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FTC charges time-share paradise overbooked

By Carrick Leavitt

ATTLE (UPI) — One look promotional brochures and you can almost hear the ukuleles or feel warm Hawaiian sunsets — but buyers of luxury condominium time-share rights found paradise overbooked, says a Federal Trade Commission complaint.

Buyers were thinking Hawaii when they plunked down thousands of dollars for one week a year in a luxury vacation condominium. Instead, they found themselves shunted into a 36-unit apartment house at Lake Tahoe or into the aging Oasis Motel at Ocean Shores, said an FTC federal court complaint.

"Those units are worth a lot less than those depicted in the sale literature showing Hawaiian units," Rachel Garson, FTC spokeswoman, said Tuesday.

"We filed 13 complaints and have lodged settlements with two of the defendants. We are hopeful that settlements will be reached with the other companies within the next two days."

The defendants were accused of making false claims in connection with the advertising or sale of time-shares and with misrepresenting the availability of exchange privileges.

Named in the complaint before U. S. District Court Judge Donald S. Voorhees were Paradise Palms Vacation Club, Paradise Palms Vacation Club Sales, Inc., and WPMK, Inc., all of Hawaii; Harbor Village Club Sales, Inc., LSQ Marketing, Inc., Alpha Omega, Inc., all of Washington State; and James R. Quincy, Syed Sarmad, Theodore Weiswasser, Ben F. Kirk, Mary Anne Kirk, Moksha Wendell Smith and Robert J. McDaniel — addresses variously listed in Hawaii, Nevada, Washington and prison.

Voorhees issued a preliminary injunction against Kirk, president of WPMK, Inc., and accepted an FTC request the court appoint a Honolulu attorney as special counsel to review the finances, governance and overall status of the club in terms of its management and its finances. The attorney will report his findings back to the court.

Voorhees was reviewing a similar agreement worked out with Paradise Palms Vacation Club, Garson said.

Paradise Palms Vacation Club sold 2500 people some 3000 weeks of vacation time at $4000 to $6000 a share, court records show.

Some of those were sold under the name of Harbor Village Vacation Club, a Washington corporation that merged with Paradise Palms last February. Principal operator of Harbor Village was Moksha Smith, a recreation land developer who now is serving time in prison for mail fraud.

Promotional brochures for Paradise Palms led customers to believe they were buying one week a year in luxury condominiums in Hawaii, said Melanie Rowland, an FTC attorney. Actually, the developer owned only enough accommodations to handle one-fifth of the membership sold, she said.

Potential Paradise Palms buyers were shown pictures of $120,000 condominiums in resorts like Discovery Bay, Waikiki Banyan and Paki Maui, when the company only had long-term leases for 18 spaces in those buildings, the FTC complaint said.

Paradise Palms units in Hawaii actually made up only 20% of the total number of units that it owns.

The remaining are at Lake Tahoe and Ocean Shores. At vacation time, buyers found themselves unable to get into the Hawaiian accommodations and were forced to accept space at units in Nevada and at the Oasis Motel on the Washington coast — a building valued at about $15,000 a unit, the FTC said.

Our readers look to this daily newspaper for official advertisements for bids on all types of contracts. As a public official, do your notices appear in the Journal of Commerce?

ian agency ss sewage tem bids

RTLAND — The Portland Indian Health Service will bids until 10 am Oct. 23 e construction of six in- al sewage disposal systems attered sites on the Port le Indian Reservation, Kit- ounty.

s go to the service, Room 220 S[illegible] Ave., Portland, [illegible] ns concerning ical [illegible]fications and/or inspection should be directed chard Melton, project en- , phone: (206) 442-7164. er information on contract nents may be obtained from J. Block, contracting of- phone: (503) 221-6599.

Economic development official joins John Graham

Ted Hemphill

Ted Hemphill, an economic development official from the Washington State Dept. of Commerce, has joined John Graham and Co. as a business development associate to market architectural, engineering, and planning services for industrial and commercial projects.

With more than 20 years of economic development experience, Hemphill will offer development assistance by identifying industries that can benefit from relocating to Washington or that wish to relocate or expand within the state. He will provide services to assist these industries with identification of suitable locations, analysis of site criteria, site development, state and local tax analysis, and legislative and community relations.

Hemphill will continue to work with local public and private development organizations on behalf of John Graham and Co., an architectural, engineering, planning, and interiors firm in Seattle.

While with the State Dept. of Commerce, he developed detailed information about local areas favorable to industrial and commercial development by examining available sites, community assets, local policy, and local and regional assets and liabilities. he helped locate and expand more than 200 diverse firms, ranging in scope from large aluminum plants to small electronics facilities.

Hemphill is a member of the Economic Development Executives of Washington, the Pacific Northwest Industrial Development Council, and the advisory board to the Small Business Administration for the Pacific Northwest region. He has been associated with the Pacific Northwest Waterway Association and the Washington Public Port Association.

KIRO'S BELL TELEPHONE SYSTEM COVERS DISASTERS INSTEAD OF CREATING THEM.

When your audience depends on you for timely, accurate infor-

More gas found at *Mist, Ore.*

MIST, Ore. (UPI) — A coalition of energy companies Monday announced what a spokesman called "a pretty good sized" natural gas well discovery near Mist in northwestern Oregon.

The well, 3 miles northwest of Mist, test flowed at a daily 4.9 [illegible]

The Founder

By SUSAN C. ORLEAN and PETER A. SISTROM

DONALD W. EASTVOLD SR., the man behind the Royal Aloha Vacation Club, is, in the words of the club's public-offering statement filed with Washington state officials, "an attorney with substantial experience in the field of real estate and timeshare development." Pretty comforting if you're about to plunk down $13,000 for membership in one of Eastvold's time-sharing resort projects.

Comforting, but not exactly the whole story. What the public offering doesn't say is that Eastvold collected all that substantial experience through a string, nearly 25 years long, of slippery, ill-fated land schemes stretching from Washington's Ocean Shores to a Mexican desert. Along the way Eastvold has had run-ins with California real estate officals and the California attorney general's office; he's been a business associate of Ray Ryan, an Indiana oilman and high-stakes Las Vegas gambler who often consorted with members of the underworld; he's filed for personal bankruptcy and pushed hard for casino-style gambling in the state of Washington. Like the rest of the high-flying, fast crowd of developers he's rubbed elbows with since he was attorney general of Washington from 1953 to 1957, Eastvold has had his ups and downs, periods of booming land business and big plans and then troubled times of slumping sales, bad debts and bankruptcy. But since he moved to Hawaii in 1976, first to market building lots on the Washington coast and later as developer of Royal Aloha, Eastvold is back in gear. The Royal Aloha operation, is by all accounts, rolling along smoothly, numbering a reported 8,000 members and selling 50 new week-long memberships every three days. Eastvold is even heading up the recently formed Hawaii Time Share Association, an industry group which promises to crack down on abuses in time-share marketing.

His old pals have done less well. Recently Eastvold's business associate from his California days, Ray Ryan, was killed in 1977 when dynamite blew up his Lincoln Continental and Moksha Wendell Smith, Eastvold's onetime assistant attorney general and partner in several businesses went to jail this January on mail-fraud charges stemming from an Idaho land development scheme.

The 61-year-old Eastvold first made a name for himself in Washington as a politician, not a land developer. In 1950, when he was 30, Eastvold was elected to the Washington state Senate. Two years later he was elected attorney general. He left the job in 1957—but not before he had played a political role in getting the state to sell, for private development, a stretch of Pacific Ocean tidelands on the Washington coast about 20 miles west of Aberdeen. As

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attorney general, Eastvold was a member of the state land board, and just before he left office—on Nov. 2, 1956—the board decided to sell to a private party the parcel of land that eventually became Eastvold's Ocean Shores.

The land-board-sale controversy heated up after Eastvold had left office when he and Smith set up a land-development company, Wendell-West. It bought the ocean-front property, a flat, former cattle ranch, from the private party and proceeded with ambitious plans to sell it off in subdivided parcels.

In a two-part series on Ocean Shores published in *the Weekly*, Seattle reporter Patrick Douglas describes the boom years for Ocean Shores during the "latter sixties, when lots there were selling like crazy under the high-pressure salesmanship of the Wendell-West crew. Each summer, the company sponsored a big golf tournament at which singer Pat Boone (a partner in Wendell-West) traded smiles with such visiting 'celebrities' as comedian Phil Harris and actor David Janssen."

In and out of trouble

Selling lots at Ocean Shores wasn't the only business in which the two former Washington officials joined forces in the late 1950s and early 1960s. According to a series of articles in the *Wenatchee World* written by Ray Schrick, Eastvold and Smith were officers in a Seattle-based swimming pool-equipment distributorship, Sunplay Pools of Washington, which, with debts of almost $40,000, undertook an arrangement with its creditors.

In 1962, Eastvold and his new wife, Ginny Simms, a former singer with big-band leader Kay Kyser, left Washington and moved to Palm Springs, Calif. There, according to Schrick's published account, Eastvold agreed to buy some of Indiana oilman and gambler Ray Ryan's stock in the Salton Sea Yacht Club—a large desert lake some 30 miles southeast of Palm Springs—in exchange for the proceeds from $250,000 worth of Eastvold's Ocean Shores interests.

Eastvold got into regulatory hot water in a hurry. According to court records quoted by the *Wenatchee World*, Eastvold was ordered to desist and refrain by the California Real Estate Division for "alleged bait-and-switch advertising"—switching prospective buyers from unsubsidized parcels into more costly lots in the subdivision. Accordingly, the sales literature was changed, but the operation got into fresh trouble when state officials found that Eastvold was selling parcels of land that didn't include legal access. The desist and refrain order went back into effect.

Eastvold also orchestrated a land-development project in Mexico called San Antonio Shores, sales of which were stopped eventually by the state of California in 1973. Two years later, a court-ordered permanent injunction spelled out Eastvold's obligations in the project, in which some 1,500 people, mostly Californians, had invested an estimated $10 million. The principal problem was that the developers couldn't deliver the 99-year leases they'd promised because San Antonio Shores was within a coastal-border area where the Mexican government limits land ownership by foreigners. Not that the property was all that desirable in the first place.

The 1975 California Superior Court injunction describes the beaches at San Antonio Shores: "Beaches, swimming pools and other apparent recreational waters thereabouts may be polluted, unsafe and unhealthy, and that portions thereof are grossly so, primarily by reason of the area of San Antonio Shores being burdened and befouled with the regular discharge...of the entire outflow of the raw, untreated sewage of the city of Tijuana."

As part of the court order, Eastvold was required to cancel and return all the promissory notes made by buyers of lots at San Antonio Shores and to pay the state of California a civil penalty of $25,000 in three payments within a year of the September 1975 order. The payments were never made: Eastvold says no one ever asked for them.

Hard times

In February, 1968, Eastvold filed a personal bankruptcy statement reporting $741,000 in assets and $1.1 million in debts. He was at the time, he told the bankruptcy court, "a defendant or judgment debtor in 20 or more lawsuits." His bankruptcy, Schrick suggests, stemmed from a string of new recreational-land development schemes that didn't take.

While Eastvold was promoting real estate in California, his old Ocean Shores partner, Moksha Smith, was busily building a recreational land-development empire based in Washington that had holdings across the continental United States, as well as in Mexico, Hawaii and Australia. Business was good, too; in 1969, Smith's Wendell-West Co. rang up total land sales of over $30 million. But a year later it was in shambles. Throughout 1970, Wendell-West's assets—land in New Mexico, Hawaii, Australia, Wisconsin, Arizona, Mississippi, and at Washington's Ocean Shores—dwindled as the faltering company sold off property and lost property through foreclosures. In December 1970 the company filed a voluntary Chapter 12 Federal Bankruptcy Act petition; Wendell-West had run up bills of $70 million, $14 million of which were unsecured (the eventual settlement had Wendell-West paying off $5 million of that debt).

One of the most important findings *Wenatchee World* reporter Ray Schrick uncovered in the Wendell-West filings was that the company was following a familiar script. The real profits in fraudulent land sales come not so much from the initial sale as from putting up promissory notes signed by small buyers as collateral for bank loans and by selling the mortgages to banks and other financing institutions. According to Schrick's series, some $1.5 million worth of contracts that Wendell-West put up as security to persons who loaned the firm money or sold it land were signed by Wendell-West salesmen. Smith explained this, according to Schrick, by saying that the salesmen were so enthusiastic about what they were peddling that they bought lots themselves. However, *the Weekly*'s account points out that "few, if any, payments were ever made on many of these contracts, as well as on others supposedly signed by people not connected to Wendell-West. Nor, in most cases, did Wendell-West voluntarily substitute bona fide contracts for those of dubious validity."

