

Timeshares, Market Value, and the Real Estate Appraisal Process

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Abstract

This article explores five key issues in timeshare appraising that may be of greater significance than in other types of residential or resort appraisals. First and foremost is identifying the nature of the timeshare interest being appraised and determining whether that type of interest requires an appraisal license in the state where the timeshare resort is located. The second issue is understanding the two-tiered marketplace—the primary marketplace involving sales by resort developers and the secondary marketplace involving resales by those who previously bought directly from the resort. Third, the appraiser has to understand how the central components of the definition of *market value* affect the comparable sale prices that should be considered given the purpose of the assignment. Fourth, appraisers must understand how to find reliable sources of sales data and properly utilize and adjust listings when closed sale prices are not readily available. Fifth, appraisers should be cognizant of central issues associated with the appraisal of charitable donations of timeshare interests, a frequently used technique for the disposition of difficult-to-sell timeshares.

Introduction

Although the appraisal of timeshare interests presents unique valuation issues, the topic has seldom been covered in the publications of the appraisal profession.¹ This article discusses the following critical questions that arise in every timeshare valuation assignment:

- What is the nature of the timeshare property interest being appraised?
- What guidance for appraising timeshares is there in the standards of practice and published professional literature of the appraisal profession?
- Do state laws require appraisals of timeshare interests to only be performed by state licensed real estate appraisers?
- How does the definition of *market value* or *fair market value* affect the timeshare appraisal process and govern the selection of the appropriate valuation method/technique?
- How does the purpose of the assignment and the use to which the appraisal report will be put affect the process for selection of comparable sales?
- What is the marketplace of buyers and sellers in which the particular timeshare interest being appraised would sell?
- Is there a difference between the market value of a timeshare interest being offered by the developer of a timeshare property and the market value of a timeshare interest being offered by current timeshare

1. See, for example, Kathleen Conroy, *Valuing the Timeshare Property* (Chicago: American Institute of Real Estate Appraisers, 1981); Mark S. Thompson and Eggert Dagbjartsson, "Market Discounting of Partial Ownership Interests," *The Appraisal Journal* (October 1994): 535–541; Alan J. Ziobrowski and Brigitte J. Ziobrowski, "Resort Timeshares as an Investment," *The Appraisal Journal* (October 1997): 371–380; Edgar B. Madsen, "Timeshare Tax Assessment: Price Versus Market Value," *The Appraisal Journal* (January 1999): 1–6; and Atupele Powanga and Luka Powanga, "An Economic Analysis of a Timeshare Ownership," *Journal of Retail and Leisure Property* 7, no. 1 (January 2008): 69–83.

owners in the resale market involving timeshares at the same property?

- How does the opportunity to trade weeks or accumulate points in a timeshare resort network affect value and the valuation process?
- How reliable are the various online sources reporting sale prices for timeshare interests?
- Is it appropriate to consider online listings of timeshare interests for sale, and if so, what are the data sources for the necessary adjustments for the difference between list price and sale price?
- What are some of the special points to be considered when appraising the charitable donation of a timeshare interest?

The Timeshare Industry: A Brief History

Over the past hundred years, the real estate industry in the United States, in cooperation with the legal profession, has devised a variety of new ownership concepts in addition to fee simple title to meet the changing demands of the marketplace for residential property. In the 1920s, cooperative apartment housing began to be developed in New York City and in the ensuing decades the co-op concept spread slowly to a few other cities, including Chicago and Miami. For a variety of reasons, however, the co-op form of ownership had only limited appeal in those other markets. The condominium form of ownership, after the enactment of enabling legislation across the United States in the 1960s, quickly surpassed the co-op as the preferred way for someone living in a multiunit downtown building to own a legal interest in their apartment. The high-rise condominium concept was quickly extended to townhouse complexes and later modified to apply to planned developments and gated communities in which single-family homes on individual lots are owned separately in fee but the common areas surrounding the homes and recreational and social amenities for the homeowners are owned in common by an association of homeowners.

Another trend has been a steady rise in the number of Americans owning second homes. In 1950, the US Census Bureau reported that only 2.3% of all housing units were in “seasonal” use,² but by the turn of the twenty-first century, about 6.0% of all homeowners and 8.0% of those aged 65 to 74 owned a second home.³ Many second-home purchasers only use their second homes on weekends or during part of the year. In the 1970s, the growing interest in owning a home or condominium at a tourism destination—for use on only a few days or during a few weeks per year—combined with an oversupply of unsold condominium projects in major vacation markets led to the establishment of a solid marketplace for the interval ownership, or timeshare, concept.

A 1981 publication of the American Institute of Real Estate Appraisers summarized the early history of the timeshare concept as follows:

The application of the timesharing concept to real estate first appeared in resort areas of Europe during the 1960s. The concept was subsequently transplanted in the beginning of the 1970s to the United States where timesharing was initiated at several resort properties. By 1975, the timesharing of real estate was being offered at some 70 properties within the country. At this writing, the number of U.S. timeshare properties approximates 300 with a corresponding sales volume for 1980 estimated at \$1 billion. Although timeshare projects exist from Maine to Hawaii, to date the largest concentrations of properties exist in New Hampshire, South Carolina, Florida, Texas, Colorado, Utah and Hawaii.⁴

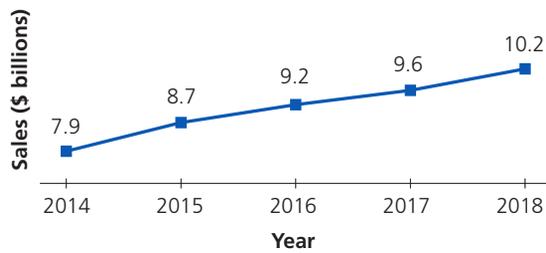
During those early years, timesharing was an unregulated industry and marketing abuses by some marred its reputation among consumers and caused concern among reputable developers as to the image of the developing industry. As a result, a group of timeshare pioneers worked to establish a legislative framework to protect consumers while allowing legitimate developers to prosper. The result was the creation of the American Land Development Association, which in 1989 became the American Resort Development Association (ARDA). Members approved the Model Timeshare Act in 1983, establishing a foundation of

2. US Census Bureau, “Historical Census of Housing Tables: Vacation Homes,” <http://bit.ly/2EQJbmr>.

3. Peter Francese, “The Coming Boom in Second-Home Ownership,” *AdAge* (October 1, 2001), <http://bit.ly/2HW6IEF>.

4. Conroy, *Valuing the Timeshare Property*, 1.

Exhibit 1 US Timeshare Five-Year Sales Trend, 2014–2018*



*6% compounded annual growth rate

Source: ARDA/Ernst & Young

credibility from which ARDA has been able to work with legislators and regulators on issues that affect both developers and consumers. In the 1980s, ARDA established the Code of Ethics of the American Resort Development Association, which serves as an industry statement on ethical sales practices. Every ARDA member must agree to abide by this code as a condition of membership.

Marriott marked the entrance of major hospitality brands into the timeshare industry in 1984. In response to consumer demand, fractional interests and private residence clubs were introduced in the 1990s. As of 2017, there were over 1,500 timeshare resorts in the United States.⁵ Globally, there are more than 7,000 timeshare resorts in 100 countries.

According to a study conducted by Ernst & Young on behalf of the ARDA, the US timeshare industry in 2018 increased for the ninth straight year, growing by nearly 7% from \$9.6 billion in 2017 to \$10.2 billion in 2018. (Exhibit 1) The study reports that timeshare sales volume over the 2014–2018 period increased by more than 26%—an average of 6% annually according to the study.⁶

Types of Timeshare Interests and the Major Industry Players

In 1974, RCI⁷ entered the industry as the first exchange company; in 2018 it was purchased by the Wyndham Worldwide hotel affiliation. In

1976, Interval International, another exchange company, was founded in Miami; it was later purchased by Marriott Vacation Group in 2018.

