

Timeshare Schemes

Use this fact sheet if:

- You bought, or are considering buying, Timeshare in Australia.
- You want to complain about the actions of a Timeshare company.

!! IMPORTANT !!

If you have entered a Timeshare contract **prior to 30 September 2007** you may only have **5 business days** to cancel (“cool off”).

After 30 September 2007 you only have **14 calendar days** to cancel (“cool off”).

Don't delay: it is much more difficult – and often impossible – to get out of the contract after the cooling off period has lapsed.

What are timeshares?

These days, Timeshares are usually:

holiday credits in [a] Club, which may be redeemed for holiday accommodation at various holiday destinations in Australia and overseas.¹

Key Consumer Issues with Timeshares:

The key problems that some consumers report about Timeshares are:

- Their resale value is often much less than the purchase price;
- The use of high pressure selling techniques by sales representatives;
- Difficulties in understanding all the terms and conditions of Timeshare contracts;
- Ongoing fees are charged, whether the holiday credits are used or not;
- Difficulties in getting best value use out of their Timeshare due to availability problems with their Timeshare accommodation;
- Misrepresentations in relation to the benefits associated with Timeshares; and
- Difficulties in cancelling the agreement soon after entry into it.

Timeshare is a complex concept and it is not unusual for consumers to be confused about the nature of what they are purchasing. Furthermore, any confusion experienced by a consumer can be exacerbated by the seller's conduct at the point of sale.

¹ Obtained from <http://www.asic.gov.au>.

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How are timeshares sold?

Timeshare companies often use high-pressure selling techniques in order to induce consumers into entering their scheme.

A Timeshare company may first approach you through telephone contact, a raffle or competition, or by approaching you personally at a holiday resort. The representative for the Timeshare company will then usually invite you to a seminar held by them with a reward offered for your attendance.

At the seminar, Timeshare sellers may use high-pressure selling techniques to get you to sign up. For instance, they may tell you that the only opportunity you have to purchase a particular Timeshare deal is at the seminar itself.

Some consumers have said that they were made to feel 'stupid', guilty and uncomfortable if they did not want to enter into the scheme. The pressure of having to make the decision at the seminar, the number of sales staff – often one allocated per family – can be confronting for many consumers.

There have also been cases of sellers misleading consumers about the nature of Timeshares or the operation and consequences of the contract.

Common Misrepresentations:

Some common misrepresentations made by Timeshare companies in the past include:

- You are buying an interest in *real* property.
- Capital growth in the area in which the Timeshare accommodation is located will result in a growth in the value of the Timeshare itself.
- Timeshares are an investment, therefore you will have no problem reselling your Timeshares on the open market and for a better price than you purchased them for.

If you have entered into a Timeshare scheme in reliance on false or misleading information regarding the scheme, you can lodge a complaint with the Financial Industry Complaints Scheme ("FICS") seeking rescission (cancellation) of the contract and a refund of monies paid (*see information regarding lodging a complaint further below*).

Paying for Timeshares:

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As well as paying what is often a substantial sum (between \$12,000 and \$25,000) for the Timeshares themselves, you will usually be liable for other fees and charges associated with managing the scheme and maintaining the upkeep of the holiday accommodation, whether or not you use the Timeshare.

Credit Contracts:

N.B: Timeshares are **not** credit products. However, it is common for a related credit agreement to be entered into in order to pay for the Timeshare.

If you have entered into a credit contract in order to pay for the Timeshare, you are probably being charged interest under the credit contract as well as fees and charges relating to obtaining the credit (*see further below about getting out of a tied loan contract*).

What information must the Timeshare company provide me?

A Timeshare company must provide you with certain documents at the point of sale. Their failure to do so may give you the right to cancel the Timeshare contract.

Below is a list of the main documents that you should be provided upon entering a timeshare scheme:

- Product Disclosure Statement (“PDS”):
A PDS sets out some of the terms and conditions of the Timeshare contract. It will also contain information about the product including: features of the product, fees that apply, the benefits and risks of purchasing the product, any commissions that are payable, information about complaints handling and cooling off rights and all other information that might reasonably be expected to have a material influence on your decision to purchase the Timeshare. A PDS must be set out clearly and concisely and contain sufficient detail about the scheme to enable you to compare similar products.
!! IMPORTANT !! The PDS may look like a glossy advertising brochure for the Timeshare company. BUT, it contains important terms and conditions relating to your entry into the Timeshare contract.
- A copy of the Timeshare contract
- A copy of the Timeshare application
- A copy of any related credit application together with a copy of the credit contract
- A Cooling Off Statement
This statement alerts you to your right to a cooling off period and must be set out on a *separate* document in a form approved by ASIC (see below).

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If the Timeshare company fails to provide you with one of these documents, or the documents provided are out of date, deficient or contain false or misleading information, you may have a right to withdraw from the Timeshare contract. You will need to exercise this right as *soon as possible* after discovering the problem, particularly as some time limits may apply. We recommend you seek legal advice or contact a consumer affairs agency.