Less than a year after Wendell-West filed bankruptcy, Smith was back in the recreational-land-development business as head of Kamala Inc., trying to rebuild his holdings and using a new marketing scheme of selling his undeveloped acreage to American servicemen stationed overseas.

TIME SHARING

In 1975, Eastvold splashed back on the Washington development scene—more specifically, right back on the banks of Ocean Shores.

"I was just sitting here in my office one day," Smith told *the Weekly*, "when Eastvold walked in the room. He said there were about 1500 remaining unsold lots at Ocean Shores, which he thought we could acquire and market." No sweat. Smith and Eastvold quickly found themselves back in business, this time with the $15 million worth of leftover Wendell-West Ocean Shores lots.

The Ocean Shores development at that point had been taken over by another group, headed by Walter P. Gribben and Robert J. McDaniels. Gribben, a California lawyer, has had some troubles of his own: Just two years earlier in 1973, he had been named along with six other people in a suit brought by the federal Securities and Exchange Commission that tied him to the dealings of U.S. Financial Inc., a Southern California real estate company. In a 76 page complaint, the SEC charged the company with manufacturing millions of dollars of phony profits.

McDaniels, too, keeps cropping up in assorted time-share deals. He has since served as president of Smith's Harbor Village Club in Ocean Shores, and last month became executive vice-president of Paradise Palms Vacation Club. If there's a center to the time-share tempest, Paradise Palms is probably perched on it: The club is under investigation in Hawaii, and was recently run out of Washington state by officials who insisted on registering it as a security. Its president, James Quincy, was a principal in the largest time-share disaster to date, the bankrupt Stanley Hotel project in Colorado, in which some 2,000 time-share owners lost over $4 million dollars.

After optioning the land from Gribben and McDaniels, Smith and Eastvold set up two companies to market their new Ocean Shores land: Holiday Resort Marketing, for domestic sales, headed by Dave Bullert, a salesman for Eastvold's ill-fated Salton Sea venture 15 years earlier; and International Resort Properties, whose president, Fredrick Schumacher, was Eastvold's attorney in his San Antonio Shores debacle and now sits on the Royal Aloha Vacation Club's board of directors.

Certainly, $15 million worth of land is nothing to sniff at. But what *really* excited Eastvold was the prospect of bringing Nevada-style casino gambling to Washington. That, of course, would have turned Ocean Shores land into pure gold.

Would have, but didn't. Eastvold served as attorney and prime spokesman for the Ocean Shores-based "Committee for Tax Relief" whose initiative drive in 1976 fell just shy of putting the issue on the Washington ballot. Undaunted, Eastvold geared up again, although this time the group failed to even submit signatures for consideration on the 1977 ballot. By then, Eastvold had headed west to market Ocean Shores lots in Hawaii, and, just a year later, to operate the Royal Aloha Vacation Club and its developers, the Aloha Group.

Blue Hawaii

On paper, anyway, Eastvold was beaten to a post with Royal Aloha by his wife, Ginny Simms. In February 1978, the first volume of *Diamond Headlines*, the Club's official newsletter, lists Simms as Royal Aloha Vacation Club secretary and "official interior decorator." Eastvold's name is nowhere to be found. By 1979, though, when the Aloha Group filed to do business in Washington, Eastvold was topping the crew as president and chief executive officer.

Getting started in the time-share business isn't difficult. All you need is an antsy sales staff, one condominium unit, and big plans. The developer—in this case, Eastvold's Aloha Group—transfers one unit to the non-profit club, and sells interval ownerships in the use of the unit. When 48 or 50 club weeks are sold in that unit, the developer transfers another and sales continue. At Royal Aloha, sales have somersaulted so quickly that club inventory boasts $20 million worth of property in Hawaii, Mexico, Lake Tahoe, and Spain. And one lonely unit, which burned down a few years ago, at Chalet Village in Ocean Shores, Wash.

Where does the Aloha Group get its properties? Most are in existing condominium buildings that the group is buying up unit-by-unit. In some cases an entire building could be carved up between several different time-sharing companies, as well as full-time condo owners who have nothing to do with the time sharing. A few of the units were even owned by members of the club's board of directors, who sold them to Eastvold, who sold them to the Aloha Group, which transferred them to the club.

And three of the group's sites in Hawaii, which are now club resorts, are not owned but *leased*. The leases all run beyond the year 2000, and while the Aloha Group's public offering statement filed with Washington authorities states coolly that they fully *expect* the leases to be extended, there is no guarantee that they will be.

Indeed, like all recreational-land sales, there's money to be made in time sharing. In one instance, the Aloha Group paid Kenneith Lacy (who happens to be an officer of the Aloha Group) $67,31?.32 for a condominium in the Waikiki Skytower. With one-week memberships running about $7,000, the Aloha Group stands to sell that unit to the Club for $336,000—five times what they paid for it. Another financing option the Aloha Group contemplates, notes the Washington registration papers, is selling the receivable notes from club members to third parties or pledging notes to third parties as security for loans.

There's a third element in the deal, and it is crucial to keeping the Royal Aloha time-sharing setup aboveboard. It is Tellus Financial Services Inc., which, as of June 1978, has kept tabs on Royal Aloha's membership roster, sales and mortgage payments. According to Sterling Morita, a *Honolulu Star-Bulletin* reporter, Tellus, whose principals held mortgages on Smith's Ocean Shores property, also advances loans to Royal Aloha.

"Tellus is the policeman in the whole arrangement," says Jon Pegg, chief and registration attorney for Washington's Real Estate Division. "They've got an awful lot of work to do."

Tellus has a few corporate officers who are familiar names in the wildly complicated land-development game. President of Tellus is Walter Gribben, mentioned earlier as named in a huge [illegible] complaint in 1973. He is also the same individual who, as controller of much of Ocean Shores property after Wendell-West went bankrupt, sold the remaining 1500 ocean lots to Eastvold and Smith in 1975 and put them back in business. Gribben later landed in the middle of a massive lawsuit at Ocean Shores, in which a small local realtor there, Mike Moore, claimed that Gribben, Eastvold, Smith, and a host of other defendants had tried to run him out of business. Moore charged that the group conspired to use bribery, threats, coercion, price-fixing and false advertising to try to run him out of business because his moderate prices and low-profile sales pitch didn't jibe with the Gribben/Eastvold/Smith style of inflated prices and hype. And dirty tricks: Moore alleged that the group also threatened to report him to "the real estate commission, board of realtors, IRS, FBI, and CIA" if he didn't remove his low-price signs from the Ocean Shores area, and that they tried to register and prevent him from using *his* own business name, Mike Moore Realty.

Another peculiar connection exists between Royal Aloha and Tellus, which claims to be a disinterested, independent party servicing the club and its developers. But Judd Kirk, a Seattle lawyer who is an officer of Tellus, appears on Royal Aloha's list of its lawyers and brokers around the country.

"That list must be inaccurate," Kirk says. Adding a moment later, "Oh, I know what that is. Maybe the club was trying to save money and not duplicate with another lawyer, and they just list me in case someone wants local legal opinion."

At the Royal Aloha Vacation Club, it's business as usual, and by all measure, neither Eastvold's clouded past nor his roster of beleaguered associates has caused the club any trouble. Certainly, Eastvold's new post as president of the Hawaii Time Share Association would indicate his intent to keep Royal Aloha on the right track. That intent is all-important, since Oregon, with its vacuum of regulation for the brand new industry, can be compared to Washington state of the '60s and '70s—a sitting duck for land fraud.

There have been hints of trouble already, though. In June 1980, the Arizona Corporation Commission suspended registration of Vacations International, the broker selling Royal Aloha Vacation Club memberships in Phoenix. The commission charged the firm with misrepresentation, fraud, and violation of state laws. Eastvold told reporters at the *Honolulu Star-Bulletin* that Vacations International was not part of the Aloha Group, just a broker representing the company in Phoenix.

"We are cancelling our brokerage agreement," Eastvold told reporters. "We are going to replace the firm with another broker... in Phoenix."

A clean break with trouble? Not entirely. Joseph Conlin, the president of Vacations International, simply went to Texas instead, where he sold memberships for Royal Aloha in San Antonio for nearly a year after being run out of Arizona. •

Willamette Week

VOL. 7 NO. 27 FOR THE WEEK OF MAY 4 - MAY 11, 1981 3 SECTIONS 50¢

Paradise Lust II

Sunrise... in places called Paradise....

As sales pitches go, it's a good one. So good, in fact, that Royal Aloha Vacation Club has snagged 500 new members since opening a sales office in Portland this March. Royal Aloha Vacation Club is part of the vacation time-sharing industry, which markets week-long "ownerships" in resort property. With 8,000 members and eight resorts—from Hawaii to Spain—Royal Aloha is one of the largest outfits in the fledgling industry. And certainly one of the most intriguing.

Last week, we looked at time sharing's growing pains, and in particular, the high-pressure sales tactics that have already raised questions about Royal Aloha.

This week, we look to the top—and trace the mercurial career of Donald W. Eastvold Sr., the man behind Royal Aloha. Susan Orlean and Peter Sistrom trace Eastvold's 25-year string of troubled land deals and some of the curious company he's kept along the way.

In an accompanying story, Jerry Uhrhammer reports on several land swindles—including one in Oregon—orchestrated by Moksha Wendell Smith, Eastvold's long-time business crony. Smith's convoluted land empire stretched well into the world of Arizona land fraud.

Uhrhammer, investigative reporter for the *Eugene Register-Guard*, first broke the story about Smith's Kamala Inc., and Top Ranch "recreational" lot sales in September 1973. Several years later, in 1976-77, Uhrhammer spent three months digging into Arizona land fraud as a member of the Investigative Reporters and Editors Inc. reporters' task force that investigated organized crime and political corruption in Arizona. Uhrhammer is now president of Investigative Reporters and Editors Inc.

The Founder

By SUSAN C. ORLEAN and PETER A. SISTROM

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...And A Friend

By JERRY UHRHAMMER

THE REAL ESTATE contract found in the microfilm records at the Grant County Courthouse was dated April 3, 1972, unmistakable evidence that Oregon's real estate laws had been broken.

Thus began the story of Top Ranch, a

A Real Cash Crop

The tangled finances behind one of Oregon's largest farm bankruptcies

By CARLTON SMITH

UNITED STATES Bankruptcy Court Judge Henry L. Hess pretty much summed up the situation late last December:

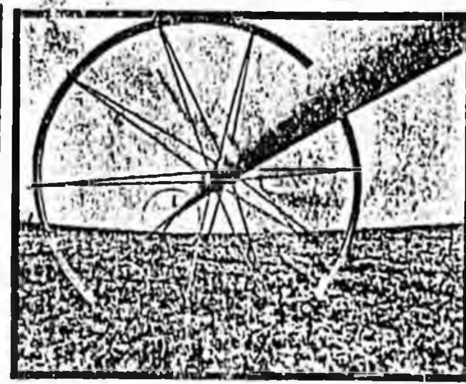
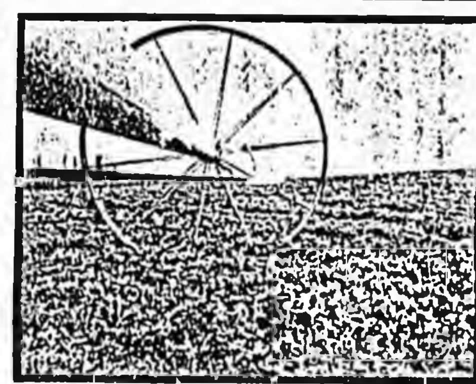
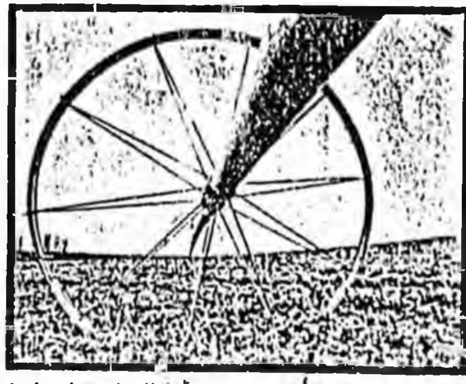
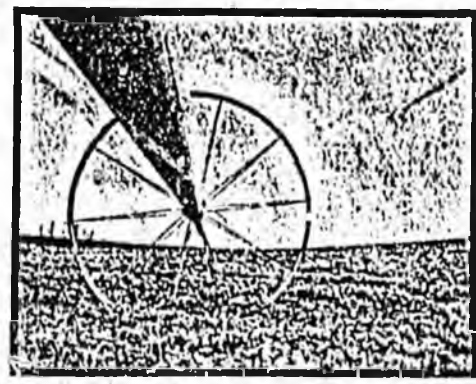
"It's apparent to the court," Hess said after three days of hearings, "that the stock—the capital stock—of Sunriver Farms of Oregon, right today, is worthless."