Timeshare exchanges added a level of flexibility to timeshare vacations in terms of both time and location. Another timeshare product enhancement came in the form of the floating-time alternative, where owners were no longer locked into a specific week and unit. Next came the points program approach, which added even more flexibility. This evolution in the timeshare industry has resulted in the following five types of currently marketed timeshare interests:

1. Deeded interests in specific weeks at specific timeshare resorts
2. Deeded interests in floating weeks at specific resorts or combination of resorts
3. Deeded interests in specific weeks or floating weeks at specific resorts or combination of resorts that are accompanied by “points” in specific “vacation clubs”
4. Deeded or nondeeded points-only interests that can be utilized at various resorts in a proprietary network or at resorts affiliated with a specific vacation club system
5. Nondeeded right-to-use interests for a specific week or series of weeks at resorts or network of resorts

The Appraisal Profession and Timeshare Valuation Methods

The first mention of “timeshares” in *The Appraisal of Real Estate* is found in the eighth edition, published in 1983. It included the following discussion:

In recent years, a new real estate partial interest has been marketed extensively, with reasonable success. It is called timesharing, or interval ownership, and is a variation of the condominium. Timesharing is the sale of limited ownership interests in residential apartments or hotel rooms. The ownership is described as limited because a purchaser receives a deed conveying title to the unit for a specific part of a year. For

5. ARDA, “Timeshare Industry in U.S. Sees Eighth Straight Year of Growth” (June 12, 2018), <http://bit.ly/2IgGjQH>.

6. ARDA, “Timeshare Industry in U.S. Sees Ninth Straight Year of Growth” (June 4, 2019), <http://bit.ly/2I5aF0>.

7. RCI, which originally stood for Resort Condominiums International, was founded as a timeshare membership exchange in Indianapolis and opened offices in Mexico and the United Kingdom in its first few years of existence; <http://bit.ly/2WmfyEo>.

example, a person might purchase the first two weeks in July or the last two weeks in December.

Certain timeshare projects are marketed on the basis of the *right to use* a specific unit for a particular time interval. This form of timeshare equates to a long-term lease on, for example, Unit 3-A for the last two weeks in December for a period of 20 years. The purchaser does not have an equity interest in the property, but, in effect, has a leasehold interest for a specified time. Other characteristics are similar to interval ownership timeshares...

Timeshare owners receive a title in fee that covers exclusive use of a specific apartment for the agreed-upon interval, along with rights to use public spaces and common areas. The title is recordable and the interest is mortgageable.⁸

The 1983 edition of *The Appraisal of Real Estate* said only the following about the appropriate method for the valuation of timeshare interests:

The valuation of such partial interests is accomplished through sales comparison. Because the practice of timesharing is relatively new, an appraiser may not find comparable sales in certain areas. However, comparables are abundant in resort and vacation areas. An appraiser must give appropriate weight to (1) the time required for sellout; (2) seasonal variations that affect sales; (3) true costs, both direct and indirect, necessary to create a facility that will command the price envisioned; and, most important, (4) the element of competition.⁹

The obvious focus of that paragraph is the valuation of timeshare interests that are being offered by the developer of a timeshare property. Note the phrases “time required for sellout” and “costs ... necessary to create a facility” are clearly references to the development process.

Two years prior to that first discussion of timeshare interests in the eighth edition of *The Appraisal of Real Estate*, the American Institute of Real Estate Appraisers, the predecessor organization to the current Appraisal Institute, published

a booklet entitled *Valuing the Timeshare Property*.¹⁰ Like the above-quoted language, the discussion in that publication focused entirely on the developer market and offered no meaningful methodology for determining the value of a timeshare interest in the resale market. Instead, and because it was written during the early years of US timeshare development, it presented a method for calculating or supporting a retail price for a timeshare interest from the perspective of a developer and did not include a discussion of how to analyze resales of timeshare interests.

The Appraisal of Real Estate, fourteenth edition, includes the same basic definition of a timeshare interest as the eighth edition, but it adds the following language to reflect the industry’s development of additional variations on the non-fee timeshare concept:

The three types of non-fee timesharing are leasehold interest, vacation license, and club membership. The leasehold interest type of timesharing is essentially a prepaid lease arrangement. A vacation license involves the transfer of a license from the developer to the purchaser, giving the latter the right to use a given type of unit for specified time periods over the life of the vacation license contract. In the club membership form of ownership, timeshare patrons purchase memberships for a specified number of years in a club that owns, leases, or operates the timeshare property. The purchaser receives the right to use a particular type of unit for a specified period during each year of membership.¹¹

Surprisingly, the fourteenth edition of *The Appraisal of Real Estate* does not include the language from the eighth edition related to the use of the sales comparison approach. In fact, the fourteenth edition of *The Appraisal of Real Estate* says nothing about the appropriate methods for determining the value of a timeshare interest. The only statement related to valuation methodology is as follows: “There are two forms of timesharing, and it is imperative that the appraiser distinguish between them when appraising timeshare projects or analyzing timeshare comparables.”¹²

8. American Institute of Real Estate Appraisers, *The Appraisal of Real Estate*, 8th ed. (Chicago: AIREA, 1983), 543.

9. *The Appraisal of Real Estate*, 8th ed., 544.

10. Conroy, *Valuing the Timeshare Property*.

11. *The Appraisal of Real Estate*, 14th ed. (Chicago: Appraisal Institute, 2013), 86.

12. *The Appraisal of Real Estate*, 14th ed., 85.

In addition to the above, the Appraisal Institute's literature on valuation of timeshares includes three articles in *The Appraisal Journal* in the 1990s. However, they do not offer meaningful guidance on the proper methodology for determining the market value of a timeshare interest *after* it is sold from a developer to a consumer.¹³

Timeshare Appraising and State Licensing Requirements

Are timeshare interests real or personal property? The answer to that question is important for those involved in the appraisal of timeshares. If the timeshare interest is real rather than personal property, then the appraiser must check laws and regulations in the state in which the timeshare resort is located to determine if an appraisal license is required to value a timeshare interest.

The laws and regulations related to the timeshare industry as well as laws and regulations related to licensing of appraisers may contain relevant provisions. As noted, some timeshares are deeded interests and some are nondeeded interests. However, the laws and regulations related to the timeshare industry in some states do not clearly explain whether a timeshare interest is to be treated as a real or personal property interest and do not clearly specify whether the appraisal of a timeshare interest requires a real estate appraisal license or not. As a result, an inquiry to state licensing agencies may be necessary before undertaking a timeshare appraisal. The licensing agencies will confirm whether a license would be required to appraise both deeded and right-to-use or points-based timeshare interests.

Timeshares and the Definition of Market Value

Central to every appraisal assignment to determine timeshare market value¹⁴ or fair market value¹⁵ are the following requirements:

- identification of the "competitive market" or marketplace in which the real property interest would typically be marketed and sold;
- determination of the "most probable price" that would be obtained in that particular competitive marketplace;
- use of transaction prices between only "well informed or well advised"¹⁶ buyers and sellers who have "reasonable knowledge of relevant facts";¹⁷
- use of transaction prices in which neither party is "under undue duress" or "compulsion to buy or sell";¹⁸ and
- utilization of prices that are not affected by special financing or sales concessions.

In timeshare valuation assignments, all of these requirements can play out in a fashion quite different from what is encountered by a typical valuation assignment of a hotel or condominium interest in a resort location.

Identification of the Marketplace and the Competitive Timeshare Market Segment

Generally accepted appraisal principles require a real estate appraiser to identify the particular market in which the appraised property will sell. The fourteenth edition of *The Appraisal of Real Estate* defines a *real estate market* as a "group of individuals or firms that are in contact with one another for

13. See the previously cited 1997 article by Ziobrowski and Ziobrowski, "Resort Timeshares as an Investment," and the 1999 article by Madsen, "Timeshare Tax Assessment," both of which eschew analysis of resale transactions of timeshare interests. Although the 1994 article by Thompson and Dagbjartsson, "Market Discounting of Partial Ownership Interests," does not specifically address timeshares, it highlights the role of liquidity and the need for an active market; it states, "For interests for which there have been numerous recent arm's-length sales, trading prices represent fair market values. When only limited trading occurs, care must be taken."

14. *The Appraisal of Real Estate*, fourteenth edition, states that the "most widely accepted" definition of *market value* is as follows: "The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress." (page 58)

15. As explained later in this article, the term *fair market value* is used in the Treasury regulations applied by the Internal Revenue Service and the Department of Justice in determining the value of charitable donations.

16. These words are used in the definition of *market value* utilized by federally regulated financial institutions making mortgage loans; see 12 CFR §34.42. The Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) applies the term *reasonably knowledgeable* to buyers and sellers; see §4.2.1 UASFLA.

