The Links Golf and Racquet Club in North Myrtle Beach, SC — a Defender Resorts-managed property.

COVER STORY

Postcard companies and Viking Ship LLCs play havoc with timeshare association finances

Growing numbers of 'owners' who don't pay and can't be traced are creating a big crisis — specifically for mature, sold out resorts.

"Is your timeshare a costly nightmare?" the invitation asks. "Has timesharing become a burden on you and your family? Wish you could get out of that contract? Upset by rising maintenance fees? Having trouble reselling your property?" Good news! "We have the simple solution for you!"

This message is reaching a large audience of timeshare owners, a portion of whom either need to sell, want to sell, or can be convinced to sell. The so-called 'postcard companies' (a.k.a. transfer companies and relief companies) are the source. They are sending a very negative message about timesharing — one that is repeated, on a daily basis it seems — all over the media (especially the Internet media). Timeshare owners — and the public — are being told: 'You have something you don't want and it is costing you lots of money. You want to get rid of it yourself and you certainly don't want to encumber your family and children with the liability. But it's hard! You can't resell it. And so you just pay and pay.' After trashing the product, the postcard company that sent the 'invitation' reveals that it is the white knight. At a cost of about $3,000 to $5,000 it'll relieve you of the burdens and expenses of timeshare ownership. ("This program GUARANTEES in writing to free you from your timeshare burdens forever.").

Owners at newer, high-end timeshare projects are not being targeted. Instead those who own at more established, older resorts — characterized by seasonality, traditional weeks, and an aging owner base — are. But this is a very large universe! "In my opinion the majority of timeshare resorts are sold out with traditional, weeks-based inventory," Christie Lodge CFO John Lee pointed out. "Just take a look at the catalogs of the major exchange companies." He continued: "This is a big problem. If most timeshare resorts are traditional, older sold-out properties that rely on owner dues, the entire industry will be impacted if this group fails. What percent of vendor sales, exchanges, and dues revenue are from tradi-



Left to right: Christie Lodge CFO John Lee, Ballard and Spahr partner Michael Clowdus, and Defender Resorts CEO Ken McKelvey.

tional timeshare resorts? This problem is impacting the entire industry and everyone needs to take part in solving it."

Here's how the transaction goes down: A timeshare owner is contacted via a mail piece, telemarketer, or TV/Web ads. They are invited to attend a webinar/conference, where they can learn how they can finally get rid of their timeshare(s). The negative aspects of timeshare ownership — rising maintenance dues, the difficulties involved in (re)selling it, etc. — are emphasized.[1] The overall message is clear. There's only one rational thing to do with a timeshare: get rid of it! Should the timeshare owner agree to pay the postcard company for this service, he/she signs over the power of attorney to a closing company and the deed is transferred — but not directly. The postcard company does not take title to the weeks. Instead a third party closing company (sometimes an actual title company) takes the title and assumes the power of attorney and actually transfers the week, in many cases to a so-called 'Viking Ship LLC'. These Viking Ship LLCs, many timeshare professionals charge, are shell entities set up to avoid the financial obligations of ownership. Their ownership is hard to trace. With alarming frequency, many have disappeared — along with the timeshare titles. They exhibit no timeshare owning behavior. The weeks are not used, there is no attempt to sell them, and annual maintenance fees are not paid. This obviously creates a huge mess and financial burden for the HOA involved. In some cases it even threatens their economic viability and further existence.

"Postcard companies and Viking Ship LLCs are very detrimental to timeshare business," offered Ballard and Spahr partner Michael Clowdus. "The postcard companies and Viking Ship LLCs have made a serious problem worse. The bad economy has flooded the resale market with supply. It's difficult for consumers who no longer want to keep their timeshares to sell. These guys contact them and claim to be their savior. But HOAs are losing the ability to collect maintenance dues. They are losing revenue due to postcard companies and Viking Ship LLCs, in some cases to the point where they can't operate any longer. The problem is bad enough that it could bankrupt some HOAs. At the very least, the postcard companies and Viking Ship LLCs are making it much harder for these HOAs to do positive things like renovations. I can't quantify it precisely, but the size of the problem is great. In the long run, most of the weeks 'acquired' by the third party companies to whom the titles are transferred are abandoned. They go up in flames. The Viking Ship metaphor is apt."

Defender Resorts CEO Ken McKelvey estimates that the overall default rate at the 17 resorts his company manages doubled from 2009 to 2010. He believes that postcard companies contributed significantly to this.

1. In addition, there have been accusations that outright deception is used. For example, 'Timesharing is dying. Marriott's getting out of it.' Or: 'Annual maintenance dues are increasing at 12% annually.' The actual figure over the last five years is 7%, according to ARDA. In addition, newer, nicer, and more expensive inventory (with higher annual maintenance fees) is overrepresented in the 7% figure more than one industry veteran told *Vacation Ownership WORLD*.

What can be done?