When Hess said that, it was all she wrote for an enterprise that once was among the most promising in Oregon—an agribusiness giant holding more than 20,000 acres of prime irrigated farmland, nearly 15 miles in irrigation pipelines, a roomful of advanced computer equipment to run the irrigation system, and millions of dollars worth of sophisticated farming equipment, buildings, sheds, vehicles and aircraft.

By the time it went down officially—January 12, 1981—the farm owed, as far as anyone has been able to determine, around $39 million. The best estimate of its value, Hess observed, stems from the price paid for it when it was last sold: slightly more than $30 million. And that price, seen in the light of subsequent events, may have been too much.

The bankruptcy of Sunriver Farms stands as one of the largest farm failures in the history of the state. It is a failure that has put the interests of the First National Bank of Oregon, one of the state's largest banks, in jeopardy: it has embarrassed two of the state's major political figures, and it has left hundreds of small business owners in Eastern Oregon holding the bag for as much as $6 million in uncollectable debts.

Most important, the wreckage left by Sunriver Farms' ill-fated venture into the arid plains of Morrow County poses

Irrigation pipelines on Sunriver Farm's 20,000-acre tract in Eastern Oregon's Morrow County

with a minimal initial investment, who managed to obtain an unsecured, $10 million line of credit from the First National Bank, and who, some say, managed to remove many of the farm's

familiar with the probings of the three agencies say that the matter could go before a federal grand jury before it is over. In addition, lawsuits stemming from the belly flop of Sunriver have

A SISTROM

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by JOHN ...

THE REAL ESTATE contract found in the microfilm records at the Grant County Courthouse was dated April 3, 1972, unmistakable evidence that Oregon's real estate laws had been broken.

Thus began the story of Top Ranch, a semi-arid Eastern Oregon cattle ranch carved into five-acre chunks for sale to American servicemen stationed in Okinawa, Guam, Hong Kong and other Far East bases.

It was not a world-shaking story, not even close to Watergate caliber. But it was a good yarn with regional interest, revealing how a land-sales company in Washington state, Kamala Inc., was using overseas sales agents to market Eastern Oregon ranchland as "recreational" lots, not always bothering to inform buyers that they might not be allowed to build a house or cabin on their property.

Like many news stories, Top Ranch didn't last long. It petered out after a couple of weeks when the Oregon Real Estate Division ordered Kamala Inc., to desist and refrain from further sales. That effectively shut down the Top Ranch operation, closing another brief chapter in the checkered history of the recreational-land sales business.

But there was more to the Top Ranch story than anyone realized at the time. As subsequent developments would reveal, Top Ranch was merely one piece of a larger story about land swindles on an international scale—a story punctuated by murder, assassination and political corruption.

It was a complex story that began amid the wreckage of two spectacular financial collapses in 1970-71—Bernie Cornfeld's worldwide Investors Overseas Services mutual fund, and the bankruptcy of the Seattle-based Wendell-West Company, once billed as the nation's largest real estate developer. This was the same Wendell-West, with singer Pat Boone as a partner, that developed Ocean Shores on the Washington coast and the Bayshore development on the Oregon Coast at Waldport.

Eventually, through a series of expanding business relationships and events, the story would include such diverse personalities as Ned Warren, the reputed "godfather" of Arizona land fraud; Sen. Barry Goldwater (R-Ariz.), who, on short notice, supplied Warren with a letter that would be used to sell worthless Arizona land to servicemen in the Pacific; Don Bolles, the Phoenix newspaper reporter killed by a car bomb in 1976; and Ray Ryan, an oil millionaire who kept getting in trouble because of mobster contacts, fatal trouble.

Most of the additional details surfaced when Investigative Reporters and Editors Inc. conducted its 1976-77 probe of land fraud, organized crime and political corruption in Arizona; details gleaned from depositions, transcripts of bankruptcy hearings, law enforcement

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state's largest banks, in jeopardy? It has embarrassed two of the state's major political figures, and it has left hundreds of small business owners in Eastern Oregon holding the bag for as much as $6 million in uncollectable debts.

Most important, the wreckage left by Sunriver Farms' ill-fated venture into the arid plains of Morrow County poses important questions about the kind of protection citizens of the state receive from institutions that should have known better—institutions like the bank, which put the imprimatur of legitimacy on an enterprise that in all likelihood never intended to turn a profit.

What went wrong?

Mervin "Red" Leonard, an experienced Eastern Oregon farmer appointed by Hess to be the farm's receiver, puts it bluntly: "What happened?" he responds with incredulity. "What happened was, they stole the place blind."

Irrigation pipelines on Sunriver Farm's 20,000-acre tract in Eastern Oregon's Morrow County

The story of Sunriver Farms' bankruptcy is essentially the story of four Californians, two of whom had previously been convicted of securities fraud, who managed to buy a $30 million farm with a minimal initial investment, who managed to obtain an unsecured, $10 million line of credit from the First National Bank, and who, some say, managed to remove many of the farm's moveable assets to other states before the operation collapsed late last year.

It is a bankruptcy that has attracted the curiosity of the organized crime unit of the Oregon attorney general, the Federal Bureau of Investigation, and the criminal-investigation division of the Internal Revenue Service.

All three law enforcement organizations are said to be eyeing the Sunriver disaster with interest; some sources familiar with the probings of the three agencies say that the matter could go before a federal grand jury before it is over. In addition, lawsuits stemming from the belly flop of Sunriver have been filed from Portland to Pendleton and points in between; additional litigation has been filed in such diverse places as Chicago, and Billings, Montana, with a prospect for even more lawsuits in New York, Las Vegas, Texas and California.

Sunriver Farms began, in another incarnation, as the dreamchild of Charlie Kyd, a former farm extension agent

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Refugees with Resumes

The peculiar plight of Portland's Afghan community

By AMY GODINE

THEIR NUMBERS ARE small (between 40 and 80), but Portland's fledgling Afghan refugee community has already begun to make its presence felt in the local resettlement networks. For unlike the other refugee groups, the Afghans are not afraid to make waves. Impatient, proud, ambitious, they gave up a lot to come to America. Not just their property, which, for this first group as for the first arrivals from Cuba and South Vietnam, was considerable, but their standing, their connections, their clout as well. It was worth the sacrifice for freedom, they figured. But now some of them are having second thoughts.

The problem, in a word, is unemployment. Among the dozen refugees interviewed by *Willamette Week*, this was the most frequent complaint. Only a handful of Portland's Afghans, most of them fairly new arrivals, have found steady jobs. The rest are still thumbing the want ads, living off welfare payments, food stamps, grants from private resettlement agencies, or relatives. Jafar Farzana, a former government worker in Kabul, has filed 25 job applications with prospective employers. "I tell them, to show how serious I am, I'll work a week without pay. They say, 'we'll call you,' but they never do." Maliha Ahadi, a former airline employee in Kabul, has looked all over for work in travel agencies and hotels, and has come up empty handed. "Employers just don't like to hear the 'refugee' word," she concludes. "After I say that, they lose interest."

The Jafar Farzana family: Victims of discrimination or high expectations?

Most refugees are assisted in their job search by the voluntary agency that brought them here from their native land; there are seven "volags," as these agencies are called in Portland. Sponsoring almost all the Afghans in Portland is the local branch of the Tolstoy Foundation, founded in 1937 by Count Leopold Tolstoy's daughter to help resettle the White Russians fleeing from the Soviet Union.

Tolstoy is the only volag currently resettling Afghans directly from Pakistan, where almost two million of them wait in United Nations-supervised refugee camps for an end to the Soviet occupation. Wealthier, more influential Afghans who are able to buy their way out to West Germany, where the government puts them up in hotels for as long as it takes them to find a sponsor, are resettled in American cities by Tolstoy as well. Some 25 of the 28 Afghan refugees Tolstoy has brought to Portland came via West Germany. Agency director Jerry Roylance says she has bent over backwards to help them ...

says, they're just too particular. They expect too much. Needless to say, the Afghans couldn't disagree more.

Sure, Tolstoy pays the rent, they say. But why don't they help you find a place to live? Sure, they donate payments for food. But you never know how much to expect one week to the next, and sometimes payments are late. Sure, it sets them up with jobs, but why should a former minister of mines settle for factory work? Surely, with perseverance, the agency can come up with better than this! Other complaints about the agencies alleged failures: it doesn't teach the refugees how to use the bus system, to make change, to find the local markets, or to apply for high-level jobs. It doesn't put them in touch with other members of the Afghan community. Worse, unlike some of the other voluntary agencies, it urges them

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A Real Cash Crop

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from Montana.

Kyd came to the dry plains of Morrow County in the early 1970s and at once saw some intriguing possibilities. Dry land in Morrow County was selling for $100 to $200 an acre; with irrigation, the same land could bring as much as 10 times that amount.

All that was needed was capital to bring the water onto the land, and Kyd set about getting it.

Kyd later attracted the investments of an assortment of Montana cattlemen, a Billings computer whiz named H.C. Jordan, and a group of financiers from Chicago and Seattle.

Using money borrowed from Prudential Insurance Co., which took a first mortgage on the land that Kyd and his investors bought, and the First National Bank, which took a second mortgage, Kyd's enterprise—Sabre Farms—soon had 20,000 acres of previously bone-dry desert under irrigation. Scores of computer-operated center-pivot farming circles were planted in potatoes, corn and beans, and Kyd and his investors sat back and waited for the money to roll in.

That never happened; in fact, some say Sabre Farms lost $16 million over the seven years it operated. And when the remaining directors of the farm voted to sell out after Kyd's death by stroke in June 1979, it was amid bitterness and recriminations among the farm's shareholders, and accusations of conflict of interest all around.

Sabre Farms was metamorphosed into Sunriver Farms mainly through the efforts of John Prag, a real estate broker in Boardman, Morrow County's fastest growing city. Prag received an exclusive listing on the farm property in the spring of 1979; he is now suing Sabre Farms, claiming the farm failed to pay his $1 million commission for brokering the sale.

As the man in the middle of the transaction, Prag is uniquely qualified to describe what happened. According to him, Sunriver Farms came to Oregon through the efforts of his own personal banker, Kermit Hauser, who manages the Oregon Bank branch in La Grande.

Shortly after receiving the listing on the Sabre Farms property, says Prag, Hauser introduced him to his father-in-law, a Californian named Ronald Lee Dodson.

The arrival of Dodson and his associates on the Sabre Farms scene—at least as a potential purchaser—is one of the more unusual aspects of the whole Sunriver affair, given the fact that Sabre Farms' shareholders presumably want- a California prison, for diagnostic studies, while scores of people—mostly Dodson's relatives—wrote the judge extolling Dodson's virtues. At the same time, others who were stung wrote in to demand that the judge make the pair pay the full price for their misdeeds.

After six months, the two men were released; McCoy told the judge in a letter that he had a job waiting for him with a company he identified as "Acropolis Development Ltd.," a Nassau, Bahamas partnership.

Four years after their guilty pleas, both Dodson and McCoy returned to court to withdraw them and were allowed to plead guilty to misdemeanor violations instead. To this day both Dodson and McCoy insist that they became confused by the laws surrounding the sales of unregistered securities, and that they had no intention of violating the law, and that the money was lost legitimately.

It was in the mid-'70s that both Dodson and McCoy became partners in another farming enterprise, DiSanto Resources.

They came to Oregon in the summer of 1979, and were introduced to Prag by Hauser. According to Sunriver Farms' current president, George Schreiber, Dodson and McCoy, acting for the DiSanto partnership, agreed to lease Sabre Farms with an option to purchase. Shortly thereafter, Dodson, McCoy and Pat DiSanto formed a new corporation: Sunriver Farms of Oregon Inc.

It was not the first Sunriver Farms corporation that the three men had organized, however. Schreiber says they had organized a parallel corporation, called Sunriver Farms of California Inc., in August 1978—nearly a year before.

The two corporations—the Oregon Sunriver later was to become a wholly owned subsidiary of the California corporation—were the first step down a trail of corporate shells and limited partnerships that had the effect of initially confusing the actual ownership of Sunriver Farms and its assets, and that later emerged in the bankruptcy proceeding as a severe limit on the liability of those responsible for the

Sunriver further agreed to assume the payments on the $13.1 million first mortgage held on the farm by Prudential Insurance Co. The remainder of the $30.6 million deal—another $3.4 million—was to have been paid to the Sabre shareholders in quarterly installments, including an initial $500,000 down payment on July 1, 1980, a $1.6 million payment by Jan. 1, 1981, and the remaining $1.3 million by March 1, 1985.

Shortly after the sales agreement was approved, Dodson went to the bank and laid out Sunriver's first operating budget. Dodson estimated the farm would need $10 million for its operating line to fund operations through the 1980 crop season.

