

apply to a points based time-share estate project wherein the purchasers use rights is defined by his undivided fractional fee interest in the property and the fractional fee interest is made up of the number of points purchased, divided by the total number of points in the project.

As explained under *Inventory Control*, time-share estate offerings are often divided into equal estates in real property coupled with unequal rights of occupancy. For example, the purchaser of a one bedroom low season unit may receive the same undivided fractional fee interest in the project as the purchaser of a three bedroom premium season unit. Therefore, it is critical that the title evidence requirement for this type of time-share estate offering include, in addition to the fractional fee interest in the project, an exact definition of all the use rights that are coupled with the fee estate in real property. The title insurance company will provide an additional exhibit to the title report that list the intervals owned by the applicant, provided the interval identification and inventory control system has been adequately defined in the time-share declaration.

MULTI-SITE TIME-SHARE PLANS

Multi-site time-share plans are defined in Business and Professions Code Section 11212(z)(2) as either:

(A) A “specific time-share interest,” which is the right to use accommodations at a specific time-share property, together with use rights in accommodations at one or more other component sites created by or acquired through the time-share plan’s reservation system.

(B) A “non-specific time-share interest,” which is the right to use accommodations at more than one component site created by or acquired through the time-share plan’s reservation system, but including no specific right to use any particular accommodations.

“Specific time-share interest” multi-site time-share plans and “non-specific time-share interest” plans are treated differently in how DRE processes public report applications.

“Specific Time-Share Interest” Multi-Site Time-Share Plan Applications

At the time the initial application is made, a RE 668A must be completed and for only the component site in which the purchaser has a priority right reserve use and occupancy of accommodations at a specific component site on a priority basis. The developer is not required to submit an application for any of the other component sites in the time-share plan.

Mandatory Reservation Systems – “Specific Time-Share Interest” Multi-Site Time-Share Plans

This type of time-share plan is affiliated by means of a contract or membership agreement through a mandatory reservation system with other time-share projects or resorts and time-share purchasers of interests in the specific component site receive, on a priority basis, the use or occupancy of accommodations at that site and it is subject to all the regulatory requirements of a single site time-share plan.

The reservation system documents that are established for the purpose of administering reservations among owners of interests for the component time-share projects or resorts affiliated through the contract or membership agreement are not subject to DRE regulation. However, there must be provisions in those documents for disaffiliation from the reservation system affiliation agreement and for limitation on costs assessed to time-share owners in the specific component site.

Regulations Section 2805.9 expands the definition of “the right to use accommodations at a specific time-share property” used in Section 11212(z)(2)(A) to mean a priority right of not less than sixty days to reserve accommodations at the specific time-share property without competing with owners of time-share interests at other time-share properties that are part of the time-share plan. The document(s) for reserving accommodations at the specific time-share property must include a provision requiring a time period of not less than sixty days during which owners in the specific time-share property may make a reservation prior to the time period in which other persons may make reservations at that site.

Public Reports-“Specific Time-Share Interest” Multi-Site Time-Share Plans

The public report must include all disclosures required for single-site time-share plans as enumerated in Code Section 11234(a) in addition to disclosures described in Code Section 11234(b) designed expressly for “specific time-share interest” in multi-site time-share plans. Code Section 11234(b) include requirements for specific disclosures about each of the component sites, the management entity for the reservations system, the fees payable to the operator of the reservation system by purchasers, among other required disclosures. The developer may include these disclosures in the body of the report or attached to the report as exhibits.

Code Section 11226(g) consists of two matters which require developer certification. The developer is required in the RE 668A to certify that purchasers have contractual or membership rights to use accommodations at all component sites and that, if those component sites are subject to blanket encumbrances, the blanket encumbrances will be subordinate to those rights (Code Section 11226(g)(1). The developer must also certify that a certificate of occupancy has been issued with respect to the accommodations at each affiliated site or that adequate provisions exist for completion of all promised improvements for component site accommodations. Under Code Section 11226(g)(2), for any accommodations for which adequate provisions for completion do not exist, the public report must disclose, in conspicuous type, that the accommodations may not be built, provided that a developer’s failure to build the accommodations shall not relieve the developer of any obligations created by the certification made pursuant to this code section

The disclosure in the Public Report concerning this kind of project should be clear that there are no assurances regarding the ability to reserve accommodations in the component resorts and that there are no assurances that the mandatory reservation system will continue to exist.

