

Trust Us. You'll Like It—and So Will Your Owners.

Why the trust structure is something you should consider

BY DAN BACHRACH AND BILL GUTHRIE



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The trust structure as applied to timeshare is nothing new. In fact, in some international jurisdictions, it is common if not necessary. Because it is such a flexible structure, there are a variety of ways to implement the trust structure in creating or expanding a timeshare plan.

Key Basics

In order to provide some background regarding the trust structure, it is helpful to understand that the trust is generally structured to include a non-specific points-based reservation system (*i.e.*, no home resort priority period). The overarching timeshare plan is composed of one trust (however, additional trusts and/or similar structures may be needed or desired as a result of jurisdictional requirements and/or tax implications). The trustee of the trust holds title to the inventory that is committed to the timeshare program for the owners' benefit. The inventory that is committed to the trust is in the form of fee simple title to property, units, or timeshare interests. In some cases, term leases of accommodations (short- and long-term) may also be committed to the trust—depending on the resulting regulatory, accounting, and tax implications. All inventory that is submitted to the trust is assigned a point value (based on seasonality, size, resort, location, etc.) at the time of submission.

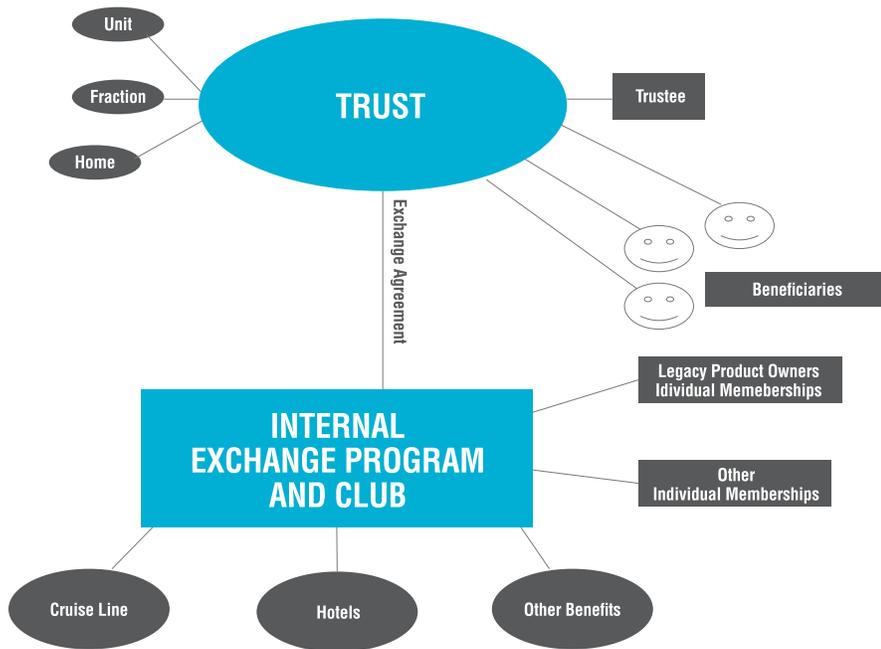
Typically, all reservations by owners are points-based. Depending on the developer's goals and type of trust structure used, the reservation system can provide owners with resort-specific priority reservation rights or eliminate any resort-specific priorities. Reservations are typically available on a

first-come, first-served basis; however, a developer may create special classes of membership that enables “premium level” members to make reservations earlier than other members or reserve certain inventory (by type or calendar) earlier or to the exclusion of others. In addition, reservation windows may be used to incentivize earlier booking and reduction of breakage.

If the trust plan is comprised of more than one resort, it may be desirable for the developer to create an internal exchange company to manage owner reservations. This internal exchange capability will be particularly valuable to those developers who want to offer owners/members additional bells and whistles that generally cannot be offered as part of a timeshare plan, due to consumer protection regulatory limitations. Such extra features, however, are permissible in an internal exchange company and may include conversion of points to other vacation experiences like hotel stays, adventure travel, airline tickets, cruises, merchandise, and other offerings that the developer is able to obtain. In addition, as described in detail below, an internal exchange company may serve as the bridge between the product owned by existing owners and the product to be sold to future owners. Again, it should be noted that flexibility is one of the attributes of the trust structure, so the program design of a trust-based plan is ultimately limited by the creativity or goals of the developer.