As is traditional with farm loans, the money was unsecured pending the receipt of income from the crop year; once the crops were sold, the income would be used to pay off the unsecured operating line. Any shortfalls of income against the loan would then be added to the secured mortgage.

All of that was fine in theory; what made the matter complex was that the bank agreed to include Sunriver's assumed mortgage payments to the bank in the unsecured loan. In effect, the bank took $1.4 million of its own secured interest and passed it over to the unsecured column.

As a result, today, after the bankruptcy, the bank's secured interest is only $10 million, and it appears that the bank, barring an unforeseen recovery miracle, will be out the $10 million it advanced to Dodson on the unsecured operating line.

What makes the matter of the loan shifting even more curious is that Dodson's $10 million operating budget included funds for operating a second farm in the state of Washington, which the Body Contours people and Behrens had also purchased on a lease option in 1980.

That farm—across the Columbia River from Boardman in Patterson, Wash. and known as Three Wells/Hundred Circles—was operated by Dodson as a division of Sunriver of Oregon Inc., even though its ownership was legally separate and distinct from

Ronald Dodson and his close associate, Ray Sumpter McCoy, once served time in a California prison for violating securities laws.

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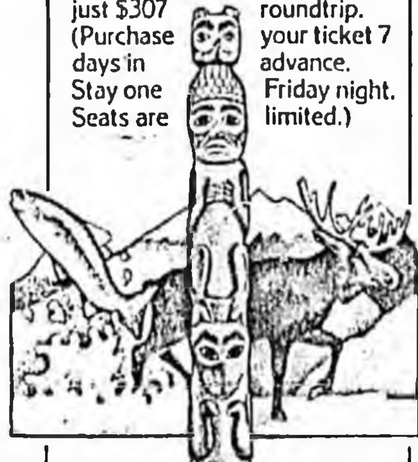

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What Prag says he did not know then, but later found out, was that Ronald Dodson and his close associate, Ray Sumpter McCoy, had once served time in a California prison for violating that state's securities laws.

According to court records in Contra Costa County, Calif., Dodson, McCoy, and two other men were indicted in May 1971 on charges alleging they tried "to cheat and defraud people of property by criminal means, false pretences, and false promises."

In effect, Dodson and McCoy were accused of creating a number of shell corporations and partnerships which obtained somewhere in the neighborhood of $2 million from central California investors, many of them retired.

The plan, according to the court records, was for Dodson and McCoy, and their various enterprises, to sell undivided subdivision lots near Lancaster, Calif.—more desert land—and guarantee their repurchase once the lots were divided.

In effect, said a salesman who testified before a grand jury investigating the affair, those who paid for the undivided lots were to provide a sort of "interim financing" to resolve the enterprise's "negative cash flow."

Instead of selling the subdivided lots, however, the enterprise never divided them, never filed the necessary subdivision reports, and never registered the financing arrangements as investment securities as they were required to do under California law. Instead, the money simply disappeared—coursed through a variety of different bank accounts into other enterprises.

In the end, Dodson and McCoy agreed to plead guilty to felony charges of selling unregistered securities; in return, the prosecutors, who were assisted by the California attorney general's office, dropped theft and fraud charges against the two men. Dodson and McCoy agreed to make all the restitution they were able—$125,000.

The pair then went off to Vacaville,

In the weeks following the signing of the lease option, DiSanto, Dodson and McCoy brought into the picture a fourth man, Fred Behrens, a Chicago tax shelter expert.

While employed as vice president of a Chicago financial-management firm called Great Plains Western in the mid-1970s, Behrens had done some work for a company called Body Contours of Chicago Inc., which owns a chain of reducing salons that do business as Gloria Marshal Figure Salons, and that was owned and operated primarily by two men, Allan Bergendehl and Sid Craig. When Behrens decided early in 1979 to leave Great Plains Western to set up his own financial management business in California, he took Bergendehl, Craig and Body Contours along as his first client.

Early in 1980, Behrens, Bergendehl and Craig all bought stock in DiSanto's 1978 corporation, Sunriver of California. Subsequently, all of the stock in Sunriver of Oregon, the 1979 corporation, was sold to Sunriver of California, making it a wholly owned subsidiary of the California firm.

With two strong buyers now in the fold—Bergendehl and Craig—plans were made to complete Sunriver of Oregon's purchase of Sabre Farms. A lengthy sales agreement was drawn up by the prestigious Portland law firm of Stoel, Rives, Boley, Fraser and Wyse, and on April 1, 1980, Dodson, on behalf of Sunriver Farms of Oregon Inc., signed the purchase agreement.

The agreement is one of the major curiosities of the Sunriver affair. The total purchase price for the farm was $30,652,000. About $3.4 million of the purchase price was for Sabre Farms' inventory of crops in the field, which Sunriver was to sell, turning over the proceeds to the First National Bank of Oregon, which by this time held a $13.4 million second mortgage on the farm property. Sunriver was then to assume the morgage payments to the bank, with the loan balance thus reduced to approximately $10 million.

loan, and apparently part of that loan went to operate a farm in which the bank held no secure interest whatsoever.

Why did the bank damage its own secured position to such an extent? The answer to this remains murky and is one of the major puzzles confronting lawyers who represent the various creditors against Sunriver, including the shareholders of Sabre Farms.

First National Bank official Frank Wallace, who supervises loan operations, told *Willamette Week* that it is not unusual for the bank to loan money to a borrower to be used against the debt the borrower has with the bank. But Wallace declined further substantive comment, citing the bank's responsibility to protect the confidentiality of its clients.

What happened to the $10 million operating line Dodson obtained from the bank? That is also an unanswered question, particularly in the light of all the claims the small business owners have filed against Sunriver, both in Morrow County courts as well as in the bankruptcy proceeding.

Those claims now total $6 million, and include payroll for the farm's hired hands, as well as claims by custom-farming services by businessmen operating specialized cultivating equipment, fertilizer companies, seed distributors, pump equipment suppliers, the Columbia Improvement District for water and power, a Chevrolet dealership in Pendleton which leased 47 vehicles to the farm (most of them still unrecovered), and even aircraft sales and repair firms. (Sunriver had its own air force, four planes belonging to "Sunriver Aviation Division.")

All of these small businesses, and others like them, advanced goods and services on credit to Sunriver under the assumption that Sunriver was a reputatable farming operation with impeccable financial credentials. It now appears that these goods and services will be a total loss to the small businesses that provid-

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ed them, simply because there are no recoverable assets for unsecured creditors from the Sunriver carcass.

The losses, however, don't stop with the bank and its $10 million, or the creditors with their $6 million. As Leonard indicates, there are some who believe that Sunriver was also engaged in a different kind of bookkeeping operation, an operation which resulted in the removal of at least some of Sabre Farms' moveable equipment to other farms, among them Three Wells/Hundred Circles, according to testimony in the bankruptcy court. Leonard, as receiver, has so far spent much of his time trying to track down this equipment; some of it wound up in Texas and California as well as in Washington.

All this financial destruction was still to come when, in the spring of 1980, Dodson was signing the purchase agreement and obtaining the $10 million from the First National Bank.

As per the agreement, Sunriver made its first payment to Sabre of $500,000 on July 1; it followed earlier payments of about $800,000 on the lease. With only $1.3 million out, then, Dodson, McCoy, DiSanto and the Body Contours owners had gained control of an enterprise valued at over $30 million but that had about $27 million in secured debts to the bank and the insurance company. Because the sale was a contract purchase, the shareholders of Sabre remained legally liable for the payment of those loans, should Sunriver have defaulted.

And that is exactly what happened. Sometime in July, Dodson sold the farm's wheat crop at the very bottom of the market. What happened to the income from this sale remains unclear from the bankruptcy court records, but sources familiar with the farm's operation contend it went to pay for the farm's normal operating expenses. Why this should have been necessary with a $10 million line of credit from the bank is unclear. It is possible that the income from the wheat crop may have been used to make the down payment of $500,000 to Sabre's shareholders.

Sources familiar with Sunriver's farming operation insist that the wheat crop was sold at the bank's demand; they claim the First National Bank frequently tells its farming borrowers how to manage their enterprises. Wallace says that's not true; that the bank doesn't tell any borrower how it must manage its own business affairs.

Sunriver plunged on through the summer, planting 13,000 acres of its holdings in beans. An additional crop of beans was planted by Sunriver across the river at Three Wells/Hundred Circles. Although the bank and the farm projected the bean yield to be 20 bags to the acre, by the time the harvest was done in the fall, the farm netted only

owners called on both Gov. Victor Atiyeh and former Rep. Al Ullman (D-Ore.), who represented eastern Oregon and was seeking reelection. With a great deal of ballyhoo, the Sunriver people had a press conference, attended by both Atiyeh and Ullman, and announced that alcohol agriculture was well on its way in Oregon.

Instead, the state Energy Department, which has review authority over such federal grant applications, questioned Ultrasystem's findings—it wondered where the alcohol plant would get the necessary feedstock. The state also began to question the financial resources of Sunriver, questions the company refused to answer. Atiyeh subsequently refused to endorse the alcohol plant application.

By late November, Sunriver's pushing and shoving in the political arena had attracted the attention of *The Oregonian*'s Les Zaitz, who at that point discovered the background of Dodson and McCoy. They resigned as officers of Sunriver Farms of Oregon Inc., and the alcohol idea died an abrupt death in Atiyeh's office.

It was at about that time that the fiasco involving the bean harvest became clear; what then transpired cast the bank in a strange light.

Two weeks after the alcohol plant idea fizzled, Schreiber, who by this time had been called in by Behrens to straighten out the mess left by Dodson and McCoy, went to see the bank's officials. Schreiber says he told the bank that the farm would not be able to make its Jan. 1, 1981 payment to the Sabre shareholders, and that the firm would be filing for reorganization under the federal bankruptcy act.

"'Have you told Sabre yet?'" Schreiber says bank officials asked. Schreiber says he replied that Sunriver had not. The following day, says Schreiber, Sunriver's lawyers went to the Pioneer Courthouse to file the bankruptcy. Unknown to Sunriver, the Sabre shareholders on the same day, about three hours earlier, had filed a foreclosure action against Sunriver in the Morrow County courts. Schreiber says he thinks the bank tipped the Sabre people off; Wallace cites the bank's commitment to confidentiality.

Maneuvering around the bankruptcy was to make it impossible for Sunriver to reorganize, says Schreiber. "Once the judge [Hess] discovered that we had been foreclosed, he figured we couldn't reorganize. How could we, without a farm?"

In the meantime, to protect *its* position from foreclosure, the bank made the regular annual payment on the first mortgage to Prudential on behalf of Sunriver, and, by extension, Sabre. Had Prudential filed foreclosure, the bank would have been out the entire $20 million it had invested in the ill-fated dream of Charlie Kyd and the ill-fated scheme of Sunrivers of Oregon and California.

The bankruptcy action is still going on in Portland, with lawyers representing the various creditors sifting through the wreckage in search of whatever remains salvageable.

At least some of the Sabre shareholders are said to be considering a lawsuit against the former officers of Sabre Farms, who sold the property to the Sunriver group, the bank, and possibly the law firm that drew up the sales agreement.

As for Dodson, he is said to be living on the Three Wells/Hundred Circles farm property across the river in Washington. And, says Schreiber, the last he heard, McCoy was at home in La Costa, Calif. •

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seven bags to the acre. After that, there was no more money.

Except for a long shot. Early in the spring, the Sunriver principals decided to try to attract additional investment by selling limited partnerships to investors across the country eager to cash in on the tax advantages afforded by the national rush to a new kind of agricultural product: alcohol.

Again, Prag, the real estate broker, makes an appearance. He and Beverly Kyd, widow of Charlie Kyd and currently one of the largest shareholders in Sabre Farms, were among the owners of an enterprise known as Morrow Produce. The produce company, which in earlier years had been used to sack fresh potatoes for sales in supermarkets, was effectively idle due to a drop in the potato market. Prag and the other owners of Morrow Produce agreed to sell the company's property to Sunriver of Oregon.

Meanwhile, the Sunriver owners, through Behrens, were selling "about 30 to 40 limited partnerships" to "qualified investors" throughout the country, according to Schreiber. The idea was to offer the tax advantages of farming losses, coupled with the write-offs allowed for the development of alcohol fuels, to investors who needed the loopholes to shelter their regular income.

To this end, Behrens, DiSanto, Mallen, Dodson and McCoy, set about distributing "confidential private placement memorandums," which in effect offered the prospective tax client a crack at a tax shelter worth up to 226 per cent of the amount invested, provided the IRS would go along with the scheme. The partnership units were offered for sale to investors at $1,000 a unit, with a minimum investment of $150,000.

