

Timeshare schemes

Key messages:

- carefully consider what you are getting before you purchase an interest in a timeshare scheme; or
- there are a number of protections that may assist you if you think you have got a bad deal.

!! IMPORTANT !!

If you have entered a Timeshare contract you will have a cooling off right which will give you a limited time to cancel. The time limit will usually be:

- if the operator is a member of the Australian Timeshare and Holiday Ownership Council (ATHOC) - **7 days**; or
- otherwise - **14 days**.

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

If you cancel the contract in time, the Timeshare company must pay back any money you have already paid.

What are timeshares?

Timeshares are usually schemes which allow points or credits to be redeemed for holiday accommodation.

Key Consumer Issues with Timeshare:

Some consumers who have purchased timeshares report:

- the resale value is much less than the purchase price;
- high pressure selling techniques have been used;
- accommodation is difficult to book at suitable times;
- ongoing fees are charged, whether the holiday credits are used or not.

A number of recent decisions have highlighted other problems experienced by some consumers, such as:

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- the failure to make appropriate enquiries and give proper reasons for recommending the purchase of timeshare
 - [Financial Ombudsman Service Adjudication 2 May 2011 \(Case Number: 22381\)](#)
 - [Financial Ombudsman Service Determination 22 December 2011 \(Case number: 215258\)](#)
- misrepresentations about the product timeshare product; and
 - [FOS Determination 6 September 2011 \(Case number: 208661\)](#)
- accommodation was infested with cockroaches and without 'ocean views'
 - [Guriguis v Worldmark South Pacific Club \(General\) \[2011\] NSWCTTT 288 \(7 July 2011\)](#)

Timeshare is a complex concept. It is not unusual for consumers to be confused about what they are purchasing. Any confusion experienced by a consumer can be made worst by the seller's conduct at the point of sale.

How are timeshares sold?

Timeshare companies sometimes use high-pressure selling techniques to get you to enter 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.

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Paying for Timeshares:

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:

Timeshares are **not** credit products. However, it is common for a related credit contract 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.

Contact Consumer Action Law Centre for advice on whether or not you can get out of the credit contract.

What information must the Timeshare company provide?

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, what happens if you don't pay fees and charges and all other information that might reasonably be expected influence 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

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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).

- *A Statement of Advice (“SOA”)*:

You should be given a SOA if the sales staff have told you that they think the Timeshare is a good deal for you. They should not do this unless they have talked to you about your financial position and your goals and objectives. The SOA should explain why buying the Timeshare fits with your goals and objectives.

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.

Getting Out of the Contract

If you have just signed up to a Timeshare contract, you may still be within the “cooling off” period - **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 credit contract that was linked to the Timeshare contract (generally this is where the credit contract was organised by the timeshare company rather than by you). 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 you with a cooling off period within which you can provide written cancellation of the contract to the Timeshare company without incurring penalties for early termination. If you do this you will be entitled to a refund of all monies paid.

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You have a right to a **seven-day cooling off period** after signing if the timeshare operator is a member of the Australian Timeshare and Holiday Ownership Council (ATHOC). If the timeshare operator is not a member of ATHOC you will have a **14-day cooling off period**.

If you are unsure how many days you have to cool off, seek legal advice **immediately**.

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. If you have entered into a credit contract to finance the Timeshare contract, you should seek legal advice as to whether you can cancel the credit contract as well.

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 schemes that applies to Timeshare companies are the [Financial Ombudsman Service](#) (FOS) and the [Credit Ombudsman Service](#) (COSL). Most Timeshare schemes are now with the [Credit Ombudsman Service](#).

FOS and COSL provides free assistance in resolving complaints with Timeshare companies.

For more information contact the Consumer Action Law Centre.

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")*

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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 Ombudsman Service or Credit Ombudsman 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]

Further information

Consumer Action Law Centre

Telephone: (03) 9629 6300, or 1300 881 020 for country callers.

Email: advice@consumeraction.org.au

Free telephone and email information regarding credit and debt and consumer law matters



If you are deaf or have a hearing or speech impairment, you can call through the National Relay Service (NRS):

- TTY users can phone 133677 then ask for 1300 881 020
- Speak & Listen (speech-to-speech) users can phone 1300 555 727 then ask for 1300 881 020

- Internet relay users can connect to NRS on www.relayservice.com.au then ask for 1300 881 020

Financial Ombudsman Service

Tel: 1300 78 08 08

http://fos.org.au/centric/home_page.jsp

Credit Ombudsman Service

Tel: 1800 138 422

www.cosl.com.au

Moneyhelp

Telephone: 1800 149 689

www.moneyhelp.org.au

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