17. See 12 CFR §34.42 UASFLA.

18. See 12 CFR §34.42 UASFLA.

the purpose of conducting real estate transactions”; it defines a *submarket* as “a division of a total market that reflects the preferences of a particular set of buyers and sellers.” The text then says the following about delineation of a market and segmentation into submarkets for the same product:

Real estate markets are divided into categories based on property types and their appeal to different market participants. The markets for various categories of real estate are further divided into submarkets, which correspond to the preferences of buyers and sellers.

* * *

A market segment is delineated by identifying the market participants likely to be interested in the subject real estate and the type of real estate product or service it provides. Product disaggregation includes both the subject property and competitive and complementary properties. Thus, market analysis combines market segmentation and product disaggregation.¹⁹

The Appraisal of Real Estate, fourteenth edition, emphasizes that an important step in the delineation of the market is an investigation of “available substitute properties—i.e., equally desirable properties competing with the subject in its market area, which may be local, regional, national, or international.” (page 165)

There is a two-tiered market in the timeshare industry: the original (primary) marketplace consisting of sales by resort developers/owners to individual buyers, and the resale (secondary) marketplace consisting of resales by individuals who have purchased from the resort developers (or in the secondary marketplace) to other individuals.²⁰ The market participants and the process by which timeshare properties are sold are quite different in each of those submarkets, as discussed in more detail below.

The Treasury Regulations’ definition of *fair market value*—which is important in appraisals of

charitable donations of timeshare interests—recognizes that there are various market tiers (and prices) for the same type of real property. Those regulations recognize that the price (and therefore the value) obtained by someone “in the ordinary course” of a real estate business can be different than the price/value obtained by someone not in the real property business.²¹

The Resort Owner (Primary) Marketplace. Most major timeshare resorts have highly organized marketing operations consisting of sales staff and sophisticated marketing presentations targeted to first-time buyers (often those renting a unit) and previous buyers of timeshare interests at the same or an affiliated resort. As an example, consider Diamond Resorts International, which owns 99 timeshare resorts worldwide. A 2016 *New York Times* article²² reported that the majority of its sales are made either to first-time buyers who attend one of its sales presentations at one of its resorts or to existing owners of timeshare interests, typically when they visit a resort either by utilizing their own week or points, or by renting the week from the owner of the timeshare interest or from the resort itself.²³ According to the *New York Times* article, in November of 2015 “Diamond said that over the last 12 months it had conducted about 221,000 tours at its 53 sales offices around the world” and that “the company says that 15.1 percent of tours result in sales.” Diamond Resorts International also stated that “60 percent of the company’s sales came from existing customers.”

The Individual Owner Resale (Secondary) Marketplace. The timeshare primary marketplace exists separate and apart from the marketplace involving owners of timeshare interests seeking to sell or dispose of their existing interests. While some such timeshare owners may use the services

19. *The Appraisal of Real Estate*, 14th ed., 164.

20. It is possible to also identify at least two other strata within the secondary market: resales back to the resorts by individuals and resales by recipients of timeshare donations. The motivations of sellers (and buyers) in each of those submarkets may be quite different from the motivations of sellers and buyers in the primary market (resort developers) and the secondary market of individuals selling to individuals. Another possible strata involves bulk purchases by timeshare holding companies that then rent out timeshares in a secondary rental market not connected with the resort owner/resort management companies. In some cases, these bulk purchasers are affiliated with the resort/owner management companies.

21. See 26 CFR 1.170A-1(b).

22. Gretchen Morgenson, “The Timeshare Hard Sell Comes Roaring Back,” *New York Times*, January 22, 2016, available at <https://nyti.ms/2QP3sO2>.

23. Most major timeshare resorts will offer an owner’s timeshare week(s) for rent to the general public and retain a portion of the rental fee in exchange for providing that service.

of the resort itself in an attempt to resell their units,²⁴ most individual owners of timeshare interests do not resell their interests through the resort's developers/operators. Instead, they sell directly on the internet through sites such as the Timeshare Users Group, Craigslist, or eBay, or through timeshare resale brokers or websites that charge either a brokerage or advertising/sales commission fee and have highly organized marketing operations. Sometimes the brokerage entities are affiliated with the particular resort at which the timeshare is located.

The prices paid in this secondary market of individual owner resales are significantly lower than prices paid in the primary resort developer marketplace, as discussed in detail below.

The Most Probable Price in the Relevant Competitive Market

Because market value is “the most probable price” that the property will bring *in its distinctive competitive submarket of buyers and sellers*, the purpose of the assignment—and the use and user of the appraisal report—is critical to the selection of the sales transactions and comparables to be considered and analyzed.

If the appraisal is for a potential seller/buyer in the individual-to-individual timeshare resale submarket, the appropriate sales to analyze as potential comparables should not be the sales between a timeshare resort owner/developer/management company and those attending sales presentations. Instead, only after-market sales (resales) of the timeshare interests should be considered.

Individuals wishing to resell their timeshare interests after purchase from the resort owner compete with other individuals who have also previously purchased from the resort owner—that is the competitive marketplace for individual-to-individual transactions. An article on the Money Talks News website said the following about the two-tiered marketplace for timeshares:

Getting in? Easy. Getting out? Not so much.

The simple fact is that recovering even a fraction of your money when selling a time-share can be nearly impossible. The reasons for this include an inactive secondary market, high monthly maintenance fees, and a supply that eclipses demand.

But when you boil it down, the real reason it's hard to sell a time-share is because most lose a huge chunk of their value the instant they're purchased.²⁵

The Timeshare Users Group (TUG) is one of the most important sources of information about resales of timeshare interests. TUG has stated the following about the difference between prices in the primary resort owner marketplace and in the secondary resale market:

With few exceptions, owners of timeshares purchased from a developer can expect to take a beating on resale. Although it's not what you want to hear, most timeshares sell on the resale market for only 0% to 15% of the price you likely initially paid to the developer when you purchased. Shocked? Please believe it!

The key is to bury forever any thoughts that because you paid (let's say) \$12,000 for your week, someone else will be willing to pay the same amount. They might, if you were putting on the same glitzy sales presentation that some high-pressure salesperson did when you bought, including giving free incentives for attending the presentation. But you don't have that luxury. So do your homework and set the price at the right level. It will sell.²⁶

A *New York Times* article on the timeshare industry observed the following about the timeshare secondary market:

Owners of timeshares in desirable resorts with unusual attributes, like a private beach, can often sell their ownership interests on the secondary market. But in areas

24. See Resort Owners' Coalition discussion at <http://bit.ly/2KvcVZy>.

25. Stacy Johnson, “Ask Stacy: How Can I Get Out of My Timeshare without Being Robbed?” Money Talks News (September 2, 2016), <http://bit.ly/2We54SB>.

26. Timeshare Users Group (TUG), “How to Sell Your Timeshare,” <http://bit.ly/2Z9fBAC>.

glutted with condos for sale or rent, selling a timeshare can be almost impossible. In these cases, timeshare ownership can become an almost perpetual liability. ... A recent search on eBay, for example, showed more than 700 timeshare listings for sale. Many, from Pennsylvania to Hawaii to Florida, can be purchased for \$1.²⁷

Commentary in Money Talks News puts it as follows:

Time-shares are a product that's often foisted on the gullible with high-pressure sales tactics. And when it's time to sell, there's often no way to do it, especially when there's a loan involved. Like a new car, timeshares depreciate radically the moment they're purchased. But at least a car dealer will buy back the car at some price. Buy a time-share at retail from a developer, and odds are good you'll be left twisting in the wind.²⁸

However, some timeshare companies will offer to buy back previously sold timeshare interests from owners wishing to avoid the ongoing maintenance or financing expenses associated with previously purchased timeshare interests. As the *New York Times* has reported, however, the prices paid in the repurchase can be significantly lower than the original purchase price and in some cases, the timeshare interest must be relinquished with an additional payment for maintenance costs.

This "inventory-recapture model" is industrywide and allows companies to acquire units far more cheaply than it costs to build properties or buy resorts. In a company presentation last November, Diamond said it typically pays \$1,500 to the homeowners' association to take back a timeshare week. Then it sells the space for an average of \$27,434, it said.