Trust Structure Benefits

With this background and foundation of information, then, why should you consider implementing a trust structure?



marketing collateral, sales training, and purchaser education;

- Allows for a uniformity of documents and pitches/presentations at every sales center—regardless of location;
- Eliminates need for multiple sales documents, financing instruments, title insurance policies, and closing processes;
- Blends/homogenizes maintenance fees with respect to the interests that are committed to the trust;
- Streamlines or potentially eliminates foreclosure process; and
- Makes fee-for-service arrangements easier, as inventory may be contributed by third party developers.

Typical Reservations/Questions

This is a typical hesitation and question with regard to the trust: “But we already have existing owners, why convert to a trust structure with points-based reservations?”

Here are some of the top benefits:

- Allows purchasers to have flexibility—with the points system—to customize their vacation, as their needs/preferences change (e.g., a three-bedroom unit for two weeks each year now vs. two 2-bedroom units for one week next year);
- Enables developer to maximize sales prices and profitability of lower valued inventory;
- Allows for incremental sales because of simpler conversion of units/weeks at different sites, thereby quickening the sales pace of any remaining inventory—no longer selling weekly increments (i.e., finding a buyer for each week);
- Enables developer to maintain a manageable sales pace and achieve improved return on invested capital by limiting inventory availability concerns at different locations;
- Mitigates traditional owner democracy issues by allowing for preferred choice of governing law;
- Allows for extended period of developer control over the managing board of the trust owners association and potentially at existing site associations;
- Creates efficiencies in registration efforts, production and clearance of

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PRODUCT

A recent survey found that the “preferred vacation” trend is tipping more toward frequent trips of shorter duration—nearly half of all vacations are of this type. Clearly, maximum flexibility is what your customers are looking for, but the survey also found that consumers are focused on value and the sense of wanderlust continues to be strong. Points offer consumers the sense of value because of the many options for use that come with points, as opposed to being tied to a home resort in a specific unit type during a specific season or a fixed week. In addition, as described above, creativity is the only limit to the use options a developer can deliver to its points owners to cure their sense of wanderlust.

The beauty of the trust structure is in its flexibility. Existing owners may be converted to the trust or may simply be affiliated with the internal exchange company. Depending on the developer’s goals, there are different ways to accomplish such integration. In some cases, the developer wants both trust

owners and legacy owners to receive the same benefits. In other cases, the developer may want to treat the trust owners better in order to induce the legacy owners to “convert” and upgrade to the trust. Either way, the use of a developer controlled exchange company provides a multitude of options.

For instance, if the developer desires to convert the owners to the new trust structure, the quality and amount of benefits offered to legacy owners may be less in order to induce legacy owners to migrate to the new trust structure, thereby allowing the legacy owner to be “upsold.” Alternatively, if the developer is not concerned with converting existing owners, an alternative may be to offer those legacy owners the ability to affiliate with the internal exchange company and obtain a points overlay membership in the exchange company. This allows the legacy owner to play in the points reservation system. The developer may charge the legacy owner to obtain such a membership.

Charging existing owners to upgrade to the points overlay membership can create a new profit center for developers. This is not to say that only developers can take advantage of converting to a trust-based points overlay. Management companies, on behalf of associations that they manage, can also implement a trust-based points overlay as a profit center or to assist a cash strapped association. For instance, the conversion/enrollment fees can generate significant revenues to permit resort renovations, avoid special assessments, and/or improve reserve funds. Moreover, one of the components that can be made available through the exchange company—a “cash back” benefit program—could be set up so that members can use the cash back program to pay their maintenance fees.

These benefits were confirmed by Jim Marmorstone, president of Tenstar Develop Group, who has helped with the

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WAVES OF CHANGE

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going a little above expectation), you never forget that. You become a raving fan.”

On ARDA

Hanning is looking forward to working at the top-line level with ARDA as Chair, guided by the Strategic Plan which was built for 2013-2015.

