their own ranks a board of directors to manage the project or at least regulate the professional management. In a time-share project, however, there is a large number of different groups of time-share owners, with each group in residence at different times during the year. Members of any one group have little enough opportunity to get to know one another, much less the members of other groups, and a time-share owner would find it very difficult to assume year-round responsibilities as a member of the project's board of directors. Even attendance at a single annual meeting would be impractical for most time-share owners not actually in residence at the time that meeting is held.

Id. § 3-114 Commissioner's comment (Supp. 1983); see Burek, *supra* note 67, at 689; Catalina, *supra* note 7, at 149.

291. See MRETSA § 3-111 (Supp. 1983).

292. See Florida Real Estate Time-Sharing Act, FLA. STAT. ANN. §§ 721.01-.28 (West Supp. 1982). For an analysis of this Act, see Langer, *Florida Real Estate Time-Sharing Act*, in THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 405 (P.L.I. Real Estate Law And Practice No. 220, 1982); see also Davis, *supra* note 198, at 116 (discussing Florida Time-Sharing Act).

293. See HAWAII REV. STAT. §§ 514E-1 to -15 (Supp. 1981).

294. See Nebraska Time Share Act, NEB. REV. STAT. §§ 76-1701 to -1741 (1981).

295. See Tennessee Time-Share Act, TENN. CODE ANN. §§ 66-32-101 to -130 (1982).

296. See Virginia Real Estate Time-Share Act, VA. CODE §§ 55-360 to -400 (1982).

297. Comprehensive timeshare legislation has been proposed in Colorado but has not been adopted. Straw, *supra* note 150, at 1544 n.3. Such legislation may also be proposed in Alabama. See Davis, *Time Share Ownership of Condominiums*, 44 ALA. LAW. 183, 185 (1983). Two other states, Wisconsin and Nevada, are contemplating less comprehensive timeshare legislation. See Comment, *Unique Property*, *supra* note 107, at 654-55. In a recent law review comment, the authors proposed a comprehensive model timeshare act for the state of Georgia. See Comment, *Twilight Zone*, *supra* note 107, at 417-31.

298. See Ellsworth, *supra* note 7, at 443. Minnesota is currently examining many proposals to bolster its sagging economy, including a proposal by Governor Perpich to quadruple the state tourism budget to \$6.2 million. *Perpich Vows Bold Economic Steps*, Mpls. Star and Tribune, Jan. 5, 1983, at 1A, col. 1-3, 5A, col. 1-3. A proposal for prophylactic legisla-

form of recreational housing.

tion can easily accompany an effort to increase tourism. Utilization of timesharing can increase tax revenues through new development and foster economic growth for surrounding economies. *See* Comment, *supra* note 21, at 319.