How much money this operation raised, and what happened to it remains unclear. Schreiber says that Sunriver of California, acting as the general partner, sold "30 to 40" such partnerships, but he doesn't say how many "units" this represents.

To help get the alcohol plant that was part of these investments off the ground, Sunriver of California hired a California engineering firm, Ultrasystems Inc., to make a feasibility study—but not before Sunriver first obtained a grant of $249,000 from the federal Department of Energy.

Ultrasystems concluded that the plant, to be situated on the site of Morrow Produce and a contiguous parcel of land which Sunriver had acquired in the deal with Sabre, was feasible.

Sunriver then set about trying to obtain a $75 million low-interest federal loan to underwrite construction of the plant. Ultrasystems projected that feedstock for the alcohol would come from Sunriver Farms, and possibly from Three Wells/Hundred Circles.

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uppercut bared blood over Herbert's nose. In the sixth, Chase had Herbert wobbling with a massive right just before Herbert rocked him with a deadly left. Chase went down on a slip in that round and by the seventh he was bleeding above the right eye and stumbling.

In the eighth, it was Herbert's turn to slip, to be stunned, and to come roaring back. From my corner the eighth belonged to Chase but the fight belonged to Herbert. My friend Poontar was also convinced that Herbert had won, and being wise to the ways of excited crowds, he suggested that it might save dry cleaning bills if we retired to the rear of the arena to await the decision. But we were both wrong, and before we could creep away, Steve Chase was awarded the split decision.

No beer flew. The crowd loved it. Chase is a deservedly popular fighter, and every time he took a heavy shot in that bout you could hear the breath jerked out of the crowd. Judge Laford scored it 78-77 for Chase; Judge Weitzel gave it to Chase 77-76. Referee Cassidy, scoring in the absence of Judge Robinson, sa[illegible] 78-77 for Herbert. Chase winced [illegible] he heard about Cassidy's scorin[g]. "He was standing the closest, he ought to know... whoops... that would mean... well, scratch that." But Chase believes he won that fight and so do 60 per cent of the fans who saw it. They argue that damage is the criterion. "I was staggering him," said Chase. "He wasn't hurting me. That's the pro game. This isn't amateur boxing."

But the other 40 per cent saw Chase hurting plenty. They saw Herbert control the form and progress of the fight, and they figure he more than made up for that lost mouthpiece and the point he dropped along with it. Matchmaker McNalley said, "It should have been a draw. That's the only reasonable decision in a fight like that." Johnny Herbert said, "I feel hurt... They didn't have to mess up my record like that." And he will have to be fierce to cancel the long-term effect of the decision. The days are gone when a boxer expected to fight at least 30 times a year, build a record of 100 bouts with maybe 15 losses, and finally get a crack at the title because he'd gone through all the opposition. This is an age when 20 fights against a mush-bag line can put you on the yellow-brick road, just as long as you've never been beaten.

Afghan

Afghans, and now works exclusively with Cubans, Cambodians, and Eastern Europeans. The reason? "Too much pressure," he confides. "The Afghans thought I was not on their side. Especially the ones from Germany. They think because you are a refugee, the world owes you something. They don't like to waste time learning a common trade. I try to tell them, here, they need to take anything they can get. The jobs *they* want are just not *out* there."

The crux of the problem, says Ansary and other Afghans who have been here awhile, is cultural. In closely knit, hierarchal Kabul society, status is everything, the loss of it, anathema. Professionally minded, modern-thinking and proud of it, the new Afghans balk at the low-paying, unskilled menial labor other less-qualified refugees like the Hmong are all too willing to snatch up. "I tried to place one Afghan refugee in an executive position in an American company, and he refused. He said his English wasn't good enough and he'd lose face," Roylance recalls. "But when I found the same man factory work, he said it was beneath him."

Says one Afghan, now a resident of the United States, "Afghanistan is a society where the pecking order is taken very seriously. Everybody is aware of everyone else's standing. And if you lose your job, your standing, you must explain it to everyone."

The worst blow to the Afghan's sense of standing is having to accept charity, says Farzana, a father of five and former goverment worker. "We want to work," he says. "We don't like to take free food and things. It is terrible for my girls to take the dirty old dress from the church. Or to stand in line for food stamps, or sit on the floor at the Tolstoy office, where there is only one chair for the visitor. It makes us ashamed."

While I listen to Farzana's complaint in his spacious rented home in Southeast Portland, his daughters offer me hot spiced tea and a bowl of raisins. Lilacs bloom in the yard. His five children, strikingly attractive and polite, are enrolled in local public schools: two will skip a grade next year. Their volunteer tutor calls their progress amazing. "They are the fastest learners I've ever taught," she says.

But the former executive and his wife, Asifa, are far from content. Like many of the refugees, he is deeply hurt by the prevailing ignorance among Americans he meets about the crisis in his homeland. "Some of them even ask me where Afghanistan is!" he exclaims, incredulous. The taunts endured by his teenage daughter on being mistaken for an Iranian make him furious. But mostly, he is stunned by his inability to get a job. "Maybe they only want people from their own religion," he murmurs of his prospective employers.

Is Farzana too discriminating? As we [illegible]

contends, the matchmaking would never be satisfactory. "I can't match a minister of roads with the same job here," she protests. "Americans are competing for these kinds of jobs. It wouldn't be fair to ask companies to hold these positions open just for the refugees."

Afghans who've been here for several years say privately that it's about time the newcomers stopped dreaming that they can duplicate the standing and power they enjoyed back home in employment over here. Their refusal to settle for less than what they believe they deserve, says one oldtimer, is just symptomatic of their unwillingness to face the reality of the move. And it's true that almost all of the refugees want to go back to their homeland. As Ansary explains, "Home is home. When you go home, you are somebody! I brought my mother over last fall, and already she wants to go back. But this is not a merry-go-round where you can get on and off wherever you want. Afghanistan is not the same anymore. And going back won't make anything better."

"Truthfully," Ansary concludes, "the refugees are torn. They want to return to Afghanistan, but they also want to live like Americans," and as long as the first dream holds its appeal, he implies, they will never realize the second.

The predicament is far fr[om] unique. Every wave of affluent refugees that crashes on American shores has struggled with it before, has refused at first to adjust to a lower standard of living than that to which it was accustomed, and later, maybe after a year or more, has inevitably come to accept the hard facts of competitive American life. Hard facts to swallow if you believe, as many Afghans do, that coming to America should signal the end, not the beginning, of years of crisis, loss and disruption.

Leadership from within the refugee community can help ease the painful transition. But the Afghans have no leaders. "All chiefs, no Indians," one American caseworker despa[irs]. Similar as their complaints about Tolstoy's insensitivity, the job market, and the lack of programs, old tribal, regional and ideological loyalties continue to stall the development of a united community.

For example, Zaher Wahab, an Afghan professor at Lewis and Clark College, knows the new arrivals could use some tips from an old hand like himself. Last summer he got his brother out of Afghanistan with the aid of Church World Services. But he steadfastly refuses to get involved. He is from a Pashtoon-speaking peasant family in the provinces, and says the only thing he has in common with the incoming refugees, most of them well-connected Farsi-speaking city dwellers, from the Tajik tribe, is the fact that they are

with a vested interest in the reorganization of the troubled firm—sent Cotton and Martin to Seattle to see Moksha Smith, president of Kamala.

That's how CMS got into the overseas land sales business, according to all accounts. The CMS salesmen needed a product to sell overseas; Kamala had the land to sell and needed agents. Moksha Smith even loaned one of his top salesmen to CMS.

Oh yes, CMS provided $50,000 to Kamala in return for 30 per cent of the Kamala stock. The first sales project overseas: selling lots in Rimrock Meadows, a Kamala Inc., development in Eastern Washington.

Moksha Smith, according to these accounts, also steered CMS toward another supplier of "recreational" land —Ned Warren, a convicted con man and swindler who would acquire notoriety as the "godfather" of Arizona land fraud. Befriending politicians and bribing real-estate officials, Warren operated with virtual impunity for many years in Arizona.

Warren said in a deposition that his first contact with CMS was in mid-1971. "I spoke with Moksha Smith who was interested through Wendell-West corporation in selling certain properties owned by CMC [Warren's firm]. He asked me to make a trip with him to the Philippines and at that time I [was] introduced to several people, among which were Mr. Kaplan of CMS," Warren said.

The result of that meeting was an agreement to begin selling some Arizona property known as Chino Meadows. Later, in September, 1971, Warren made another trip to the Far East and persuaded CMS to sell a new property to the overseas U.S. military personnel—something called Chino Grande Ranchettes.

Chino Grande Ranchettes turned out to be an illegal Arizona subdivision, and all the evidence indicated that CMS was the victim of another Warren swindle.

CMS eventually learned that the Chino Grande Ranchettes it had been peddling to servicemen consisted of rocky land with steep slopes, vertical rock cliffs and almost impossible access. CMS attempted to make good to its customers, offering refunds or an exchange for alternate land of equal or better value.

It was during the course of a 1973 investigation of recreational land sales in Oregon that the *Eugene Register-Guard* got a tip to check land sale contracts for Kamala's Top Ranch property north of Monument in Grant County.

A search of the microfilmed deed records produced a contract showing that Leslie D. Chapman, an Air Force sergeant, bought a Top Ranch lot on April 3, 1972.

That date was highly significant because it was more than two months before the June 7, 1972, issuance of the Top Ranch public report by the Oregon

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Afghan Refugees

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to get a job right away, which means they can't get welfare and take the English classes they need to better compete for the highly skilled jobs they are trained to do.

And trained they are. Back home, they ran whole provinces, drilled regiments, practiced law, supervised development projects and roads. Most of them bilingual, they come from families with second homes, vineyards, bodyguards, orchards. Women wore the chador, but they also held well paying jobs. Their high schools offered 17 classes. In a country the size of Texas, populated mostly by illiterate nomads and farmers, they are the cream of the crop, a Farsi-speaking, urban-dwelling minority, a powerful elite. It's not an identity they're likely to surrender without a struggle. Why shouldn't their expectations be high, they ask? Their talents are many, their intentions only good.

Most refugee groups are as unwilling to speak against their American sponsor agency as agencies are to speak critically of their charges. But relations between the Afghans and the Tolstoy Foundation are an exception to this rule of mutual discretion. Roylance openly admits that dealing with Portland's newest refugee group has been neither a gratifying nor an easy experience. Not that they are to blame for what she calls their unrealistic expectations. Much of the fault must be assigned to government sponsors in West Germany, who gave them free food, housing, medical care, schooling, extra funds, and after a year, jobs, for as long as it took them to win refugee status from the U.S. government.

"They were totally taken care of. Totally," Roylance says. But unlike the Southeast Asians waiting for visas in Thai or Malaysian camps, they were given no English language classes, no job training, no orientation—nothing, in short, to prepare them for life in the United States.

"By the time they get here," Roylance concludes, "they expect the same treatment they got in West Germany. Their attitude is, 'Where's my house? Where's my money? When can I go to school?' And we can't afford this. Not Tolstoy, not the federal government. All we can do is provide rent till they find work, help them out with health care, donate furniture, pots and pans, and set them up with some job interviews. And they feel let down. It definitely gets things started on the wrong foot."

Equally disenchanted is Aziz Ansary, a 30 year old Afghan who left his native land 10 years ago and now works as a Tolstoy resettlement worker. A few weeks ago he stopped dealing with dive employers. [illegible]

Is Farzana too discriminating? As we talk, the phone rings; it's an American woman from a Portland custodial agency with a possible job offering for the refugee. The pay is low—$3.75 an hour—and you need a car. Farzana, initially curious, can barely conceal his lack of interest by the end of the conversation. How can he support his five children on $3.25 an hour? Or save up enough money to buy a car so he can get a better job? To the former manager, it looks like a vicious circle.

But Roylance insists that the jobs are there. "It's just that the Afghans are interested in more than mere survival. And because of their special skills and demands, they're that much harder to place."

A conversation with another Afghan, a well-spoken former dissident organizer who helped set up the strikes in India against the Soviet regime in Afghanistan, bears out Roylance's point. This man, a student of economics, had hoped to find "a good job according to my ability. But nobody accepts. The agency gave my name to two, three companies. Now I know I have to send my resume to *200* places. Finally, I got a position with CETA. There, I learn about how to talk to the boss. How to dress. How to behave." He grins. "All Afghans know these things! But we are an educated people!"

Over and over the new arrivals emphasize the difference between their needs and those of the illiterate rice farmer from Laos, the fisherman from Vietnam. They see the special programs for the Southeast Asians at the Indochinese Refugee Center; they hear about the special clinic for Southeast Asians run by the county; they discover that the state has a special welfare office just for the Asians; they note the lack of bilingual Afghans on the teaching staff of Portland Community College at Ross Island—and they can't help but feel like their own education and job skills are, in some impalpable, ironic way, held against them.

