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Westgate Resorts Clamps Down on Resales Through “Outside” Brokers

Company enforcing exclusive brokerage and right-of-first-refusal provisions

In a letter sent to a number of resale brokers, the attorneys for Orlando’s Westgate Resorts have demanded that the brokers “immediately cease and desist all attempts to market and resell Westgate Units” or else face a lawsuit for injunctive relief and damages. The basis for the demand, according to the attorney’s letter, are the timeshare document provisions in which each owner grants Westgate’s realty company (1) the exclusive right to act as the owner’s sales agent, and (2) an option permitting Westgate to purchase the timeshare interest on the same conditions as offered to the owner by a prospective buyer, commonly known as a right of first refusal.

When asked about Westgate’s motivation for the sudden enforcement of these provisions, Michael Marder, Westgate’s attorney, stated that Westgate was concerned about its owners paying upfront fees to brokers who did little to sell the units and the fact that several resale companies have claimed to be affiliated with Westgate. Marder added that Westgate also had a right to designate an exclusive broker and was trying to direct owners to brokers who do not charge upfront fees.



any owner from selling their unit(s). Owners have the right to list/advertise their ownership with whomever they choose. The only requirement that Westgate has is to be able to verify the selling price – once a purchase agreement has been approved.

“This allows Westgate the opportunity (based on inventory demands) to purchase the unit instead. That’s what the ‘the first right of refusal’ means.”

The letter above doesn’t mention a commission split; however, when other resale brokers have persevered to complete their resales, they were confronted with demands for 50 percent of their commissions. In some instances, Westgate’s broker agreed to accept one-third of the commission.

Several brokers have engaged an attorney to determine if they have a basis to challenge the enforceability of the Westgate resale restriction.

TimeshareResalesUSA, an Orlando firm headed by Carol Levene, claims to be the only designated resale broker for Westgate. In our call to her with questions about Westgate brokers, Ms. Levene would not provide any information with-

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The reaction of resale brokers was predictably angry. Thomas Yearly of Orlando’s Timeshare Store (which does not charge upfront fees) sent a letter to Westgate owners who had listed with him, along with a copy of the attorney’s letter, notifying them that his company can no longer market their units.

About two and a half weeks after the initial letter from the attorney, Harvey Rubinson, director of “corporate owner solutions” for Westgate, sent an e-mail letter to owners with the following:

“Westgate Resorts will not prevent

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Westgate clamps down

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out consulting with her attorney. Subsequently, one of Westgate's attorneys called TimeSharing Today in response to the call to Ms. Levene. The attorney acknowledged that TimeshareResalesUSA is a designated broker, but refused to provide further information, including whether there are now other designated brokers.

Notwithstanding attorney Marder's expressed concerns about upfront fees, TimeshareResalesUSA will not accept listings from prospective sellers unless they register for its online auction site, at fees ranging from \$500 to \$750.

Typically, a right of first refusal is a smooth arrangement in which everyone involved in the resale process knows exactly what to expect and what to do. "After a contract is obtained for a set price and terms, the broker or title agency presents the contract to the developer for the right of first refusal process," says an Orlando area timeshare resales industry support person. "The right of first refusal allows the developer to step in the place of the buyer under the terms of that contract. It does not give them the right to renegotiate a new price." If the developer says "yes," then the developer acquires the unit. If the developer says "no," and waives its rights, then the closing can continue with the contract purchaser.

Westgate Resorts' right of first refusal not only gives Westgate the opportunity to purchase units that are being resold cheaply, but also alerts it to a transaction in which it can assert its exclusive resale

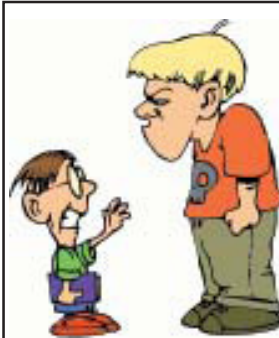
agency rights to demand a commission.

"Westgate is trying to enforce the right of first refusal and resale clauses in all the development phases for all their resorts," says a Orlando area timeshare resales industry support person. "However, only half of their Central Florida phases' condominium documents actually contain these concepts, according to documents in the public records in Orange and Osceola Counties, Florida."