Getting Out of the Contract

If you have just signed up to a Timeshare contract, you may still be within the “cooling off” period (see further) - **act immediately**.

Even if you are uncertain about wanting to get out of the contract during the cooling off period and/or you experience difficulties in contacting the Timeshare company to have any questions you have answered, we recommend that in the meantime you still exercise your cooling off rights. You can always sign up to the deal again, after you have had your questions answered to your satisfaction.

N.B - Do not be deceived into believing that what the sales person said about the Timeshare scheme being a “once in a lifetime offer” is true, it very rarely is.

It is much more difficult – often impossible to cancel after the cooling off period is up. However, if you have concerns about how the Timeshare was sold to you, or you believe you were misled, you may have rights under law to have the contract cancelled or to obtain some other relief.

In general, if you are able to withdraw from a Timeshare contract, you are also entitled to terminate any tied loan contract. The finance company may also be liable for any misrepresentations made by the seller in relation to the Timeshare contract and/or the credit contract.

Cooling Off Period:

Timeshare schemes must provide a consumer with a cooling off period in which they can cancel the contract and obtain a refund of all monies paid.

As stated above, if you enter into a timeshare contract *prior to 30 September 2007* you *may* only have five (5) business days to cool off. If you are unsure how many days you have to cool off, seek legal advice **immediately**.

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However, *from 30 September 2007 onwards* all Timeshare schemes must, in accordance with ASIC policy, provide a consumer with a cooling off period of fourteen (14) calendar days within which to provide written cancellation of the contract to the Timeshare company without incurring penalties for early termination.

If you cancel the Timeshare contract within the cooling off period, you are entitled to a refund of all monies paid under that contract.

When the cooling off period begins:

The cooling off period begins when all the required documents have been given to you AND you have acknowledged in writing that you have received these documents. This is usually at the time that you sign up for the Timeshare.

Exercising your cooling off rights:

The Timeshare company may have given you a blank form for the purpose of 'cooling off' (canceling). If you have not been provided with a form, you can write to them and tell them you withdraw from the contract within the cooling off period.

Make sure to sign and date the letter and keep a copy for your records. It is also advisable to use Registered Mail, so that you can prove you sent it. Further, if time is tight, we recommend that you send the letter by fax and post (see further below for a sample letter).

Even if you have missed the cooling off period, you may have a dispute based on misrepresentation or other unfair conduct.

Dispute Resolution & Regulation of Timeshare companies:

Timeshare companies are required to be a member of an external dispute resolution scheme. The relevant scheme that applies to Timeshare companies is FICS.

FICS provides free assistance in resolving complaints with Timeshare companies. This is generally done through a process of conciliation, which attempts to obtain mutual resolution of the dispute.

Formal Determination of your complaint:

If parties involved in a complaint to FICS cannot resolve the matter, it can be referred to a Panel or Adjudicator for a formal determination, which is binding on the Timeshare company.

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Before taking a complaint to FICS, FICS generally requires you to try and resolve the issue with the Timeshare company first.

Complaint not resolved:

If the complaint has not been satisfactorily resolved by the Timeshare company you may then make a complaint to FICS.

A complaint may be made to FICS by –

- Writing to:
Financial Industry Complaints Service
PO Box 579
Collins Street West
Melbourne Vic 8007
- Ringing FICS on 1300 780 808 or
- Downloading a Complaint form from www.fics.asn.au/Complaint/default.asp

The contents of your Complaint:

It is important to outline all of your concerns about the Timeshare scheme and the circumstances of your entry into it in your complaint.

For instance, start by setting out the history of your dealings with the company, from first contact to entering into the scheme and any other contact you have had since entry.

Try and be as clear as possible about dates and what was said to you.

Consider including the following:

- anything that the sales representative told you that you now think was incorrect or misleading;
- any conduct by the sales representative that you think was unfair; and
- anything in the documents given to you that is different to what you were told or what you believed was the case.

Make sure to keep a copy of your complaint.

For more information about how to make a complaint refer to Consumer Action Factsheet sheet '*How do I make a Complaint about a Debt Collector or Creditor?*'

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Sample Letter: Terminating the contract during the cooling off period.

Date

Your Name & address

Name & Address of Timeshare company

Dear *(if you do not have a name, try "Sir/Madam")*

Re: Agreement between [*insert your name*] and [*insert name of Timeshare company*], dated [*insert date of contract*].

I refer to the above contract and hereby exercise my cooling off right and withdraw from my agreement with [*insert name of Timeshare company*] for the purchase of [*name of scheme entered*] together with any related finance agreement entered for the purchase of such Timeshares.

Accordingly, I request that you immediately return all monies paid by me to date, failing which a complaint will be lodged with the Financial Industry Complaints Service.

Your cheque should be made payable to the writer and sent to the address below:

[insert address]

Yours faithfully

[insert signature]

[Print name]

cc: [Name & address of finance provider if relevant]