

Proposal
for a new
Timeshare Directive

by the
**Timeshare Consumers Association
(TCA)**

NOTE: Reasons are in document tca_sanco_reasons.doc/pdf

1. Definition and Application

- 1.1. Timeshare is the provision of holiday accommodation for two or more discrete periods in the future.
- 1.2. This Directive is applicable to all legal or natural persons acting in the course of business. Herein described as “Businesses”.
- 1.3. This Directive applies to all transactions where the agreement value is greater than €250

2. Requirements

- 2.1. All businesses involved in selling or operating timeshare within the EU must be registered with the relevant business authority in an EU country.
- 2.2. All Purchase Agreements for timeshare must satisfy the disclosure requirements described in Clause 6 later. Each separate product or service offered should have a separate Purchase Agreement.
- 2.3. The list of minimum disclosure items (Clause 6) should be modifiable by regulation.
- 2.4. All schemes to promote the sale of timeshare should make it clear that timeshare is being promoted and all printed material should carry a statement “Regulated by the Timeshare Directive 2007” and should state the name of the Seller (defined later)

- 2.5. Any scheme which promises any payment to the Buyer in the future must be regulated by the relevant financial authority in the country in which the business is registered.
- 2.6. The language of any promotional material on which the Buyer could be expected to rely; the Purchase Agreement; all supporting documents related to the Purchase Agreement and all subsequent correspondence with the Buyer/Owner should be in a language (of the EU) of the buyers choice and be specified within the Purchase Agreement
- 2.7. Any business providing a “resale” service to owners may not take any advance payment from the Owner for any service.

3. Buyers right to cancel and ban on taking of any money during the cancelation period

- 3.1. The cancellation period starts on the date (day 1) when all parties have signed the Purchase Agreement and the Buyer has received a signed copy.
- 3.2. Buyers should have not less than 28 calendar days to post a notice of cancellation of the Purchase Agreement. No reason need be given and no costs should be incurred by the Buyer.
- 3.3. This cancellation notice must be in one of the following forms:-
 - 3.3.1. A letter sent by a system which provides proof of posting
 - 3.3.2. A fax, provided that a confirmation of receipt is produced by the sending fax machine
 - 3.3.3. Email, provided that evidence can be produced that the email reached the intended recipient
- 3.4. This right to cancel must be clearly disclosed in the Purchase Agreement, immediately above the place where the Buyer(s) signs, in the form of the following statements:-
 - 3.4.1. “You have until *day/month/year* to cancel this agreement. This date must not be less than 28 days from the date of signing this Agreement and you have received a signed copy. You should post a notice to the *Seller* saying that you are cancelling, using any

means which provides proof of posting (including by fax or email) provided you retain evidence of posting, not later than the date shown”

3.4.2. “Where a linked finance arrangement is agreed the timely cancellation of this Purchase Agreement will automatically cancel the finance agreement”

3.5. No money may be taken from the Buyer in respect of the Purchase Agreement or any other agreement that may be associated with the Purchase Agreement until the expiry of the cancellation period.

3.6. Where the purchase is into incomplete accommodation no payment may be taken from the Buyer until the Buyer has received written confirmation from the Seller that the accommodation and all related services are available for use.

4. Ownership

4.1. All timeshare schemes must be totally controlled by the individual owners in a democratic scheme within three years of the first sale being made.

4.2. All Buyers must become members of a “club” (incorporated or un-incorporated) with the right to:-

4.2.1. a single vote for each time period (or points equivalent) owned in a year

4.2.2. attend General Meetings (with postal votes for those unable to attend) to decide on:-

4.2.2.1. Fees

4.2.2.2. Sinking fund (where appropriate)

4.2.2.3. Quality standards

4.2.2.4. Employment of a management company including terms of employment of the company.

4.2.2.5. Any change to the scheme for use of the accommodation (requiring a 75% majority)

- 4.2.3. Control of the Club should be effected through an elected Committee consisting of not less than four ordinary owners elected at a General Meeting.
- 4.2.4. Any business involved with the Club should not have any right to vote or participate in the operation of the Club .
- 4.3. Developers must pay all fees on the same basis as owners for all unsold periods or points equivalent.
- 4.4. The collection and disbursement of all fees should be under the control of the club [but responsibility may be assigned to the management company under contract]

5. Purchase Agreement

- 5.1. The purchase of timeshare must be established in the form of a Purchase Agreement.
- 5.2. The Purchase Agreement should be headed “This is a Purchase Agreement for the acquisition of timeshare and is regulated by the Timeshare Directive 2007”
- 5.3. The Seller must be the legal entity responsible for providing (delivering) the timeshare product, although the Seller may use another legal entity as their agent.. All payments must be made to the Seller or to an independent stakeholder [trustee, notary etc.]
- 5.4. Where the Purchase Agreement makes reference to another document there should be an area where the Buyer should initial to state that they have received the relevant document(s).

6. Minimum disclosure information in the Purchase Agreement

- 6.1. The following information – “minimum disclosure information” - must be disclosed within a Purchase Agreement in a print size no smaller than 10pt. in a font in common use for legal disclosure which should be uniform throughout the Purchase Agreement. Where there is no information for a specific item then “None” or “Not relevant” should be entered.