Last year, the company introduced a "relinquishment option" for members of its European resorts. If they agree to pay two years of maintenance costs, they can escape their obligations.²⁹

The *New York Times* also reported that Diamond's average timeshare transaction price in 2015 was \$21,700, up from \$12,510 in 2012. However, our research found that the average price was only \$422 in 1,876 individual-to-individual secondary-market resales between January 2010 and August 2016 at three Diamond Resorts affiliated timeshare properties³⁰ in Osceola County, Florida, near Disney World. At three Diamond Resorts-affiliated timeshare properties³¹ in Orange County, also near Disney World, the average price was \$3,039 in 285 transactions that occurred between October of 2008 and October of 2015.

Well-Informed, Well-Advised, and Reasonably Knowledgeable Buyers and the Timeshare Marketplace

A number of articles in *The Appraisal Journal* have discussed the history and evolution of the definition of *market value* over the past five decades. Those articles include helpful explanations of the meaning of "well informed and well advised" buyers and sellers who are "acting prudently and knowledgeably." Three articles in particular help explain the amount of knowledge that the "typical" "knowledgeable" buyer is assumed to have under the definition of *market value*.

Harold Albritton in 1980 pointed out that the definition of *market value* accepted by appraisers in the 1950 edition of the *Appraisal Terminology and Handbook*, published by the American Institute of Real Estate Appraisers, stated that the purchaser only had to have "knowledge of all uses to which it (the property) is adapted and for which it is capable of being used." Knowledge of all information in the marketplace was not necessary—only knowledge of all uses for the property.³²

Richard Marchitelli and Peter F. Korpacz in 1992 traced the history of the development of the concept of market value in the appraisal literature.³³ They note the 1935 definition of *market value* was "the amount expressed in terms

27. Gretchen Morgenson, "The Timeshare Hard Sell Comes Roaring Back," *New York Times*, January 22, 2016, <https://nyti.ms/2QP3sO2>.

28. Johnson, "How Can I Get Out of My Timeshare?" Money Talks News, <http://bit.ly/2We545B>.

29. Morgenson, "The Timeshare Hard Sell," *New York Times*.

30. The three resorts are Barefoot in the Keys, Polynesian Isles, and Mystic Dunes.

31. The three resorts are Grand Villas, Grand Beach Resort, and Cypress Pointe.

32. Harold D. Albritton, "A Critique of the Prevailing Definition of Market Value," *The Appraisal Journal* (April 1980): 199–205, 200.

33. Richard Marchitelli and Peter F. Korpacz, "Market Value: The Elusive Standard," *The Appraisal Journal* (July 1992): 313–322.

of money which a purchaser *would be justified in paying* for a property.”³⁴ (Emphasis added) By 1975, however, the Institute’s definition had incorporated the concepts of “typically motivated” buyers and sellers, “well informed or well advised” buyers and sellers, and buyers and sellers “acting prudently, (and) knowledgeably.”³⁵ However, the 1975 definition created enormous controversy by introducing the postulate that market value was also the “highest price in terms of money which a property will bring.” When the savings and loan industry collapsed in the early 1980s, lawmakers in Congress blamed it in part on inflated appraisals based on estimates of “the highest price” for which a property should sell. In response, the appraisal profession by 1981 and federal regulators by 1989 had restated the definition of *market value* as “the most probable price” for which the appraised property will sell in its particular competitive market.³⁶

Determining the “most probable price” requires a look at actual past market behavior. Probability is based on analysis of actual prior buy/sell decisions by actual market participants in the particular market in which the property would sell. The need to look to actual past actions of actual buyers in the particular market in which the property would sell was addressed in the 1984 award-winning *Appraisal Journal* article by Jared Shlaes.³⁷ Among Shlaes’s more significant and relevant explanations of the meaning of *market value* are the following:

An appraiser’s job is to make reasonable predictions about the price obtainable for a specific property or properties, based on patterns of behavior observed in the market, the source of information on which all such predictions are based... *This knowledge allows us to talk about value in terms not of justice or ultimate truth but of observable market behavior*, making only one assump-

tion: that the future will continue to follow the patterns encountered in the past, an assumption for which humans appear to be hard wired.” (page 508, emphasis added)

Only “sufficient” knowledge—not full or complete knowledge—to make a transactional decision a “rational” decision is expected of the typical buyer: “They (transactions) must be made by people whose behavior is not aberrant, who are competent to do business and have *sufficient information to behave rationally* in the market.” (page 509, emphasis added)

The fool in the market teaches us nothing about value, only about foolishness. To be useful as market evidence the price must reflect an exchange between two *reasonably capable and informed* beings. *Strictly speaking, prudence is not required, at least not if the imprudent are setting the prices ... Access to relevant information, though, is essential.* (page 513, emphasis added)

USPAP Advisory Opinion 22 (AO-22), related to the Scope of Work Rule in the Uniform Standards of Professional Appraisal Practice, says the following about the importance of understanding the “reasonable competition” for the property interest being appraised:

The “knowledge” referred to in a market value definition is knowledge about the property appraised, about the market for that property, and about alternatives available in the marketplace that the appraiser concludes are reasonable competition for the property appraised.

An appraiser is expected to be at least as knowledgeable as the typical market participant is about the market for the type of property to be appraised. By completing research and verification steps while performing the assignment, the appraiser is expected to become as knowledgeable about the subject property and its comparables as the typical market participants.³⁸

34. American Institute of Real Estate Appraisers, *Appraisal Terminology* (Chicago: American Institute of Real Estate Appraisers, 1935), 55. This early definition was used partly in response to the lack of a market for many kinds of properties during the Great Depression. Appraisers often had to create hypothetical situations of a market in the absence of actual market transactions.

35. American Institute of Real Estate Appraisers and Society of Real Estate Appraisers, *Appraisal Terminology* (Chicago: American Institute of Real Estate Appraisers and Society of Real Estate Appraisers, 1975), 137.

36. *The Appraisal of Real Estate*, 8th ed.

37. Jared Shlaes, “The Market in Market Value,” *The Appraisal Journal* (October 1984): 494–518. Shlaes received the Robert H. Armstrong Award for the “year’s most outstanding contribution” to *The Appraisal Journal* for this article.

38. Appraisal Standards Board, Advisory Opinion 22 in *USPAP Advisory Opinions*, 2018–2019 ed. (Washington, DC: Appraisal Foundation, 2018), Lines 121–127.

As discussed above, there is a well-established secondary marketplace of timeshare interests bought and sold by individuals who previously purchased from the resort owners, and those prices are significantly lower than the prices paid in the primary marketplace of purchasers from resort owners. This gives rise to questions about the buyers in the primary market. Are those who buy in the primary market paying higher prices because they do not have reasonable knowledge of the relevant fact that they could purchase the same timeshare interests in the secondary market at a fraction of the price they pay the resort owner? Why don't visitors to timeshare resorts shop the secondary market rather than pay the higher prices? Are those who buy directly from resort developers and management companies "well informed" and "well advised" if they pay the higher prices? Are they acting "prudently" and "knowledgeably" and in their "best interest"?

Many, if not most, first-time timeshare buyers visiting a resort and attending a sales presentation session sponsored by the resort developer or management company may not know that there is a secondary marketplace in which they might be able to buy a timeshare interest in a similar unit for a similar week or weeks but at a fraction of the price being asked by the resort developer. Or, if they do know about the secondary market, they may not want to take the time to explore that market to obtain a lower price, or they may be concerned about potential scams associated with the resale market. These may be two answers to the questions raised about the higher prices paid by those who buy directly from the resort itself.

The answer to why primary marketplace buyers pay more is not as simple as that, however, because those who buy timeshares from resorts or developers in the primary market may obtain a number of perquisites and privileges that cannot be transferred to future buyers and are not available from sellers in the resale market. This may be the most important reason why buyers pay the higher prices in the primary market rather than explore the lower-priced secondary market.