“Non Specific Time-Share Interest” Multi-Site Time-Share Plan Applications

RE 668B is required for a *non-specific time-share interests* in a *multi-site time-share plan* as defined in B&P Code Section 11212(z)(2)(B).

A separate RE 668B must be completed and fee paid for each location of a multi-site plan that includes a non-specific time-share interest and which is not currently covered by a California public report.

The RE 668A is not applicable to this type of Time-share Plan. Because the documents for the reservations system and organizational documents for the operation of this type of time-share plan and documents to be utilized for the purchase and marketing of individual interests will be applicable to all component sites, those documents should be submitted with one of the initial RE 668Bs. The file that includes that application will be designated the “Primary” Application, which is similar to a Master File. All other applications for component sites are referred to as “Secondary” applications. The instructions for completing a Primary and Secondary application is included in the instructions and the body of the RE 668B.

How a “Specific Time-Share Interest” and “Non-Specific Time-Share Interest” Multi-Site Time-Share Plans Work

Purchasers of time-share interests in a multi-site time-share plan may be conveyed either a time-share estate or a time-share use. Multi-site time-share plans in which time-share estate interests are conveyed are rare. If the interest conveyed is a time-share estate, the purchaser would receive a deeded interest in one of the component sites. For purposes of his or her rights to use and occupy dwelling units in the multi-site time-share plan, the deeded interest conveyed to that purchaser would have no meaning. That purchaser would not have any superior right to use and occupy dwelling units in the site in which he or she received a deeded interest over and above other owners of interests in the multi-site time-share plan.

“Non Specific Time-Share Interest” multi-site time-share plans more commonly involve the sale of right-to-use interest wherein the terms of the purchase and conveyance are included in the purchase agreement. The purchase agreement will describe the basic nature of the reservation right the purchaser receives. The purchase agreement might state the purchaser has the right to use any unit of a certain type every year or only during a certain time of year. The purchase agreement also may involve the assignment of points, which is another way to determine the value of the reservation rights purchased. The more points one purchases, the greater flexibility that purchaser has in making reservations to use dwelling units in the component sites. Refer to *Time-Share Points Programs* for more information on this topic.

The component sites may include entire subdivisions, selected individual dwelling units in pre-existing time-share projects or in other types of subdivisions or it may be merely involve a few fractional interests in an existing time-share project unrelated to the multi-site time-share project.

There is usually bifurcated management for time-share plans. An “administrative” management agreement, which is a contract between the managing agent and the owners’ association for the multi-site time-share plan, administers the reservation system and performs other duties as established in that contract for the purpose of operating the multi-site time-share plan. Then there is the “on-site” manager, which performs maintenance and operational duties with respect to the individual component sites. On occasion, the management agreement may encompass both administrative and on-site management duties. Any management agreement must be reviewed by the Subdivisions Deputy for compliance with Code Section 11267.

Review of Governing Documents

Each component site’s governing documents should be reviewed carefully for compliance with Code Sections 11233 and 11234 as well as Article 3 and Article 4 of Chapter 2 the Vacation Ownership and Time-Share Act of 2004. Often, multi-site time-share plan governing documents for out-of-state subdivisions are drafted to meet the situs state’s laws and regulations because the project originates in another state. If the component site is located in California and is burdened by an underlying common interest subdivision, a completed RE 648 must be submitted by the sponsor.

If there are provisions of governing documents for either the time-share project documents or the component site common interest subdivision documents that do not meet California regulatory requirements, the developer should provide either authoritative legal support for those provisions (such as copies of the situs state’s statutes or regulations that require the provisions) or other justification for the contrary provisions. It may be helpful under certain circumstances to request that the SRP submit copies of the situs states’ statutes to confirm whether certain provisions are mandated.