"The English I speak now I learned before I came," one Afghan, who asked not to be named, explains. "The English as a second language class at Ross Island is only for the beginners, the Southeast Asians. It can teach us nothing."

Tolstoy says it doesn't have the time or the money to attend to the special needs of the Afghans. And even if it could, it wouldn't want to appear to play favorites with one group of refugees over another. "Already, I've spent thousands on them," Roylance says. "More than any other group—about $1,000 a person, and sometimes more with the larger families. Boy, I wish *I* was a refugee."

To match the Afghans with jobs that require their special skills, says Roylance, would mean hiring a job placement specialist. Tolstoy can't afford this, and even if it could, Roylance Farsi-speaking city dwellers, from the Takik tribe, is the fact that they are from Afghanistan, and this alone is not enough to resolve deeper differences between the groups.

"The Afghans are very factionalized," he says. "From there to here, they carry their domestic problems with them. I'm a good example. The common wisdom is, the people from Kabul have no scruples. You don't trust them. I know I should help, but I don't want to. I'm a leftist, and these people here today would have been the next targets of the peasants—my people—when the Russians leave. What can we possibly say to each other?"

The Founder's Friend

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investigative reports, newspaper clippings and numerous interviews.

It began in 1971 when the Wendell-West Company filed what was then reputedly the largest Chapter XII bankruptcy (reorganization) in the history of the United States with creditors' claims totaling $70,000,000.

Concerned that stigma from the bankruptcy proceeding might impede attempts to revive the firm, three Wendell-West partners—Moksha Smith, Lawrence C. Angell and A.J. Hutton Jr.—decided to get a fresh start with a fresh name. They formed a new corporation called Kamala Inc., with Wendell-West owning 63 per cent of the stock, and began developing new projects for the land sales market. Top Ranch was one of them.

Meanwhile, 5,000 miles away in the Orient, some of Bernie Cornfeld's former salesmen, unemployed following the IOS collapse, also were forging a new corporate identity. They formed a corporation of their own to sell such things as mutual funds and debentures, calling it Capital Management Systems Ltd.

Two CMS organizers, Elmore Cotton and David Martin, journeyed to Palm Springs, Calif., to visit Ray Ryan, a wealthy Indiana oilman with a penchant for high stakes gambling and friendships with mobsters. At the time, in fact, Ryan was appealing his 1970 conviction for obstruction of justice in connection with destruction of records showing that three eastern Mafia leaders had been given gift memberships in the plush Mt. Kenya Safari Club in Africa, which Ryan co-owned with actor William Holden.

Exactly why they chose to visit Ryan is unclear, although it is probable that Ryan's son-in-law, Bob Kaplan, a young Beverly Hills stockbroker who would later become president of CMS, helped pave the way. In any event, Ryan—a major creditor of Wendell-West before the June 7, 1972, issuance of the Top Ranch public report by the Oregon Real Estate Division. The public report is a disclosure statement about the property being sold; under Oregon law, no property in such a recreational subdivision can be sold legally until the public report is issued. Thus, the real-estate contract was *prima facie* evidence of an illegal sale.

Telephone calls to other servicemen who bought Top Ranch parcels while overseas indicated that others also had not been shown the public report.

In the case of Top Ranch, the public report was particularly important because it disclosed, in capital letters, that the land was unsuitable for subsurface sewage disposal, meaning no septic tanks. That also meant that a buyer couldn't get a building permit to erect a house or cabin on the property.

This fact surprised some of the buyers contacted by the *Register-Guard* who said they had been led to believe by the salesmen that they wouldn't have any problem with sewage or with building any kind of structure on a Top Ranch lot.

The Oregon Student Public Interest Research Group, working independently on an investigation of Top Ranch, also reported instances of servicemen saying they had not been shown public reports before purchasing.

Moksha Smith, reached by telephone in Seattle, claimed to have signed documents showing that all Top Ranch buyers had been provided with the public reports. But he had trouble explaining how buyers who made their purchases prior to the issuance of the report could have been given the report before, other than to say that perhaps some of the overseas agents "jumped the gun" on some sales.

On June 2, 1976, *Arizona Republic* investigative reporter Don Bolles drove to a hotel on North Central Avenue in Phoenix to meet a tipster. The tipster didn't show up. Bolles made a telephone call, then went back outside and climbed into his new white Datsun and started to back out of the parking space.

A bomb blast blew apart the Datsun. Bolles was mortally wounded, one leg blown completely away, other limbs mangled.

Who attached the radio-controlled bomb to his car? Who touched it off? And why? These questions went unanswered for months as Phoenix police checked out clues.

It was during this time that the names of Sen. Barry Goldwater and Capital Management Systems Ltd. leaped into prominence.

Less than three hours after the bomb blast, reporters found a note on Bolles' desk. It was in Bolles' handwriting, a memo to himself. It referred to letters written by Goldwater and then-Rep. Sam Steiger (R-Ariz.) to CMS, a corporation that was selling lots in an illegal land subdivision to servicemen in

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The Founder's Friend

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the Far East.

This may have been the bait that lured Bolles to his appointment with death. No one knew for sure.

It turned out, eventually, that land fraud was not the primary factor behind Bolles' assassination. Months later, a local thug named John Adamson would confess to police that he had set the bomb and he would implicate three other men. Two of them, Max Dunlap and James Robison, would be charged and convicted of Bolles' murder, only to be released when the convictions were reversed by an appellate court. A third man named in a police affidavit—wealthy rancher and liquor wholesaler Kemper Marley—was never charged.

But the memo found on Bolles' desk was a clue that eventually would offer insight to the comfortable relationship existing between Arizona politicians and the land bandits. At the time, land fraud was becoming Arizona's most famous export—and Ned Warren was preeminent in the field.

When the IRE task force of reporters began work in Phoenix, there were several puzzling aspects about the purported Goldwater-Steiger letters to CMS which had not been answered.

For example, there was a memo dated Aug. 18, 1971, written by Ed Lazar, Warren's top lieutenant, suggesting to Warren that he obtain a letter of endorsement on the Chino properties from Steiger. Lazar's memo included proposed wording for the letter.

But no such letter from Steiger could be found and Steiger disclaimed any knowledge of writing such a letter.

What police did have was a letter from Goldwater to CMS, dated Aug. 19, 1971, praising the Chino properties in almost precisely the same language as acknowledged signing the letter but was vague about the reasons why.

A new investigative hypothesis evolved, and Warren later confirmed it in an interview with IRE.

When Warren received Lazar's memo asking for a letter of endorsement from Steiger, Warren had a better idea. Why get a letter from a congressman when you can get one from a U.S. senator who is also a retired Air Force major general and whose name carries a lot of weight in military circles?

Indeed, why not? And that's exactly what Warren did. Within 24 hours, he had a letter of endorsement addressed to CMS and signed, "With best wishes, Barry."

The incident says something, perhaps, about the easy access that Warren had developed to Arizona's power structure. And it also says something about the way a U.S. senator, a candidate for President in 1964, can be used—wittingly or unwittingly—as an instrument of persuasion in the sales of worthless real estate to U.S. military personnel overseas.

Warren later took Goldwater's letter with him on his trip to meet with CMS officials in the Far East and copies were added to CMS sales kits.

"What more could anybody want?" asked Kaplan, the former CMS president.

Goldwater refused to be interviewed by IRE.

Postscripts:

- Kamala Inc., Moksha Smith (president), and Monte Cook (sales manager) were indicted by a federal grand jury in Seattle on April 23, 1980, in the climax of an investigation by postal inspectors of an $800,000 mail fraud. Smith and Cook plead guilty to charges of creating spurious land-sales contracts in a scheme to defraud investors, lenders and others with whom Kamala did business. On Jan. 23, 1981, Moksha Smith began serving a three-year sentence at the federal prison camp in Boron, Calif. Cook was sentenced to three which entered a no-contest plea, was fined $1,000 on each of 19 counts (suspended), and placed on three years probation.
- Ned Warren, who eluded successful prosecution for many years in Arizona, finally was convicted of bribery and land fraud. He died last year in the prison ward of a county hospital. He had been in ill health for years after having triple by-pass surgery in 1977.
- Capital Management Systems Ltd., apparently suffered mortal financial wounds in its dealings with Warren and faded from sight. The current status of CMS is unknown.
- Edward Lazar, Warren's right-hand man, quit the land-sales business and, in February 1975, on the eve of testifying to a grand jury about Warren's payoffs to the former real estate commissioner, was shot to death in an underground parking garage in Phoenix. Five shots from a .22 caliber weapon. It remains an unsolved murder.
- Ray Ryan, the wealthy Indiana oilman, was blown to bits on Oct. 18, 1977, when a dynamite bomb exploded in the trunk of his Lincoln Continental in Evansville, Ind. News accounts of the bombing recalled that Ryan had testified in 1965 against two Mafia figures who were convicted of trying to extort $60,000 a year in protection money. Ryan's murder remains unsolved, but the manner of his execution suggested a mob contract. A federal grand jury investigated but returned no indictments.
- And Top Ranch? What about the servicemen who bought the five-acre lots on contract? A few asked for and received refunds after the *Register-Guard*'s first disclosures in 1973. Some buyers grew discouraged and quit paying. Grant County Assessor Lane Burton says several lots have been sold at sheriff's sales for unpaid property taxes. Other buyers hung on. Burton recalls a barrage of complaints when the assessor's office lowered the values on Top Ranch lots after all the trouble erupted. "They were mad as heck. There are still some people who think they have

ES Willamette Week

Royal Aloha's Founder

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attorney general, Eastvold was a member of the state land board, and just before he left office—on Nov. 2, 1956—the board decided to sell to a private party the parcel of land that eventually became Eastvold's Ocean Shores.

The land-board sale controversy heated up after Eastvold had left office when he and Smith set up a land development company, Wendell-West. It bought the ocean-front property, a flat, former cattle ranch, from the private party and proceeded with ambitious plans to sell it off in subdivided parcels.

In a two-part series on Ocean Shores published in *the Weekly*, Seattle reporter Patrick Douglas describes the boom years for Ocean Shores during the "latter sixties, when lots there were selling like crazy under the high-pressure salesmanship of the Wendell-West crew. Each summer, the company sponsored a big golf tournament at which singer Pat Boone (a partner in Wendell-West) traded smiles with such visiting 'celebrities' as comedian Phil Harris and actor David Janssen."

In and out of trouble

Selling lots at Ocean Shores wasn't the only business in which the two former Washington officials joined forces in the late 1950s and early 1960s. According to a series of articles in the *Wenatchee World* written by Ray Schrick, Eastvold and Smith were officers in a Seattle-based swimming-pool-equipment distributorship, Sunplay Pools of Washington, which, with debts of almost $40,000, undertook an arrangement with its creditors.

In 1962, Eastvold and his new wife, Ginny Simms, a former singer with big band leader Kay Kyser, left Washington and moved to Palm Springs, Calif. There, according to Schrick's published account, Eastvold agreed to buy some of Indiana oilman and gambler Ray Ryan's stock in the Salton Sea Yacht Club—a large desert lake some 50 miles southeast of Palm Springs—in exchange for the proceeds from $250,000 worth of Eastvold's Ocean Shores interests.

Eastvold got into regulatory hot water in a hurry. According to court records quoted by the *Wenatchee World*, Eastvold was ordered to desist and refrain by the California Real Estate Division for "alleged bait-and-switch advertising"—switching prospective buyers from unsubsidized parcels into more costly lots in the subdivision. Accordingly, the sales literature was December 1970 the company filed a voluntary Chapter 12 Federal Bankruptcy Act petition; Wendell-West had run up bills of $70 million, $14 million of which were unsecured (the eventual settlement had Wendell-West paying off $5 million of that debt).

One of the most important findings *Wenatchee World* reporter Ray Schrick uncovered in the Wendell-West filings was that the company was following a familiar script. The real profits in fraudulent land sales come not so much from the initial sale as from putting up promissory notes signed by small buyers as collateral for bank loans and by selling the mortgages to banks and other financing institutions. According to Schrick's series, some $1.5 million worth of contracts that Wendell-West put up as security to persons who loaned the firm money or sold it land were signed by Wendell-West salesmen. Smith explained this, according to Schrick, by saying that the salesmen were so enthusiastic about what they were peddling that they bought lots themselves. However, *the Weekly*'s account points out that "few, if any, payments were ever made on many of these contracts, as well as on others supposedly signed by people not connected to Wendell-West. Nor, in most cases, did Wendell-West voluntarily substitute bona fide contracts for those of dubious validity."

Less than a year after Wendell-West filed bankruptcy, Smith was back in the recreational-land-development business as head of Kamala Inc., trying to rebuild his holdings and using a new marketing scheme of selling his undeveloped acreage to American servicemen stationed overseas.

