

TIMESHARES AND BANKRUPTCY

By Mark E. Henze

Timeshares, Vacation Ownership Interests, Vacation Clubs and Campground Memberships can pose a special problem in a bankruptcy case. What you need to know depends upon what you want to do with your ownership/membership. For purposes of this article, I will refer to them all as Timeshares.

A Timeshare is property owned by you. It may be simply a membership interest (with a corresponding right to use the property) or it may actually be deeded real estate that is owned by you. In either event, it has some value and must be disclosed on your bankruptcy papers. Like any other property, you may have a loan or a mortgage that secures your Timeshare. In which case, the value of the property is the value of the Timeshare minus the amount that you still owe on the secured loan. A Timeshare is NOT exempt property and if the Timeshare has any value, the Trustee has the full right to try to sell the Timeshare and use the funds to pay off your creditors. However, typically Timeshares are not worth much on the resale market and unless your Timeshare has some real value, the Trustee may not be interested in taking the time to sell it. The Trustee may insist on at least trying to sell it, but may give it back to you later if he/she has no luck.

Also, remember that Timeshares almost always have Association Dues or Maintenance Fees that must be paid by the owner. If you have fallen behind on these dues/fees, the Association or Timeshare Resort will have a lien (security interest) in your Timeshare. The dues must be paid or the Association can either take efforts to collect these back dues from you or foreclose on your Timeshare. **THEY ARE NOT REQUIRED TO FORECLOSE!** However, if a Trustee is to sell your Timeshare, he must first use the sales proceeds to pay the remaining purchase loan AND catch up on the back owed dues or fees before he can get any funds for the bankruptcy creditors. Thus, if you are behind on your dues/fees, he may simply give the Timeshare back to you.

IF YOU WANT TO KEEP THE TIMESHARE: In many (most) cases a Timeshare truly is not worth keeping. However, if you have already paid in full for the Timeshare, use it regularly and don't mind paying the annual dues or maintenance fees, you might want to keep it. If so, you'll either need to convince your bankruptcy Trustee that the property isn't worth him taking and selling. On the other hand, you might be able to convince the Trustee that the Timeshare wouldn't sell for much and he might be willing to allow you to buy it back from him/her at a reasonable price. We have had many cases where the Debtor has bought back their own Timeshare for \$100 to \$500. If you still have a loan to purchase the Timeshare and you keep it, you'll still have to make the remaining payments owed. In addition, you'll still be liable for the ongoing dues and fees.

IF YOU WANT TO SURRENDER THE TIMESHARE: In many (most) cases a Timeshare is not worth keeping. You may have found it to be a financial drain and be glad to get rid of it. If the Trustee is able to sell it, no problem, you will no longer own the Timeshare and you'll no longer be obligated for the annual fees/dues. However, if the Trustee does not sell it (and in most cases the Trustee will not sell it), **YOU ARE STILL THE OWNER** and are still responsible for ongoing dues and fees until you are no longer the owner. The bankruptcy will have discharged any amounts that you owe on the secured loan for the purchase of the Timeshare. It will also discharge any dues/fees that you owed as of the date that your bankruptcy case was filed. **However, you will still be on the hook for any new fees/dues that are owed AFTER your case was filed.** These dues/fees are similar to a utility (such as gas and electric) that are new

debts each month/year as they come due. The only way to stop this future obligation is to get your name taken off as the owner of the Timeshare.

HOW CAN I HAVE MYSELF REMOVED AS THE OWNER? There are really only 3 ways that you can have your name taken off as the owner of the Timeshare. But sadly, if none of these work ... you will still be the owner of the Timeshare and still be obligated to pay the monthly/annual dues or association fees. Aren't you glad you purchased the "thing" in the first place?

1. Sell the Timeshare: If you can sell the Timeshare to another person, the new purchaser will be the owner of the Timeshare and will thereafter be obligated for future dues/fees. The only problem is that: a) Timeshares can be hard to sell; b) The lender has a lien for the remaining purchase price owed; and c) The Association/Resort has a lien for any past due fees or association dues that haven't been paid. In order to sell the Timeshare, either you'll have to pay off the purchase loan and the back dues ... or your purchaser will have to pay it off prior to completing the purchase. If you go on E-Bay, you'll find hundreds of timeshares for sale at prices lower than you'd expect. However, there is usually a fee for the closing (after all most Timeshares are really real estate) and many go unsold. But it is worth a try ... especially if your Timeshare is paid off and you aren't far behind on your due/fees. Go to E-Bay and research what other Timeshares from your resort may already be selling for. You may be better off getting \$500 to sell it than continuing to pay monthly/annual dues or maintenance fees.

2. Allow the Timeshare to be Foreclosed: Sometimes the resort or the lender will file an appropriate legal action to foreclose the timeshare and take it away from you. If you don't want the Timeshare, this is wonderful as it relieves you from any obligation to pay the dues/fees after the foreclosure sale is completed. However, often the resort or lender isn't willing to pay the fees and costs necessary to conduct a foreclosure ... especially when the Timeshare really isn't worth much. And remember, THEY ARE NOT REQUIRED TO FORECLOSE! The resort can simply do nothing and continue going after you for the continuing dues/fees.

3. Negotiate with the Resort to Give it Back: On many occasions, the resort isn't willing to spend the money to foreclose on the Timeshare. However, you and they can agree to simply have you sign it back over to them at little or no cost to them. Sometimes, this is referred to as a "deed-in-lieu-of-foreclosure." In many cases, we've even had resorts willing to pay an owner a small amount as compensation for simply signing the Timeshare back over to them and saving them the collection or foreclosure costs. This is often the best method to get out of a Timeshare. REMEMBER that your bankruptcy has discharged any obligation you have for the original purchase loan and for any dues/fees that were owed as of the time that your bankruptcy case was filed. It would be illegal and a violation of your bankruptcy discharge for the resort to insist that you pay any of those discharged amounts in order to return the property to them. But remember, there is nothing you can do to force them to take the Timeshare back!

4. One final possible option: There is a lawfirm that currently specializes in getting timeshare developers, marketing companies and owner's associations to take back timeshares (www.timeshareexitteam.com). They do so by threatening legal action based upon the manner the timeshare was sold to you in the first place. While they are successful in many cases (they claim success in 100% of the cases ... but that's only the cases they take), it is not without cost to you. Still as a last ditch effort, they may be worth a try. Be sure to understand what it will cost you to use their services as people have reported fees of \$2,000 to \$5,000.