

Case Study



Taking Club Property out of Trust – Resort in the Canaries

Key Players

- A) Founder Member: Usually the original developer who builds the resort and as timeshare sales are made, places property in trust with the Trustee;
- B) The Trustee: Holds the title to the freehold property on behalf of the members of the Club
- C) The Management Company: Contracted to manage the resort, cleaning, maintenance, and collection of maintenance fees from members;
- D) The Club: An unincorporated body with no legal standing. When a timeshare buyer pays the price of the timeshare they are admitted to the Club, become members and are bound by the Club Constitution;

Key Documents

- A) Club Constitution: The document that governs the relationship between the members. It includes duration of the Club, powers of the Committee, general meetings, obligations to pay management fees and voting percentages required to change the Constitution;
- B) Management Agreement: Agreement with management company to carry out the tasks assigned to them. Includes term of agreement, fees, obligations and termination provisions;
- C) Deed of Trust: Deed between Founder Member and Trustee in which the Trustee takes the property into trust to be held on behalf of the members;
- D) Club Rules: Document that sets out general rules of the Club such as opening times of common areas, restrictions on noise and bringing pets onto Club property;
- E) Purchase Agreement: Contract between sales company/founder member in which a buyer pays agreed price to use the holiday property and becomes a member of the Club.
- F) Deed of Adaptation: Spanish deed registered at the local land registry with the above key documents A to D. The Land Registry register a notice against all the holiday property stating that it is subject to a timeshare regime.

Steps Taken

The resort had too many apartments in the Club for the decreasing amount of timeshare owners and rentals were not making up the difference in the deficit of management fee income.

The Committee reached a unanimous decision that it was time for 4 units to be taken out of trust and sold on the open market which would result in a cash injection for the Club. The Constitution was carefully reviewed to consider percentage of votes required and then notices of the Special General Meeting (SGM) were drafted and agreed between the Committee, Management Company and the Club Solicitor.

A SGM was called in which the members were asked to vote to release the surplus apartments, appoint

lawyers to complete the release of the apartments from the Club and authorize the Committee and especially the President and Treasurer to sign powers of attorney in favour of the lawyers to implement the release of the property from the trust.

The vote was passed with a significant majority. The Club solicitor arranged translations of the SGMs minutes, powers of attorney were signed by Management Company, the President and Treasurer in favour of the solicitor and a Spanish deed of release prepared. This deed of release was signed before a Spanish notary and specifically refers to the apartments to be released and attaches the minutes of the SGM and powers of attorney.

Costs included reasonable legal fees, notary and land registry costs and taxes on the value of the deed known as stamp duty.

If you are considering a release of trust property, contact us to discuss the process.