For example, buyers from resort developers/management companies in the primary market-

place are typically offered concession and financing packages that may include cash or resort credits, packages of points in a vacation club system, or other inducements such as discounts on meals or entertainment that are not available to purchasers in the secondary market. The opportunity to put down a relatively small down payment to the resort owner and pay the balance over time is a significant inducement to sales that is not available in the secondary market. Also, many of the larger timeshare resort systems put a restriction on the resale of the points obtained; purchase agreements increasingly state that the points awarded to a buyer in the primary market cannot be resold in the secondary market. Those who buy directly from the resort also may receive additional items such as free membership in one of the exchange programs for a year or more, or receive benefits at other hotels or resorts within that system. TUG describes the various inducements to purchasing from the resort developers/management companies;³⁹ its guide, "Timesharing 101—A TUG Introduction to Timesharing," states as follows:

Sometimes, developers include incentives with their sales that you won't get in a resale. Bonus weeks (extra exchange weeks) are provided for a set number of years by some developers. Marriott sometimes credits purchasers with Marriott points that are good for hotel stays. Fairfield has paid for lifetime RCI membership for purchasers. In addition, some developers try to "penalize" buyers of resale units by not allowing them full access to timeshare program features. For example, Marriott does not allow purchasers of resale units to participate in their program in which timeshare owners can trade their weeks for Marriott Rewards points (except for purchases from "approved" resellers).⁴⁰

In addition, buyers in the primary market staying at the resort and/or attending a marketing presentation get to inspect the property and the particular unit in which they will have an interest. Although buyers in the secondary market may have already visited the particular resort in which they are purchasing a unit, few would take the time to revisit the resort and

39. All of these perquisites associated with sales in the primary timeshare marketplace may be items of personal property rather than real property and are typically nontransferable, so they are not technically part of the valuation of a timeshare interest in the resale market. Discussion of that issue is beyond the scope of this article.

40. Stephen J. Nelson, "Timesharing 101—An Introduction to Timeshares," Timeshare Users Group, <http://bit.ly/2WillpF>.

inspect the particular unit in a secondary-market transaction given the low resale market prices.

As can be seen, there may be good reasons why buyers in the primary timeshare market are willing to pay substantially higher prices than buyers in the secondary market. So, the prices paid in the primary marketplace cannot be ignored when the appraisal assignment involves the upfront valuation of a timeshare interest being purchased directly from the resort developer or management company. The most probable price, and therefore the market value of the interest sold in that competitive primary market segment should be based on the prices obtained in that submarket. But as explained below, it is not correct to utilize primary market sale prices when appraising timeshare interests marketed in the resale secondary market.

Website Sources of Market Information for Well-Informed Buyers and Sellers in the Secondary Market

There are many internet resources with information about prices paid by well-informed buyers and sellers in the secondary market.⁴¹ Four of the most significant sources for prices paid in the individual-to-individual resale market are as follows:

- Timeshare Users Group (TUG)
- eBay and Craigslist
- MyResortNetwork.com
- RedWeek.com

These are widely recognized sources of information. The *New York Times* as well as the *Wall Street Journal* and many other media sources have mentioned these sources in articles about the differences between the timeshare resale market and the resort owner market. For example, a 2008 *New York Times* story referenced the TUG and eBay resale sites stating as follows:

Resales can be found on eBay and at the Timeshare Users Group (www.tug2.net). The group's online forums offer discussions on all aspects of timesharing, and its

reviews and ratings for more than 4,000 properties can help you find one with good trading potential.⁴²

Timeshare Users Group (TUG). The Timeshare Users Group (TUG) is among the most important sources of information about prices paid by well-informed and well-advised buyers and sellers of timeshares. The TUG homepage reports that it was started more than twenty years ago and has "more than 50,000 registered users."⁴³ The TUG newsletter has 50,000 email subscribers. The membership fee is \$15 per year.

TUG also has its own listing service. As of September 2018, the TUG website had 1,897 current for sale ads for timeshares and it claimed "\$22,791,992 in completed for sale ads." There were also 95 ads by parties looking to buy timeshares and/or timeshare points, including interest in buying points in many of the largest points programs. According to a representative of the Timeshare Users Group, since 2011 TUG has averaged about 2,000 online for sale ads involving timeshare resales by individuals. TUG reports that at least 50% of those offerings resulted in confirmed completed resales to another private party.⁴⁴

The TUG website includes many testimonials from its members, such as the ones below.⁴⁵ These users' statements indicate the knowledge and information that TUG can provide to both buyers and sellers in the resale market.

TUG provided the most reliable info about the ins and outs of timeshare ownership and the timeshare industry.

You've saved us from making a horrible mistake with a timeshare we were considering. I've been telling others who are interested in timeshare about your group, and will continue to do so. You're providing a much needed service. Thank you!

Thanks for your organization and all the work you do! I was finally able to unload my timeshare which had become a complete drain on my resources. Your articles helped a lot!!!

41. Of course, the most accurate source of information would be actual sales collected from among the sale prices published by county recorder of deeds offices. That is possible to obtain online in some, but not all, counties in which there are timeshare resorts, as explained later in this article.

42. Steve Bailey, "Trading Places," *New York Times*, June 20, 2008, <https://nyti.ms/2HWZkZq>.

43. TUG information available at <http://bit.ly/2K0fLQ>.

44. Source: Email correspondence dated October 19, 2016, with TUG administrator stating, "TUG averages about 1,000 confirmed completed resales a year since 2011 (i.e., those members that actually inform us they have successfully sold their timeshare)."

45. TUG, "Timeshare Owner Comments and Testimonials," <https://tug2.net/comments.html>.

eBay and Craigslist Timeshare Listings and Auctions. eBay has had an active resale market involving timeshares. eBay indicates a timeshare sale ad currently costs \$70 to post and potentially reaches 70 million eBay site users. As of September 2018, it reported the average auction time for a timeshare sale was seven days. At that time there were 759 timeshare listings on eBay, of which 674 were being offered for sale via an auction process. The eBay timeshare listings contain detailed information about the timeshare interest and the resort.

The Craigslist website consists of classified ads throughout the world. According to the website, more than 60 million people in the United States alone use Craigslist each month.⁴⁶ Users can buy and sell timeshares through the website by searching locally as well as by the location of the timeshare. For example, a recent search for the word “timeshare” under “Vacation Rentals” in Orlando showed 134 results. The same search under “For Sale” resulted in 13 current listings ranging between \$1.00 and \$29,500. While current listings are shown, the website does not track completed transactions.

MyResortNetwork.com. MyResortNetwork.com is another important site for well-informed and well-advised buyers and sellers of resale interests in timeshare resorts. MyResortNetwork.com characterizes itself as “a timeshare owner network” and it is a listing source for renting, selling or buying timeshare interests. It states that it “actively markets” the timeshares through websites, mailings, and advertisements and provides the contact information for those interested in listed timeshares.

MyResortNetwork.com does not charge a commission on sales and the advertising fee is quite low—\$19.95 to \$24.95 for a six-month for rent listing and \$34.95 for a six-month for sale ad. The website states that it has an average of 600,000 visits a month with over two million page views a month. The website includes a list of timeshare owners on the website who have been contacted within the past fourteen days.⁴⁷

Exhibit 2 MyResortNetwork.com Timeshare Listings and Sales*

Location	Number of Resorts	Current MRN Listings	MRN Reported Sold
Orlando	129	6,418	3,678
Las Vegas	38	1,656	1,397
Hawaii	129	672	5,371
South Carolina	136	340	1,960

*October 17, 2018

Another important feature of MyResortNetwork.com is that it includes information on closed sales resulting from ads on its website. It shows the final listing price before the owner or broker listing the ad sold the timeshare interest.⁴⁸

Exhibit 2 shows the number of listings and reported sales on the MyResortNetwork website, as of October 17, 2018, for some of the most popular timeshare resort locations.

RedWeek.com. The RedWeek.com website claims to have “more visitors than any other timeshare website” and “an audience of over 2.6 million travelers and timeshare owners.”⁴⁹ Like MyResortNetwork.com, RedWeek.com is “primarily a do-it-yourself timeshare marketplace where owners advertise their timeshares for rent and resale, and individuals contact them directly to arrange a transaction.” Much of its activity seems to be in facilitating exchanges of timeshare weeks.

RedWeek.com typically charges neither a fee nor a commission for its services. Instead, users of the website register and pay a fee—currently \$59.99 for a do-it-yourself listing, or \$125 for a posting in which the company helps with pricing and verifying information. Unlike MyResortNetwork.com, RedWeek also offers what it calls “full-service resale,” which consists of handling “the entire process: creating your posting; fielding inquiries; and ensuring a smooth, legal transfer.” It

46. <http://www.craigslist.org/about/factsheet> (accessed 2018, website subsequently revised).

47. <https://www.myresortnetwork.com/about.htm>.

48. MyResortNetwork.com offers “Market Value Resort Information Reports” by specific resort for \$14.95 “to help you price your unit right,” <https://www.myresortnetwork.com/timeshare-appraisal/>.