In terms of his top priorities within that plan, he says that he sees it in terms of “buckets,” as in regulatory/legislative work, product development, etc. ARDA’s work in the regulatory environment remains absolutely top on his list of concerns, for it is so critical to the overall success and health of the industry—“especially for sold-out resorts.” So where tax issues may not be the most “sexy” of topics, he notes, “the work just has to be done.” He plans to support the great work ARDA is already doing on these fronts, adding his expertise where needed.

He’s also excited about growing the business across several fronts—whether that means internationally or just in terms of product flexibility.

“Growing the business internationally excites me because we’re a big company, but I’m not

sure it excites all the people in the business and I understand that. I look at growth as being in new markets in any sense—not necessarily only on the international front. It can certainly apply right here at home, as there are still a massive amount of people who are in the sweet spot for us, potential buyers who don’t yet own our product. So, finding new owners over the next 10-15 years means that we have to take a really hard look at our product and its core relevance.”

His belief in the vacation ownership product comes from his conviction that core values really don’t change over time, that what’s important to him will be important to his children.

Overall, he’s excited to take on the role of ARDA Chair—honored to join the ranks of those men and women who have come before him in this leadership role as true pioneers and influencers of the industry. ■

SOCIAL MEDIA & WEB 2.0

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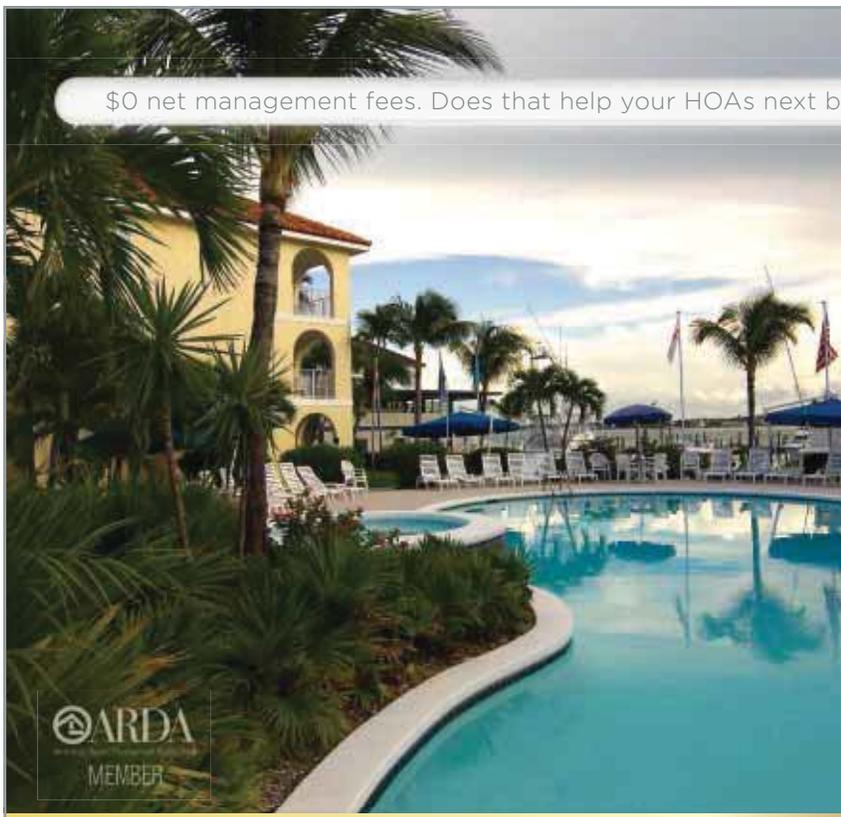
employ all social media, whether it is TripAdvisor, Facebook, Flickr, YouTube, or Twitter. It will also help you keep an eye out for new applications and customer demand-drivers. ■

TRUST US

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design/implementation or conversion to point-based trusts, fractional ownership developments, and destination clubs.

Marmorstone says: “The transition from a week-based program to a points-based trust program on an existing week-based program can be accomplished simply in less than six months. The financial and flexibility benefits to all stakeholders are compelling and deserve serious consideration by any association board or developer.” ■



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