In 1975, Eastvold splashed back on the Washington development scene—more specifically, right back on the banks of Ocean Shores.

"I was just sitting here in my office one day," Smith told *the Weekly*, "when Eastvold walked in the room. He said there were about 1500 remaining unsold lots at Ocean Shores, which he thought we could acquire and market." No sweat. Smith and Eastvold quickly found themselves back in business, this time with the $15 million worth of leftover Wendell-West Ocean Shores lots.

The Ocean Shores development at that point had been taken over by another group, headed by Walter P. Gribben and Robert J. McDaniels. Gribben, a California lawyer, has had some troubles of his own: Just two years earlier in 1973, he had been named along with six other people in a suit brought by the federal Securities and Exchange Commission that tied him to the dealings of U.S. Financial Inc., a Southern California real estate company. In a 76-page complaint, the SEC charged the com- this case, Eastvold's Aloha Group—transfers one unit to the non-profit club, and sells interval ownerships in the use of the unit. When 48 or 50 club weeks are sold in that unit, the developer transfers another and sales continue. At Royal Aloha, sales have somersaulted so quickly that club inventory boasts $20 million worth of property in Hawaii, Mexico, Lake Tahoe, and Spain. And one lonely unit, which burned down a few years ago, at Chalet Village in Ocean Shores, Wash.

Where does the Aloha Group get its properties? Most are in existing condominium buildings that the group is buying up unit-by-unit. In some cases an entire building could be carved up between several different time-sharing companies, as well as full-time condo owners who have nothing to do with the time sharing. A few of the units were even owned by members of the club's board of directors, who sold them to Eastvold, who sold them to the Aloha Group, which transferred them to the club.

And three of the group's sites in Hawaii, which are now club resorts, are not owned but *leased*. The leases all run beyond the year 2000, and while the Aloha Group's public offering statement filed with Washington authorities states coolly that they fully *expect* the leases to be extended, there is no guarantee that they will be.

Indeed, like all recreational land sales, there's money to be made in time sharing. In one instance, the Aloha Group paid Kenneith Lacy (who happens to be an officer of the Aloha Group) $67,310.32 for a condominium in the Waikiki Skytower. With one-week memberships running about $7,000, the Aloha Group stands to sell that unit to the Club for $336,000—five times what they paid for it. Another financing option the Aloha Group contemplates, notes the Washington registration papers, is selling the receivable notes from club members to third parties or pledging notes to third parties as security for loans.

There's a third element in the deal, and it is crucial to keeping the Royal Aloha time-sharing setup aboveboard. It is Tellus Financial Services Inc., which, as of June 1978, has kept tabs on Royal Aloha's membership roster, sales and mortgage payments. According to Stirling Morita, a *Honolulu Star-Bulletin* reporter, Tellus, whose principals held mortgages on Smith's Ocean Shores property, also advances loans to Royal Aloha.

"Tellus is the policeman in the whole arrangement," says Jon Pegg, chief and registration attorney for Washington's Real Estate Division. "They've got an awful lot of work to do."

Tellus has a few corporate officers who are familiar names in the wildly complicated land development game. President of Tellus is Walter Gribben, mentioned earlier as named in a huge SEC complaint in 1973. He is also the same individual who, as controller of much of Ocean Shores property after Wendell-West went bankrupt, sold the remaining 1500 ocean lots to Eastvold and Smith in 1975 and put them back in business. Gribben later landed in the middle of a massive lawsuit at Ocean Shores, in which a small local realtor there, Mike Moore, claimed that Gribben, Eastvold, Smith, and a host of other defendants had tried to run him out of business. Moore charged that the group conspired to use bribery, threats, coercion, price-fixing and false advertising to try to run him out of business because his moderate prices and low-profile sales pitch didn't jibe with the Gribben/Eastvold/Smith style of inflated prices and hype. And dirty tricks: Moore alleged that the group also threatened to report him to "the real estate commission, board of realtors, IRS, FBI, and CIA" if he didn't remove his low-price signs from the Ocean Shores area, and that they tried to register and prevent him from using *his* own business name, Mike Moore Realty.

Another peculiar connection exists between Royal Aloha and Tellus, which claims to be a disinterested, independent party servicing the club and its developers. But Judd Kirk, a Seattle lawyer who is an officer of Tellus, appears on Royal Aloha's list of its lawyers and brokers around the country.

"That list must be inaccurate," Kirk says. Adding a moment later, "Oh, I know what that is. Maybe the club was trying to save money and not duplicate with another lawyer, and they just list me in case someone wants local legal opinion."

At the Royal Aloha Vacation Club, it's business as usual, and by all measure, neither Eastvold's clouded past nor his roster of beleaguered associates has caused the club any trouble. Certainly, Eastvold's new post as president of the Hawaii Time Share Association would indicate his intent to keep Royal Aloha on the right track. That intent is all-important, since Oregon, with its vacuum of regulation for the brand-new industry, can be compared to Washington state of the '60s and '70s—a sitting duck for land fraud.

There have been hints of trouble already, though. In June 1980, the Arizona Corporation Commission suspended registration of Vacations International, the broker selling Royal Aloha Vacation Club memberships in Phoenix. The commission charged the firm with misrepresentation, fraud, and violation of state laws. Eastvold told reporters at the *Honolulu Star-Bulletin* that Vacations International was not part of the Aloha Group, just a broker representing the company in Phoenix.

"We are cancelling our brokerage agreement," Eastvold told reporters. "We are going to replace the firm with another broker . . . in Phoenix."

A clean break with trouble? Not entirely. Joseph Conlin, the president of Vacations International, simply went to Texas instead, where he sold memberships for Royal Aloha in San Antonio for nearly a year after being run out of Arizona. ▪

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buyers from unsubsidized parcels into more costly lots in the subdivision. Accordingly, the sales literature was changed, but the operation got into fresh trouble when state officials found that Eastvold was selling parcels of land that didn't include legal access. The desist and refrain order went back into effect.

Eastvold also orchestrated a land-development project in Mexico called San Antonio Shores, sales of which were stopped eventually by the state of California in 1973. Two years later, a court ordered permanent injunction spelled out Eastvold's obligations in the project, in which some 1,500 people, mostly Californians, had invested an estimated $10 million. The principal problem was that the developers couldn't deliver the 99-year leases they'd promised because San Antonio Shores was within a coastal-border area where the Mexican government limits land ownership by foreigners. Not that the property was all that desirable in the first place.

The 1975 California Superior Court injunction describes the beaches at San Antonio Shores: "Beaches, swimming pools and other apparent recreational waters thereabouts may be polluted, unsafe and unhealthy, and that portions thereof are grossly so, primarily by reason of the area of San Antonio Shores being burdened and befouled with the regular discharge...of the entire outflow of the raw, untreated sewage of the city of Tijuana."

As part of the court order, Eastvold was required to cancel and return all the promissory notes made by buyers of lots at San Antonio Shores and to pay the state of California a civil penalty of $25,000 in three payments within a year of the September 1975 order. The payments were never made: Eastvold says no one ever asked for them.

Hard times

In February, 1968, Eastvold filed a personal bankruptcy statement reporting $741,000 in assets and $1.1 million in debts. He was at the time, he told the bankruptcy court, "a defendant or judgment debtor in 20 or more lawsuits." His bankruptcy, Schrick suggests, stemmed from a string of new recreational land development schemes that didn't take.

While Eastvold was promoting real estate in California, his old Ocean Shores partner, Moksha Smith, was busily building a recreational land-development empire based in Washington that had holdings across the continental United States, as well as in Mexico, Hawaii and Australia. Business was good, too; in 1969, Smith's Wendell-West Co. rang up total land sales of over $30 million. But a year later it was in shambles. Throughout 1970, Wendell-West's assets—land in New Mexico, Hawaii, Australia, Wisconsin, Arizona, Mississippi, and at Washington's Ocean Shores—dwindled as the faltering company sold off property and lost property through foreclosures. In

U.S. Financial Inc., a Southern California real estate company. In a 76-page complaint, the SEC charged the company with manufacturing millions of dollars of phony profits.

McDaniels, too, keeps cropping up in assorted time-share deals. He has since served as president of Smith's Harbor Village Club in Ocean Shores, and last month became executive vice-president of Paradise Palms Vacation Club. If there's a center to the time-share tempest, Paradise Palms is probably perched on it: The club is under investigation in Hawaii, and was recently run out of Washington state by officials who insisted on registering it as a security. Its president, James Quincy, was a principal in the largest time-share disaster to date, the bankrupt Stanley Hotel project in Colorado, in which some 2,000 time-share owners lost over $4 million dollars.

After optioning the land from Gribben and McDaniels, Smith and Eastvold set up two companies to market their new Ocean Shores land: Holiday Resort Marketing, for domestic sales, headed by Dave Bullert, a salesman for Eastvold's ill-fated Salton Sea venture 15 years earlier; and International Resort Properties, whose president, Fredrick Schumacher, was Eastvold's attorney in his San Antonio Shores debacle and now sits on the Royal Aloha Vacation Club's board of directors.

Certainly, $15 million worth of land is nothing to sniff at. But what *really* excited Eastvold was the prospect of bringing Nevada-style casino gambling to Washington. That, of course, would have turned Ocean Shores land into pure gold.

Would have, but didn't. Eastvold served as attorney and prime spokesman for the Ocean Shores-based "Committee for Tax Relief" whose initiative drive in 1976 fell just shy of putting the issue on the Washington ballot. Undaunted, Eastvold geared up again, although this time the group failed to even submit signatures for consideration on the 1977 ballot. By then, Eastvold had headed west to market Ocean Shores lots in Hawaii, and, just a year later, to operate the Royal Aloha Vacation Club and its developers, the Aloha Group.

Blue Hawaii

On paper, anyway, Eastvold was beaten to a post with Royal Aloha by his wife, Ginny Simms. In February 1978, the first volume of *Diamond Headlines*, the Club's official newsletter, lists Simms as Royal Aloha Vacation Club secretary and "official interior decorator." Eastvold's name is nowhere to be found. By 1979, though, when the Aloha Group filed to do business in Washington, Eastvold was topping the crew as president and chief executive officer.

Getting started in the time-share business isn't difficult. All you need is an antsy sales staff, one condominium unit, and big plans. The developer—in

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LOWER HALF OF PG. 14

And A Friend

By JERRY UHRHAMMER

THE REAL ESTATE contract found in the microfilm records at the Grant County Courthouse was dated April 3, 1972, unmistakable evidence that Oregon's real estate laws had been broken.

Thus began the story of Top Ranch, a semi-arid Eastern Oregon cattle ranch carved into five-acre [illegible]nks for sale to American servicemen stationed in Okinawa, Guam, Hong Kong and other Far East bases.

It was not a world-shaking story, not even close to Watergate caliber. But it was a good yarn with regional interest, revealing how a land-sales company in Washington state, Kamala Inc., was using overseas sales agents to market Eastern Oregon ranchland as "recreational" lots, not always bothering to inform buyers that they might not be allowed to build a house or cabin on their proper[illegible].

Like many news stories, Top Ranch didn't last long. It petered out after a couple of weeks when the Oregon Real Estate Division ordered Kamala Inc., to desist and refrain from further sales. That effectively shut down the Top Ranch operation, closing another brief chapter in the checkered history of the recreational-land-sales business.

But there was more to the Top Ranch story than anyone realized at the time. As subsequent developments would reveal, Top Ranch was merely one piece of a larger story about land swindles on an international scale—a story punctuated by murder, assassination and political corruption.

It was a complex story that began amid the wreckage of two spectacular financial collapses in 1970-71—Bernie Cornfeld's worldwide Investors Overseas Services mutual fund, and the bankruptcy of the Seattle-based Wendell-West Company, once billed as the nation's largest real estate developer. This was the same Wendell-West, with singer Pat Boone as a partner, that developed Ocean Shores on the Washington coast and the Bayshore development on the Oregon Coast at Waldport.

Eventually, through a series of expanding business relationships and events, the story would include such diverse personalities as Ned Warren, the reputed "godfather" of Arizona land fraud; Sen. Barry Goldwater (R-Ariz.), who, on short notice, supplied Warren with a letter that would be used to sell worthless Arizona land to servicemen in the Pacific; Don Bolles, the Phoenix newspaper reporter killed by a car bomb in 1976; and Ray Ryan, an oil millionaire who kept getting in trouble because of mobster contacts, fatal trouble.

Most of the additional details surfaced when Investigative Reporters and Editors Inc. conducted its 1976-77 probe of land fraud, organized crime and political corruption in Arizona; details gleaned from depositions, transcripts of bankruptcy hearings, law enforcement investigative reports, newspaper clippings and numerous interviews.