49. <http://www.redweek.com/rent-or-sell-my-timeshare>.

charges a brokerage commission for full-service; if the property sells, RedWeek receives a commission of \$399 or 3% of the resale price. According to the RedWeek website:

RedWeek.com is the largest online marketplace for timeshares for sale, and has an **A+ rating** from the Better Business Bureau. Owners post their timeshares for sale here, and connect directly with travelers looking to buy. **No middleman**, and **no tours. Ever.** [emphasis in original]

Consistent with this statement, the Better Business Bureau reports that RedWeek.com has been BBB accredited since 2006. TUG users generally agree that RedWeek.com is a reputable advertising website. A review of listings of properties for sale on the RedWeek.com site indicates they are generally at more realistic levels when compared to actual prices paid in completed resale transactions.

Electronic Sales Data Available from Public Records

In many local timeshare markets, detailed information—including names of grantor/grantee, consideration paid, date of sale, and deed number—is available to the public either online or through electronic downloading of the data. In some counties, additional information (such as the timeshare legal description, unit number, week involved), is available. Examples of counties where it is possible to download such data for free or by purchase include the following:⁵⁰

- **Florida:** Broward County, Lake County, Orange County, Osceola County, Volusia County
- **Missouri:** Taney County
- **Nevada:** Clark County
- **New York:** New York County (Manhattan)
- **South Carolina:** Beaufort County, Horry County

- **Tennessee:** Sevier County
- **Virginia:** James City County, York County
- **Wisconsin:** Sauk County

The data can be readily sorted to differentiate sales between buyers and sellers in the secondary market and primary market sales involving the resort owner/developer/vacation club. For example, the Manhattan database available on ACRIS⁵¹ indicates sales data between individuals, including the names of buyer and seller, price paid, date of sale, block and lot number, deed type (i.e., timeshare deed, quitclaim, etc.), and deed document number. By clicking on a timeshare deed number in the ACRIS database, the week and unit number also can be viewed.

Pitfalls in Use of Sales Comparison Approach in Timeshare Appraisals

The appraisal of timeshares presents special circumstances as well as challenges in the application of the sales comparison approach. The following are major pitfalls appraisers may encounter in application of the sales comparison approach in timeshare appraisals.

1. Difficulty in determining terms of sale and incentives/perquisites included in sale prices in the primary market.
2. Difficulty in making proper adjustments for the difference between list price and sale price in appraising timeshares in the secondary marketplace.
3. Difficulty in making proper adjustments for the differences in prices paid for particular weeks in various seasons of the year.⁵²
4. Difficulty in determining the reliability of listings and alleged sale prices shown on websites when appraising timeshares in the secondary marketplace.

50. Our research indicates that the three largest timeshare resort markets in the country in terms of numbers of timeshare resorts are Orange County, Florida, encompassing Disney World and the Orlando metro area; Horry County, South Carolina, containing Myrtle Beach; and Clark County, Nevada, in which Las Vegas is located. Orange County contains at least twenty-three timeshare resorts. The Horry County area contains at least twenty-five timeshare resorts, and Clark County contains at least nineteen timeshare resorts.

51. The Automated City Register Information System (ACRIS) is the name of the free online search vehicle for recorded property interests, including sales transactions, for boroughs of New York City. The site makes it possible to search property records from 1966 to the present.

52. Adjustments for differences in unit location, view, or design may be considered if the subject timeshare interest is tied to a particular unit description. More typically, however, timeshare interests are largely traded irrespective of such differences, and the primary determinant of price levels within a given timeshare resort property appears to be week or season dependent.

Determining Terms of Sales and Incentives

The Appraisal of Real Estate, fourteenth edition, emphasizes the importance of making transactional adjustments to sale prices for real property rights conveyed, financing terms, and conditions of sale.⁵³ As discussed earlier, in the primary market sales from resort developers/management companies may include cash or resort credits, packages of points in a vacation club system, free membership for a number of years in an exchange network, or other inducements such as discounts on meals or entertainment or even financing on a portion of the purchase price. Obtaining information about the specific inducements that accompanied a particular sale may be difficult to acquire from the resort itself and may require contacting the individual timeshare purchaser in order to make proper adjustments.

Adjusting for Differences between List Prices and Sale Prices in the Secondary Market

The sales data available from the reliable sources of secondary market data typically are only list prices rather than sale prices. While *The Appraisal of Real Estate* clearly states that list prices can be used in the sales comparison process⁵⁴ and that “whenever possible, an appraiser should gather information about properties offered for sale,” it warns that “listings usually reflect the upper limit of value”⁵⁵ and also warns that “offers provide less reliable data than signed contracts and completed sales.”⁵⁶

Although listings can be used, the generally accepted principles of the appraisal profession clearly emphasize a preference for use of closed sales when data for closed sales is available.⁵⁷ When

listings are used, they must be properly adjusted—typically downward in active markets not affected by recessions—to account for the difference between asking prices and closed sale prices in the marketplace in which the appraised property will be sold. This is particularly important when there is evidence of unrealistically high price-setting activity in the secondary marketplace.

In some cases, analysis of listings is important to understanding whether a market is trending up or down, but they are typically not used as a substitute for actual closed sales transactions. For example, Fannie Mae’s *Selling Guide* states that at a minimum “three closed comparables must be reported in the sales comparison approach” and, if listings are used, they can only be used as “supporting data, if appropriate.”⁵⁸ The HUD FHA “Reporting Requirements for Appraisals in Declining Markets”⁵⁹ requires appraisers to “adjust active listings to reflect list to sales price ratios for the market.” Also, the standard “Market Conditions Addendum” form requires the appraiser to actually calculate the “median comparable list price” in the market and compare it to the “median comparable sale price” in order to arrive at a calculation of the “median sale price as a % of list price.”⁶⁰

Also of note in regard to use of listings is the definition of *market value* used by federally insured financial institutions when making mortgage loans. That *market value* definition includes the statement that “implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer.”⁶¹ This language implies that any listings used must be adjusted through a market analysis of the actual relationship between asking prices and closed sale prices.

53. For a general discussion of this issue without any specific reference to timeshare sales, see, *The Appraisal of Real Estate*, 14th ed., 405–412.

54. “[I]n the sales comparison approach, the appraiser develops an opinion of value by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property.” *The Appraisal of Real Estate*, 14th ed., 377.

55. *The Appraisal of Real Estate*, 14th ed., 118.

56. *The Appraisal of Real Estate*, 14th ed., 367.

57. “Data from completed transactions is considered a very reliable value indicator.” *The Appraisal of Real Estate*, 14th ed., 382.

58. Fannie Mae, “Minimum Number of Comparable Sales,” *Selling Guide: Fannie Mae Single Family* (Washington, DC: Fannie Mae, May 1, 2019), 579; to view the most recent *Selling Guide* go to <http://bit.ly/2tUk9j7>.

59. See HUD, Chap. 4, “Property Valuations and Appraisals,” Section 4155.2 4.9.c, “Specific Requirements for Reporting Comparable Listings,” <http://bit.ly/2Kxv49g>.

60. Fannie Mae Form 100MC, “Market Conditions Addendum to the Appraisal Report,” <http://bit.ly/Form1004MC>.

61. Subpart C: Appraisals—definitions, 12 CFR § 34.42(g), <http://bit.ly/2Mw1AeD>.

Adjusting for Differences between Weeks and Seasons

As mentioned earlier, some deeded interests are in terms of specific weeks or in a limited set of floating weeks. When appraising those specific interests, or considering sales of other weeks to use as comparables, care must be taken to adjust properly for the week or group of weeks involved in either the appraisal or the sale being analyzed. Prices and values for weeks can vary one season to another and even from one week to another within the same season; for example, the week between Christmas and New Year's Day or the weeks involving the Presidents' Day, Memorial Day, Independence Day, or Labor Day holidays command higher prices.

Avoiding Listings and Alleged Sale Prices from Unreliable Websites

The large pool of owners looking to resell their timeshares has fostered the development of numerous internet-based enterprises that offer to help owners market their interests. The Federal Trade Commission (FTC) has issued a warning to users of timeshare listing websites. It cautions potential sellers that many timeshare resale websites are considered scams that require someone to pay a large upfront fee to sell a timeshare. The solicitation—either by phone or on the website itself—claims the website has a strong track record of sales and buyers waiting to purchase. Too frequently, the FTC cautions, the website may be a scam, the claimed listing or sale prices are not achievable, the number of active buyers they claim to be looking to purchase timeshares is a hoax, and, as a result, the reseller may pay “hundreds or even thousands of dollars” in upfront or monthly listing fees with no realistic chance of making an actual sale.⁶² The FTC concludes its warning with the following advice:

If you want an idea of the value of a timeshare that you're interested in buying or selling, consider using a timeshare appraisal service. The appraiser should be licensed in the state where the service is located. Check with the state to see if the license is current.