First of all, is what the postcard companies are doing illegal? The answer is: in a general sense, no. "It's not illegal in the sense of being criminal," Clowdus asserted. The transfer might be seen as fraudulent by a judge and this would give the judge the authority to rescind the transaction (the transfer of title). But this is problematic. It doesn't make sense for the judge to return the week to the owner who didn't/doesn't want it back. The judge can give the title to the HOA, but the difficulty is "by the time a judge is looking at the case, the Viking Ship LLC has been defunct for some time," Clowdus said. "It's very hard to find the individuals who formed the entity [the Viking Ship LLC]. Who do you sue? The relief companies are purposefully obscure – they operate under a number of different names. They are very hard to track down." Further, any legal action of the nature described has to be pursued on an individual case-by-case/timeshare interest by timeshare interest basis. That's expensive.

What about simply foreclosing on the week? "To actually foreclose on an individual delinquent timeshare week, it costs an HOA close to $2,000 in Colorado," Clowdus responded. "In many cases, this is higher than the current retail (resale) value of the week itself." Besides to foreclose on the week you have to able to identify and locate the title-holding owner of the week, and, as mentioned, the Viking Ship LLCs can obscure this process to the point of making it very close to impossible.

In Colorado, an effort is being organized to make payment of upfront fees by timeshare owners to relief companies illegal in the sense of being a crime. "That would really have a chilling effect on these operations in Colorado," Clowdus observed. "It's similar to the equity protection swindle for home owners about to lose their homes due to foreclosure. In Colorado, an act was passed to protect homeowners from those scams. The AG's office believes the most effective part of that was making advance fees illegal. There's no ability to collect advance funds and it creates potential criminal liability. The end result of this would be that the Viking Ship LLC scheme won't work anymore."

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The key steps for HOAs, according to Clowdus, Lee, and McKelvey are: 1) communicating with owners to discourage the transfer of their weeks to postcard companies; 2) demanding detailed paperwork to ensure a legitimate transfer, and; 3) relying on the Uniform Fraudulent Transfer Act (UFTA) to define fraudulent transfers to non-dues paying entities that exhibit no characteristics of timeshare ownership.

Letting owners know about the postcard companies and persuading them not to do business with these operations is a big part of the solution. If successful, the problem is averted before it develops. Every owner contact situation presents an opportunity for this – when assessments are billed, in newsletters, at owner's meetings, in informational packages given to owners when they check in, and so forth.

Defender Resorts manages 17 timeshare resorts. "We've gone to our Boards and told them about the postcard companies, what they are up to, and the threat they pose," McKelvey said. We offer to send owners a postcard of our own [see this issue's cover]. It's a very eye-catching yellow and black postcard that in effect says, 'STOP! WAIT! You are going to get these calls and/or cards from postcard companies if you haven't already. Before you do business with them, call your management company first. Let us tell you what we know about them.' We've set up a couple of hot lines to accommodate the calls we get."

At the Christie Lodge, putting processes in place to confirm that buyers are legitimate has yielded results, according to Lee. "We have to treat ABC LLC as a legitimate buyer unless we have reason not to," he explained. "We've put processes in place to request buyer information. If it's an LLC we want to know who the principal is, we want to talk to that

person, and we want them to accept personal responsibility that maintenance fees will be paid — otherwise we are not going to recognize the transaction. For a period, we were not accepting 10 to 20 purchases from these companies a month. Now it's down to zero because postcard companies realize the transaction must be to a bona-fide buyer."

The UFTA is designed to prevent transfers "with the actual intent to hinder, delay, or defraud any creditor of the debtor…" (The HOA is a creditor of both the selling owner and the transferee.) Clowdus believes the UFTA can be used to combat postcard companies/Viking Ship LLCs. "We have not yet brought claims against transfer companies using the UFTA; what we are using it for is to describe the types of conveyances we are talking about that don't meet the smell test. If you look at the UFTA you can see that it contemplates transactions like this. We don't need to stand by and let these transactions just happen! An Association can impose on anybody who wants to transfer a week a heightened level of scrutiny so they have to convince us that they are a legitimate buyer. That's the primary purpose of referencing the UFTA. If it smells like a fraudulent transfer under the statute, we are going to impose these rules and if you don't like it, do something about it!"

In full bloom at the Christie Lodge in Avon, CO.

End of Part I. Part II to appear in the June issue of *Vacation Ownership WORLD*.

VACATION OWNERSHIP WORLD

Wyndham Vacation Ownership first quarter sales hit $319 million

Tour flow up, vpgs down as company focuses on new buyers.

Wyndham Vacation Ownership's (WVO's) timeshare sales were $319 million in the first quarter of 2011, up 4% from the first quarter of 2010, reflecting an 11% increase in tour flow, partially offset by a 6% decrease in volume per guest [vpg]. The changes in tour flow and volume per guest reflect a focus on increasing sales to new owners, according to WVO.

Total segment revenues were $450 million in the first quarter of 2011, compared with $444 million in the first quarter of 2010, reflecting incremental commission revenues under the Wyndham Asset Affiliation Model (WAAM) and a lower provision for loan losses.

Adjusted EBITDA for the first quarter of 2011 increased 17% to $96 million, compared with EBITDA of $82 million in the first quarter of 2010.