

# Small developers can score with vacation club point systems, too

*A veteran industry attorney argues that point systems can start small and grow — if necessary safeguards are in place.*

As big-time developers like Hilton, Fairfield, and Disney catch timeshare's wave of the future with vacation clubs, where does this leave small developers?

"Right in the middle of the action with great opportunities," according to California attorney John Rogers Burk, whose clients have included vacation ownership developers, large and small, for over more than two decades.

"As long as adequate safeguards are in place, flexible vacation club point-ownership systems are just as viable for the small developer as the large," says Burk, adding that right-to-use point systems allow developers to start small and exercise flexible opportunities for growth.

His view runs counter to the perception of many in the industry that point systems are suited only to clubs with large memberships and many locations.

To dispel this notion, Burk points to the example of one of his clients, a point-based West Coast vacation ownership club, which entered timesharing six years ago with just eight units at two locations. From this small beginning, the club is headed toward \$70 million in sales this year — through skillful implementation, marketing, and management of their program.

The required safeguards vary for each case and jurisdiction, but the basic considerations are these:

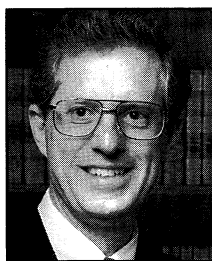
**(1) Financing:** Adequate financing must be available -- or committed -- for acquisition, marketing, and sales, and initial operating expenses and maintenance. Nobody has yet found a way around this prerequisite, but by being able to start small, the size of the financing requirement can be contained.

**(2) Control:** The ownership entity should be a nonprofit corporation in which all members have a vote to control the property and the affairs of the club.

**(3) Operating budget:** An ad-

equated budget and assessments must be provided, with financial assurances funded by the developer during the start-up period. The budget must cover taxes, operating expenses, short- and long-term maintenance costs, and capital reserves.

**(4) Independent escrow:** For protection of purchase money, it must be held independently, not allowing the developer access to it until the membership is issued.



***Burk: "... (with adequate safeguards) vacation club point-ownership systems are just as viable for the small developer as the large."***

**(5) Ownership:** Each ownership must be backed up by a lien-free club ownership of property to be used by the members.

**(6) Inventory control:** The escrow company must also monitor sales closings to make sure the points issued to members do not exceed the total points available for annual vacation days in lien-free units.

**(7) Recorded declaration.** The units in the club need a recorded declaration dedicating the units to the club program and stating how many points are allocated to each unit for annual occupancy.

Burk also assumes that the developer will comply with all applicable consumer protection laws such as truth-in-lending, equal credit opportunity, interest limits, registration, and disclosures. Of course, all marketing laws and regulations and the American Resort

Development Association's Code of Standards and Ethics should be complied with, as well.

And he says that it almost goes without saying that from a sales perspective, and assuming a quality project, it is important to have an affiliation with one of the large exchange companies.

Burk emphasizes that right-to-use vacation clubs afford the flexibility consumers want today.

He argues that the product the vacation club developer is selling is essentially the services and use of real property, not the property itself. "Deeded fee ownership [the most common legal format for timesharing] has become so encumbered with laws and restrictions that transferring and managing each title is an unnecessary burden to all concerned."

On the other hand, "voting right-to-use clubs [see number 2 above] give members the same benefits without the headaches. Under right-to-use point systems, all transactions — including changing the size and term of ownership, transferring ownership, clearing title, foreclosure, etc. — are less time consuming, less costly, and less complex."

Burk notes that small developers, particularly, lack the resources required "to traverse more cumbersome deeded-fee transactions," and that "right-to-use point systems can free them up to devote more time and money to development and marketing where they maximize their efforts."

He sees right-to-use point programs as the wave of the future — because they provide what consumers want and because the developer "doesn't have to be big to score." ■

**John Rogers Burk** practices law in Roseville, California, near Sacramento. His clients have included major point-based, right-to-use vacation clubs, as well as many other timeshare and resort developers.