The principle problem with the use of these sites is that the information provided is usually listings, not transacted sale prices. Little or no effort is made to adjust these listing prices to indicators of actual sale prices, or to support such adjustments using market-derived listing-to-sale-price ratios. A more fundamental problem is that many of these website sources are based on upfront fee-oriented business models. They may encourage owners to list their timeshares at unrealistically high prices, over extended periods of time, with little or no prospect that the timeshares will ever actually be sold.

Before relying on the data from those websites, appraisers should review the website's marketing premises and TUG information reporting any problems experienced by actual customers. Information from the Better Business Bureau or state authorities should be checked to determine whether these website businesses have used questionable practices to generate fee revenues from timeshare owners who had little hope of selling their timeshares at the listed prices. Some information about a few of these websites, as reported by TUG members or the Better Business Bureau (BBB), is summarized below.⁶³

SellMyTimeShareNow.com. The website SellMyTimeShareNow.com is operated by Sell My Timeshare Now, LLC, based in Exeter, New Hampshire. The company has stated that

SellMyTimeShareNow.com is the leading provider of timeshare resale and rental services in the vacation ownership industry. With over 4 million visits to its family of sites in 2013 (and over 3.3 million in the first three quarters of 2014) SellMyTimeshareNow.com is the world's most active online marketplace for the purchase and rental of timeshare interests. A subsidiary of Vacation Innovations, SellMyTimeshareNow, LLC, has been helping to solve the shared ownership needs of owners and non-owners alike since 2003.⁶⁴

The SellMyTimeShareNow.com website includes offerings of timeshares for sale and for rent by individual timeshare owners. Its primary source of

62. FTC, “Timeshares and Vacation Plans,” <http://bit.ly/2I2z1Bn>. The FTC also offers cautions for potential timeshare buyers.

63. TUG BBS, Timeshare Users Group Online Discussion Forum, <https://tugbbs.com/forums/index.php>.

64. “SellMyTimeshareNow.com Continues to Dominate the Secondary Market for Those Looking to Rent, Buy, or Sell Timeshare,” *Marketwired*, December 16, 2014, <https://yhoo.it/2ZgutwV>.

revenue appears to be the upfront fees collected by individuals placing listings. According to posts in the TUG users group forum, there appears to be little motivation for the company to assist owners in setting realistic listing prices. Individuals in the TUG forum have commented as follows:⁶⁵

Ads on their site run forever and do not have an expiration date...thus they are able to boast a very large number of ads.

One difference is SMTN charges \$600–\$1,000 for the ad which they are encouraged to pass on to the buyer with pricing of the unit. They do a little hard sell about how they show up first in searches, how eBay prices are mostly scams and timeshares are worth closer to 30–40% (even for off season no names) of what they originally paid vs the pennies on the dollar approach. If a unit has been sitting for 1 year or more and is still available and the owner is still reachable, they are usually disillusioned and willing to deal.

REPUTABLE brokers take their commission out of the proceeds of the sale/rental—not up front.

[I]f you pay them upfront, why should they care if they sell it or not?

[B]e aware that upfront fee companies often promise they can sell your timeshare for FAR more than what it's actually going for on the resale market—just to get your business.

Most timeshares (except the very top resorts during prime season) sell for 0–10% of original retail.

As for Sell My Timeshare Now, they are just a very expensive listing service. If you want to list your TS for much, much less, then use TUG, RedWeek, MyResortNetwork, Craigslist, and/or E-Bay.

SellMyTimeShareNow.com also generates revenues from fees charged to individuals who buy or rent in response to one of their ads. One TUG user commented on the costs, stating:

The listing price was \$5,500. This is what they quoted me for closing:

Broker Fee:	\$1,500
Admin Fee:	\$195
RTU Fee:	\$429

With T/S transfer fee, all told closing was well over \$2,500.00 And to think they charge the seller an upfront fee as well.⁶⁶

Sell My Timeshare Now, LLC, has been subject to direct complaints to the Better Business Bureau (BBB):

According to BBB files this company has a pattern of complaints that centers around the company's advertising claims. Complainants allege they are guaranteed a time frame in which their timeshare will sell. Many consumers allege the company makes a promise that their timeshare will sell quickly. The company responds to the complaints and reiterates the company policy which reads the company does not guarantee when a timeshare will sell.⁶⁷

It is important to remember that this and other sites with similar business models typically do not offer listing prices that are grounded in the actual transaction market.

BuyaTimeshare.com. BuyaTimeshare.com, based in Tampa, Florida, describes itself as “an internet advertising and marketing company for timeshare owners who seek to sell or rent timeshare by owner.”⁶⁸ BuyaTimeshare.com has a business

65. TUG BBS, <http://tugbbs.com/forums/>.

66. TUG BBS, <http://tugbbs.com/forums/>.

67. Better Business Bureau (BBB), <https://www.bbb.org/>.

68. See “About Buyatimeshares.com” at <http://bit.ly/2lklyCy>.

model similar to SellMyTimeShareNow.com and does not advise owners on realistic price setting. Buyatimeshare.com's terms of service state that its goal is "to create a marketplace that efficiently serves the needs of both Sellers and Buyers." It also states,

We do not warrant or guarantee any part of an actual or potential transaction between a Seller and a Buyer, including the quality, safety or legality of the timeshare advertised, the truth or accuracy of the advertisement.

...

We are NOT a licensed real estate broker....We do not provide Sellers or Buyers with any brokerage services, including, but not limited to: appraising or providing professional guidance regarding the value of a timeshare;⁶⁹

User complaints are similar in scope and nature to those made about SellMyTimeShareNow.com. Although the website touts its relationships with the Better Business Bureau, the BBB reports that the company is not accredited by it:

BBB files indicate that this business has a pattern of complaints concerning misrepresentation during the sales presentation, specifically that the consumers' timeshare will sell within a certain time frame and misrepresenting the type of services that are being provided.

On December 1, 2012, BBB contacted Buyatimeshare.com requesting information as to why the business believes the customers are filing the complaints, and what actions the business has taken to help eliminate the causes of complaints.⁷⁰

TimesharesOnly.com. TimesharesOnly.com is operated by Timeshares Only, LLC, located in Orlando, Florida. It entered the resale marketplace in 1994 and describes itself as "the largest retail timeshare marketplace." Its business model touts the integration of a timeshare sales program with interim services to rent units

to generate income for the owner until they are sold. The site encourages potential sellers and buyers to become members of affiliates to realize additional benefits of the programs.

Commentary on the TUG website indicates that TimesharesOnly.com is another upfront fee-based program, with additional revenues generated by commissions sought from buyers who express an interest in one of their listings. Timesharesonly.com is careful to note that the timeshares it lists "only advertisements."⁷¹

Timeshares Only, LLC, indicates an A+ rating by the Better Business Bureau and a long affiliation by the owner with the ARDA as its former chairman. However, the Central Florida Better Business Bureau indicates that this business is not BBB accredited; the site also notes eighteen complaints from consumers over the past three years, mostly related to advertising/sales issues or problems with services.

TimesharesOnly.com is an upfront fee-oriented operation. As a marketplace for advertising of timeshares, it appears to make little effort to assist potential sellers in setting a realistic, market-based asking prices in their listings. Many listings remain on the site for many years without selling, suggesting the asking prices are not representative of a market value.

Donation of Secondary-Market Timeshares and the Role of the Real Estate Appraiser

There are various ways in which real estate appraisers may become involved in timeshare appraisal assignments.⁷² Potential timeshare purchasers may ask appraisers to assist in determining an appropriate listing price. Owners of timeshare interests who are interested in disposition may ask an appraiser to check on the credentials and claims about activity in the secondary market of timeshare real estate agents

69. See "Terms of Services" at <https://www.buyatimeshare.com/terms.asp>.

70. BBB, <http://bit.ly/2Ws532j>; the BBB website indicates the company also does business under the website sellatimeshare.com.

71. The website reports that it is illegal in Florida for brokers to take upfront fees for listings and is careful to note that it is not acting as a broker for the timeshare listings. See "FAQ: Selling or Renting Your Timeshare," <https://www.timesharesonly.com/faq>.