6.2. Seller, who must be the provider of the service:-

6.2.1. Full legal name

6.2.2. If incorporated, the country of incorporation (must be in EU)

6.2.3. Full postal address (must be in EU)

6.2.4. Fax number & email address (if applicable)

6.2.5. Full details of the bank (which must be in the EU) to which payments in respect of this Agreement should be made.

6.3. Agent (where relevant)-

6.3.1. Full legal name

6.3.2. If incorporated, the country of incorporation (must be in EU)

6.3.3. The legal relationship between the Agent and the Seller

6.3.4. Full postal address (must be in EU)

6.4. Buyer:-

6.4.1. Full name

6.4.2. Full postal address

6.5. Any other party to the Purchase Agreement:- [trustee, stakeholder, management company, club organisation etc.]

6.5.1. Full legal name

6.5.2. If incorporated, the country of incorporation (must be in EU)

6.5.3. Full postal address (must be in EU)

6.5.4. Statement of the service they provide and their relationship with the Seller

6.6. Date(s) and place(s) of signing of this Agreement by the Seller and by the Buyer

6.7. Simple explanation of the rights being purchased. [ie. Fixed week of timeshare, floating week of timeshare. Points system, holiday club, number of periods of holiday per year etc.]

6.8. Fuller explanation of the rights being purchased with the statement "The following are guaranteed":-

- 6.8.1. Accommodation size:-
 - 6.8.1.1. Number of bed places in private area
 - 6.8.1.2. Number of bed places in public area
 - 6.8.2. Accommodation quality assessed by
 - 6.8.3. Period of occupation (week number plus calendar or similar unequivocal statement)
 - 6.8.4. Number of periods of use (in a year or duration of the agreement)
 - 6.8.5. Where the scheme of use involves a booking system:-
 - 6.8.5.1. a statement that “This is a booking system. All bookings are subject to availability so a specific place or a specific time period cannot be guaranteed.”
 - 6.8.5.2. Who and how to contact for booking accommodation.
 - 6.8.6. Where the scheme offers discounts then a minimum discount % against a recognised base price [leading travel agent etc.] should be stated.
- 6.9. Start date and finish date of rights of use. Where the accommodation is incomplete, the exact date by which it will be ready for use.
- 6.10. Whether the Agreement can be renewed, on what terms and when.
- 6.11. Price and payment details
- 6.11.1. full price payable (must be a EU currency) inclusive of all taxes etc.
 - 6.11.2. date(s) of payment(s)
 - 6.11.3. to whom payments should be made . Payments must be made by the Seller or an independent stakeholder.
- 6.12. A statement “Failure to pay the full amount by the required date(s) will place the Buyer in breach of contract. The Seller would then be entitled to take recovery action including by legal means”.
- 6.13. Future costs:-
- 6.13.1. a list of all services available to the Buyer and the terms on which these are provided.
 - 6.13.2. a list of all common facilities that will be available to the Buyer and the terms on which these are available
 - 6.13.3. current amount & currency (must be a EU currency) of any periodic or utilisation fees payable inclusive of all taxes etc. and the timing of the payments.
 - 6.13.4. how future costs are regulated.

- 6.13.5. date of the first payment is due
- 6.14. Statement “Failure to pay future charges when demanded could result in loss of all rights and may involve legal action for recovery”
- 6.15. Statement “The absolute control over the management of the club or resort that is the subject of this Agreement rests with the ordinary owners/members through a democratically managed club”.
- 6.16. A statement “Other costs that may be incurred by the buyer in making use of the timeshare are[flights; transfers and food.etc.]”
- 6.17. Where a promise of payment to the Buyer is made, a clear statement of the terms of that payment and the regulatory authority under which the scheme operates.
- 6.18. Cancellation rights should be disclosed as clause 3.4 above
- 6.19. Agreed language (must be an EU language)
- 6.20. Law and jurisdiction of the contractual matters of the Purchase Agreement (must be an EU country).
- 6.21. Statement “Should you wish to resell in the future what you have herein agreed to buy you may not get back all that you have paid.”
- 6.22. Statement “Any breach of the requirements of the Timeshare Directive will make this Purchase Agreement null and void. In the event of such breach any payment that has been made by the Buyer should be returned in full to the Buyer, on demand, within 28 days.”
- 6.23. A copy of the Timeshare Directive can be viewed/obtained

7. Sanctions

7.1. Failure to provide any of the minimum disclosure information or providing false information will be considered a breach of the Directive rendering the Purchase Agreement null and void.

7.2. Any breach of the following will be subject to criminal sanction with a maximum fine on conviction of €50,000 for each count:-

7.2.1. A business systematically failing to comply with the Directive

7.2.2. Failure to fully refund money to the Buyer where a breach of the Directive is demonstrated and payment is demanded by the Buyer. See Clause 6.22

7.2.3. The failure by the Seller to disclose the cancellation rights. See clause 3.4

7.2.4. Taking of any money before the expiry of the cancellation period.. See clause 3.5

8. Consumer Awareness

8.1. National Governments should ensure that all consumers are advised of the existence of the Timeshare Directive and the protection that it provides.

8.2. National Governments should actively promote Code(s) of Conduct to enhance the consumer protective aspects of the Timeshare Directive

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