By all accounts, David A. Siegel, through his Westgate Resorts, is one of Orlando's most successful vacation-ownership developers. Unlike many others who have sold out to larger, more diversified companies, Siegel has retained ownership of his original resorts while branching out to other destinations (Daytona Beach and Miami, Florida; Gatlinburg, Tennessee; Las Vegas, Nevada; and Park City, Utah). His accomplishments are described in detail on the Westgate Web site.

Until recently, Siegel wasn't a member of the American Resort Development Association (ARDA), but he is now, and that means he's supposed to subscribe to ARDA's *Code of Standards and Ethics*. If owners feel they have an ethics complaint against Siegel and Westgate, they can notify ARDA's ethics committee.

Will complaining to ARDA do any good? ARDA says yes. The organization exists primarily to further the interests of developers, but among those interests are furthering the timeshare industry's public image and keeping owners happy. To this end, ARDA posts consumer information on its Web site and wants to know about its members' alleged misbehavior.



Westgate recently sent a letter to a title closing agent stating that Florida Ranch Lands II, Inc "has been appointed by the Developer to act as Owner's exclusive sales agent in connect with resale of the Unit..., is entitled to and hereby demands payment of a sales commission equal to Fifty Percent (50%) of the purchase price for the resale of the Unit." The Orlando address to which such commissions are to be sent at the time of closing is the corporate office of Westgate Resorts' parent company, Central Florida Investments, Inc.

One title closing statement shows that the seller paid its own broker a \$500 commission and paid Florida Ranch Lands II, Inc. a commission equal to one-half of the \$3,200 selling price.

After discussions between resellers and Florida Ranch Lands in other transactions, some of its commissions were reduced to 30 percent of the selling price.

In another transaction, Westgate exercised its right of first refusal to purchase the unit and also requested the closing agent "to forward fifty percent of the applicable commission" to Westgate's designated broker.

One Westgate owners' saga in trying to resell his unit

"I could have sold a valuable piece of real estate quicker than it took me to sell one timeshare week," declares the Chicago owner of a Westgate unit-week. Here is the actual timeline for that transaction as provided by the owner:

- November 8, 2003 - Unit listed.
- November 18, 2003 - Unit sold.
- December 9, 2003 - Signed copies of Seller's "Open Escrow" documents submitted to a timeshare closing service.
- December 30, 2003 - All seller closing documents signed.
- January 26, 2004 - All buyer closing documents signed.
- February 11, 2004 - Closing documents submitted to the resort for "First Right of Refusal" review.
- March 1, 2004 - Letter received from closing company stating Westgate Resorts will buy back unit.
- March 1-29, 2004 - The closing company returned all the buyer's funds they were holding. Seller called Greenspoon, Marder, Hirschfeld, Rafkin, Ross & Berger on two occasions requesting status on the closing. No one able to provide status on the unit. The law firm suggested that the seller call Westgate Resorts. Seller called Westgate Resorts and was informed verbally by Westgate Resorts that they had sent the letter exercising the right of First Refusal in error. Westgate Resorts agreed to research how to proceed with the closing.
- April 2, 2004 - Seller called Westgate and requested an update on the closing. No information was readily available.

Westgate Resorts said they would have an answer Monday.

- April 5, 2004 - Seller called and no information was ready as promised. Westgate Resorts did not return a follow-up call.
- April 6, 2004 - Seller called and firmly requested a status on the transaction. Westgate Resorts informed seller that Westgate Resorts would agree to purchase his unit for \$2,200, which was much less than what was agreed to in the original sales/closing contract. Also, as part of the agreement negotiated with the buyer, the seller had given use of his 2004 week to the buyer; the seller already had paid the annual maintenance fee for 2004.
- April 14, 2004 - Westgate agrees to pay original contract price, except maintenance reimbursement. Owner rejects offer.
- April 15, 2004 - Westgate admits they have no right of first refusal in Seller's phase. Seller will try to revive original deal.

Westgate Message Board

Westgate owners who want to exchange viewpoints or seek information from other owners are reminded that there is an online message board dedicated to Westgate resorts. Go to **tstoday.com**. You will see a menu item for Message Boards with a link to "Resorts/Destinations." At that page, you will find a link to the Westgate Message Board.

Letters to the Editor

Owners' written comments concerning Westgate's position on resales are welcomed. A representative sample of opinions will be published in the next issue.

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