72. LIA Administrators and Insurance Services and its legal counsel advise that timeshare interest valuations have posed legal liability and disciplinary risk for appraisers. They further caution that actions by the Internal Revenue Service relating to penalty assessments or criminal referrals may be outside the coverage provided by professional liability insurance policies.

or websites. However, one of the most likely assignments involves appraisal of timeshare interests for charitable donations.

Many timeshare owners simply give away their timeshare interests. A 2015 *U.S. News and World Report* article commented on the donation options as follows:

Give it away. RedWeek and TUG also provide the option to list a timeshare you're willing to give away for nothing. If you can find a taker, you'll at least save yourself the annual maintenance fees. You may find a family member or friend who would like to use it. Don't count on giving it to a charity. Most charities will not accept timeshares.⁷³

Despite the warning in the *U.S. News and World Report* article that most charities will not accept timeshares, there have been thousands of donations of timeshare interests in the United States. A number of charities have set up programs to accept donations of timeshares and thousands of timeshare interests have been donated to charities in the past two decades.⁷⁴

Appraisal assignments and "qualified" appraisal reports by "qualified" appraisers involving the "fair market value" of timeshare interests donated to qualifying charitable organization are subject to special Internal Revenue Service rules that must be followed. Although this article does not cover the detailed rules for complying with IRS requirements for charitable donation appraisals, previous articles in *The Appraisal Journal*⁷⁵ as well as another Appraisal Institute publication⁷⁶ cover the topic in detail. However, when considering

the two-tiered timeshare marketplace, a number of specific points need to be emphasized.

The first is that Internal Revenue Service regulations use the term *fair market value* rather than the more usual term *market value* used in financing appraisals. The Uniform Standards of Professional Appraisal Practice (USPAP) require an appraiser to use the definition appropriate to the purpose of the assignment and the use of the appraisal report. USPAP Advisory Opinion 22 (AO-22) states the following about the requirement to use the appropriate definition of *market value*:

Importance of Identifying the Source of a Market

Value Definition. Definitions of market value from different sources contain different conditions. Those differences can directly affect the scope of work that is necessary to develop credible assignment results. Each definition is unique, with authority only in a specific jurisdiction or to a specific client group. Therefore, identification of the source for the definition of value to be applied in an assignment is essential.

The source must be consistent with the jurisdiction having authority over the transaction in which the appraisal is to be used. For example, using a definition of market value other than the definition specified in regulations published pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) may invalidate that appraisal for use in a federally related transaction. Likewise, if an appraisal is prepared for use in litigation, using a definition of value other than the definition specified by the court having jurisdiction over the matter being litigated may disqualify that appraisal for use in that court.⁷⁷

73. Teresa Mears, "How to Get Rid of Your Unwanted Timeshare," *US News and World Report* (June 25, 2015), available at <http://bit.ly/31pGL7Q>.

74. A 2009 online article identified a number of charities that at that time accepted charitable donations of timeshare interests. See RCI VIP, "Charities Accepting Timeshare Donations," <http://bit.ly/RCIVIPdonations>. One charity mentioned is Donate for a Cause, a highly publicized charity involved in accepting donations of timeshare interests. During the past decade, Donate for a Cause was the subject of many news stories advising timeshare owners about the advantages of donating unwanted timeshare interests. See, for example, David Cherry, "Got an Unwanted Timeshare? Help Is Available," *AZFamily.com* (CBS television Phoenix, AZ affiliate), posted December 10, 2012, available at <http://bit.ly/2Zkmija>; and Deborah McNaughton, "Can't Afford Your Timeshare? How to Dump It," *Orange County Register*, December 2, 2012, available at <http://bit.ly/2HV2PIV>. Donate for a Cause also was the subject of litigation by the US Department of Justice alleging an "abusive tax scheme" that included deliberate overvaluation of the appraised values of 5,523 donated timeshare interests. See *United States of America v. Tarpey*, D. Mont., September 28, 2016, where the US district court issued a final judgment and permanent injunction against Donate for a Cause, prohibiting it from organizing or promoting any additional charitable donations; judgment available at <http://bit.ly/2JXDtTS>.

75. See, for example, Benjamin A. Blair, "What Appraisers Need to Know about the Final IRS Regulations on Substantiation of Noncash Charitable Deductions," *The Appraisal Journal* (Fall 2018): 254–264.

76. See, for example, Richard J. Roddewig, *Appraising Conservation and Historic Preservation Easements* (Chicago: Appraisal Institute, 2011).

77. Appraisal Standards Board, Advisory Opinion 22 in *USPAP Advisory Opinions*, 2018–2019 ed., Lines 92–101.

While in most respects, *fair market value* and *market value* have essentially the same meaning, in the Treasury regulations there is a significant addition to the definition of *fair market value* that has an important implication in timeshare valuation assignments involving charitable donations. The main definition of *fair market value* set forth in the Treasury regulations states as follows:

The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

However, the regulations then go on to add the following gloss on the definition:

If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quality, in the quantity contributed.⁷⁸

That section is very important to understanding the fundamental point that the same real estate product can sell in two entirely different marketplaces of buyers and sellers. It specifically recognizes that there can be a “business” marketplace—in the case of timeshares, the primary market consisting of sales by resort owners in their ordinary course of business—that is different from other markets in which the same product may sell—in the case of individual timeshares, the secondary resale market involving those who previously bought in the primary marketplace.

While IRS estate tax regulations do not necessarily govern charitable gift donations, the following language in Estate Tax Regulation §20.2031-1(b) helps in understanding how there can be various markets in which the same property interest can sell and the importance of using sales from the appropriate market; it states, “...nor is the fair market value of an item of property to be determined by the sale price of the item in a mar-

ket other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate.”

Note that the Estate Tax Regulation cited requires use of sale prices only in the market “*in which such item is commonly sold to the public.*” (emphasis added) When the appraisal assignment involves charitable donation of a timeshare interest by a participant in the secondary timeshare market, the “item” being sold is a timeshare interest held by an individual in the secondary market—not a timeshare interest sold in the ordinary course of the primary timeshare resort business industry.

Therefore, when appraising a charitable donation of a timeshare interest, it is important to use sale prices from the appropriate market sector. If the donor is the developer or management company entity, prices paid in the primary market may be appropriate to use, assuming the property interest donated would have all of the associated prerequisites that typically accompany timeshare sales at that location and there is a current, active marketing program for that product at the particular timeshare resort. When appraising for someone who has already purchased a timeshare interest and who would be a reseller in the secondary market, only sale prices paid in that secondary market should be utilized.

Conclusion

The valuation of a timeshare interest raises special questions not found in the typical real estate appraisal assignment. Special care must be taken to understand the timeshare interest being appraised and the particular marketplace in which that interest would sell.

The timeshare market is two tiered—there is a primary marketplace of higher-priced timeshare interests sold directly to consumers by timeshare resort developers or their management companies, and there is a secondary marketplace of significantly lower-priced timeshare transactions between individuals. The appraiser must take great care to match the sale prices used with the

78. 26 CFR §1.170A-1 (c)(2).

intended use and user of the appraisal report. Adjusting sale prices in the primary market to account for the terms and conditions of sale, non-real estate perquisites, and financing concessions can be difficult when appraising interests that will be sold in the primary marketplace. Adjusting for the difference between list price and sale price also can be problematical when appraising time-

share interests sold in the secondary marketplace. Finally, when appraising timeshare interests for possible charitable donation, Internal Revenue Service regulations and definitions must be carefully followed, and when appraising for an individual rather than the resort developer, care must be taken to use only sales from the secondary marketplace to support the appraisal.

About the Authors

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Additional Resources

Suggested by the Y. T. and Louise Lee Lum Library

Appraisal Institute

Lum Library External Resources Knowledge Base [Login Required]

Information Files—Residential properties, timeshare properties

American Resort Development Association

- **ARDA International Foundation Research Library**
<http://www.arda.org/researchlibrary/>
- **Industry Information**
<http://www.arda.org/news-information/industryinformation/overview.aspx>
- **Publications and Resources**
<http://www.arda.org/publications-resources/default.aspx>

Internal Revenue Service

Determining the Value of Donated Property (Publication 561)

<https://www.irs.gov/publications/p561>

Timeshare Consumer Association

<http://www.timeshareconsumerassociation.org.uk/>