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It began in 1971 when the Wendell-West Company filed what was then reputedly the largest Chapter XII bankruptcy (reorganization) in the history of the United States with creditors' claims totaling $70,000,000.

Concerned that stigma from the bankruptcy proceeding might impede attempts to revive the firm, three Wendell-West partners—Moksha Smith, Lawrence C. Angell and A.J. Hu[illegible]on Jr.—decided to get a fresh start with a fresh name. They formed a new corporation called Kamala Inc., with Wendell-West owning 63 per cent of the stock, and began developing new projects for the land-sales market. Top Ranch was one of them.

Meanwhile, 5,000 miles away in the Orient, some of Bernie Cornfeld's former salesmen, unemployed following the IOS collapse, also were forging a new corporate identity. They formed a corporation of their own to sell such things as m[illegible]ual funds and debentures, calling it Capital Management Systems Ltd.

Two CMS organizers, Elmore Cotton and David Martin, journeyed to Palm Springs, Calif., to visit Ray Ryan, a wealthy Indiana oilman with a penchant for high-stakes gambling and friendships with mobsters. At the time, in fact, Ryan was appealing his 1970 conviction for obstruction of justice in connection with destruction of records showing that three eastern Mafia leaders had been given gift memberships in the plush Mt. Kenya Safari Club in Africa, which Ryan co-owned with actor William Holden.

Exactly why they chose to visit Ryan is unclear, although it is probable that Ryan's son-in-law, Bob Kaplan, a young Beverly Hills stockbroker who would later become president of CMS, helped pave the way. In any event, Ryan—a major creditor of Wendell-West with a vested interest in the reorganization of the troubled firm—sent Cotton and Martin to Seattle to see Moksha Smith, president of Kamala.

That's how CMS got into the overseas land-sales business, according to all accounts. The CMS salesmen needed a product to sell overseas; Kamala had the land to sell and needed agents. Moksha Smith even loaned one of his top salesmen to CMS.

Oh yes, CMS provided $50,000 to Kamala in return for 50 per cent of the Kamala stock. The first sales project overseas: selling lots in Rimrock Meadows, a Kamala Inc., development in Eastern Washington.

Moksha Smith, according to these accounts, also steered CMS toward another supplier of "recreational" land—Ned Warren, a convicted [illegible]on man and swindler wh[illegible] would acqu[illegible]e notoriety as the "godfather" of Ari[illegible]ona land fraud. Befriending politicians and bribing real-estate officials, Warren operated with virtual impunity for many years in Arizona.

Warren said in a deposition that his first contact with CMS was in mid-1971. "I spoke with Moksha Smith who was interested through Wendell-West corporation in selling certain properties owned by CMC [Warren's firm]. He asked me to make a trip with him to the Philippines and at that time I [was] introduced to several people, among which were Mr. Kaplan of CMS," Warren said.

The result of that meeting was an agreement to begin selling some Arizona property known as Chino Meadows. Later, in September, 1971, Warren made another trip to the Far East and persuaded CMS to sell a new property to the overseas U.S. military personnel—something called Chino Grande Ranchettes turned out to be an illegal Arizona subdivision, and all the evidence indicated that CMS was the victim of another Warren swindle.

CMS eventually learned that the Chino Grande Ranchettes it had been peddling to servicemen consisted of rocky land with steep slopes, vertical rock cliffs and almost impossible access. CMS attempted to make good to its customers, offering refunds or an exchange for alternate land of equal or better value.

It was during the course of a 1973 investigation of recreational-land sales in Oregon that the *Eugene R[illegible]-Guard* got a tip to check land s[illegible] [illegible]ntracts for Kamala's Top Ranch p[illegible]rty north of Monument in Grant C[illegible]ty.

A search of the microfilme[illegible] deed records produced a contract showing that Leslie D. Chapman, an Air Force sergeant, bought a Top Ranch lot on April 3, 1972.

That date was highly significant because it was more than two months before the June 7, 1972, issuance of the Top Ranch public report by the Oregon Real Estate Division. The public report is a disclosure statement about the property being sold; under Oregon law, no property in such a recreational subdivision can be sold legally until the public report is issued. Thus, the real-estate contract was *prima facie* evidence of an illegal sale.

Telephone calls to other servicemen who bought Top Ranch parcels while overseas indicated that others also had not been shown the public report.

In the case of Top Ranch, the public report was particularly important because it disclosed, in capital letters, that the land was unsuitable for subsurface sewage disposal, meaning no septic tanks. That also meant that a buyer couldn't get a building permit to erect a house or cabin on the property.

This fact surprised some of the buyers contacted by the *Register-Guard* who said they had been led to believe by the salesmen that they wouldn't have any problem with sewage or with building any kind of structure on a Top Ranch lot.

The Oregon Student Public Interest Research Group, working independently on an investigation of Top Ranch, also reported instances of servicemen saying they had not been shown public reports before purchasing.

Moksha Smith, reached by telephone in Seattle, claimed to have signed documents showing that all Top Ranch buyers had been provided with the public reports. But he had trouble explaining how buyers who made their purchases prior to the issuance of the report could have been given the report before, other than to say that perhaps some of the overseas agents "jumped the gun" on some sales.

On June 2, 1976, *Ar[illegible]ona Republic* investigative reporter D[illegible]n Bolles drove to a hotel on North Central Avenue in Phoenix to meet a tipster. The tipster didn't show up. Bolles made a telephone call, then went back outside and climbed into his new white Datsun and started to back out of the parking space.

A bomb blast blew apart the Datsun. Bolles was mortally wounded, one leg blown completely away, other limbs mangled.

Who attached the radio-controlled bomb to his car? Who touched it off? And why? These questions went unanswered for months as Phoenix police checked out clues.

It was during this time that the names of Sen. Barry Goldwater and Capital Management Systems Ltd. leaped into [pro]minence.

Less than three hours after the bomb blast, reporters found a note on Bolles' desk. It was in Bolles' handwriting, a memo to himself. It referred to letters written by Goldwater and then-Rep. Sam Steiger (R-Ariz.) to CMS, a corporation that was selling lots in an illegal land subdivision to servicemen in

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the Far East.

This may have been the bait that lured Bolles to his appointment with death. No one knew for sure.

It turned out, eventually, that land fraud was not the primary factor behind Bolles' assassination. Months later, a local thug named John Adamson would confess to police that he had set the bomb and he would implicate three other men. Two of them, Max Dunlap and James Robison, would be charged and convicted of Bolles' murder, only to be released when the convictions were reversed by an appellate court. A third man named in a police affidavit—wealthy rancher and liquor wholesaler Kemper Marley—was never charged.

But the memo found on Bolles' desk was a clue that eventually would offer insight to the comfortable relationship existing between Arizona politicians and the land bandits. At the time, land fraud was becoming Arizona's most famous export—and Ned Warren was preeminent in the field.

When the IRE task force of reporters began work in Phoenix, there were several puzzling aspects about the purported Goldwater-Steiger letters to CMS which had not been answered.

For example, there was a memo dated Aug. 18, 1971, written by Ed Lazar, Warren's top lieutenant, suggesting to Warren that he obtain a letter of endorsement on the Chino properties from Steiger. Lazar's memo included proposed wording for the letter.

But no such letter from Steiger could be found and Steiger disclaimed any knowledge of writing such a letter.

What police did have was a letter from Goldwater to CMS, dated Aug. 19, 1971, praising the Chino properties in almost precisely the same language as proposed in Lazar's memo. Goldwater acknowledged signing the letter but was vague about the reasons why.

A new investigative hypothesis evolved, and Warren later confirmed it in an interview with IRE.

When Warren received Lazar's memo asking for a letter of endorsement from Steiger, Warren had a better idea. Why get a letter from a congressman when you can get one from a U.S. senator who is also a retired Air Force major general and whose name carries a lot of weight in military circles?

Indeed, why not? And that's exactly what Warren did. Within 24 hours, he had a letter of endorsement addressed to CMS and signed, "With best wishes, Barry."

The incident says something, perhaps, about the easy access that Warren had developed to Arizona's power structure. And it also says something about the way a U.S. senator, a candidate for President in 1964, can be used—wittingly or unwittingly—as an instrument of persuasion in the sales of worthless real estate to U.S. military personnel overseas.

Warren later took Goldwater's letter with him on his trip to meet with CMS officials in the Far East and copies were added to CMS sales kits.

"What more could anybody want?" asked Kaplan, the former CMS president.

Goldwater refused to be interviewed by IRE.

Postscripts:

• Kamala Inc., Moksha Smith (president), and Monte Cook (sales manager) were indicted by a federal grand jury in Seattle on April 23, 1980, in the climax of an investigation by postal inspectors of an $800,000 mail fraud. Smith and Cook plead guilty to charges of creating spurious land-sales contracts in a scheme to defraud investors, lenders and others with whom Kamala did business. On Jan. 23, 1981, Moksha Smith began serving a three-year sentence at the federal prison camp in Boron, Calif. Cook was sentenced to three years probation. And Kamala Inc., which entered a no-contest plea, was fined $1,000 on each of 19 counts (suspended) and placed on three years probation.

• Ned Warren, who eluded successful prosecution for many years in Arizona, finally was convicted of bribery and land fraud. He died last year in the prison ward of a county hospital. He had been in ill health for years after having triple by-pass surgery in 1977.

• Capital Management Systems Ltd., apparently suffered mortal financial wounds in its dealings with Warren and faded from sight. The current status of CMS is unknown.

• Edward Lazar, Warren's right-hand man, quit the land-sales business and, in February 1975, on the eve of testifying to a grand jury about Warren's payoffs to the former real estate commissioner, was shot to death in an underground parking garage in Phoenix. Five shots from a .22 caliber weapon. It remains an unsolved murder.

• Ray Ryan, the wealthy Indiana oilman, was blown to bits on Oct. 18, 1977, when a dynamite bomb exploded in the trunk of his Lincoln Continental in Evansville, Ind. News accounts of the bombing recalled that Ryan had testified in 1965 against two Mafia figures who were convicted of trying to extort $60,000 a year in protection money. Ryan's murder remains unsolved, but the manner of his execution suggested a mob contract. A federal grand jury investigated but returned no indictments.

• And Top Ranch? What about the servicemen who bought the five-acre lots on contract? A few asked for and received refunds after the *P[illegible]-Guard*'s first disclosures in 1[illegible]. Some buyers grew discouraged and quit paying. Grant County Assessor Lane Burton says several lots have been sold at sheriff's sales for unpaid property taxes. Other buyers hung on. Burton recalls a barrage of complaints when the assessor's office lowered the values on Top Ranch lots after all the trouble erupted. "They were mad as heck. There are still some people who think they have something," Burton says.

Developer George Donovan at North Carolina's Fairfield Mountains
"We have to be very careful that the bad doesn't drive out the good."

Time-sharing resorts are a booming business these days. Could they be the Eighties' equivalent of real estate investment trusts?

Endless vacation or endless headache?

By Carol E. Curtis

IT'S SUNSET, and time for the Jacuzzi. Beyond your room-size, mirror-lined bathroom, the master bedroom suite opens onto a majestic view of the Blue Ridge Mountains. The soft strains of piped-in music spill over to the two upper levels, where a gourmet kitchen, a second bedroom and living room with a stone fireplace open onto the same spectacular view. The golf course, pool and tennis complex are but a walk away.

Welcome to Fairfield Mountains. For $16,000 you can own the suite, along with the view and the Jacuzzi, for two weeks each year for the rest of its estimated 40-year life. For $125 weekly maintenance each year, you will never have to worry about upkeep. Decorator furniture, linens and dishes are included.

If this sounds like a good deal, it is—perhaps for you, but certainly for Fairfield Communities, Inc. After it sells you two weeks at its Fox Run development in the North Carolina mountains, Fairfield hopes to sell the other 48 weeks (two weeks each year are open for maintenance) at prices of up to $11,000 each week. Total revenues of the unit: $275,000. That's $150,000 more than the going price if the unit were sold outright to one buyer for $125,000. Since time-share owners pay upkeep, Fairfield's operating costs are minimal. Profits aren't. Fairfield spent $78,000 to build this particular unit, meaning that even with the high cost of sales its pretax margins are as high as 50%.

The scene shifts to Colorado. Next to the Stanley Hotel in Estes Park—a rambling, turn-of-the-century structure that was the inspiration for the movie *The Shining*—there is a pile of dirt. It is all that remains of a plan to turn the Stanley into a time-share resort. The Stanley is now in bankruptcy after James Quincy, a partner in the project, persuaded 2,000 "owners" to pay $10 million for weekly units. State attorneys say the money was dissipated in cost overruns and large sales commissions. Quincy moved on to sell time-share projects in Washington and Hawaii.

Which scenario is closer to the future of time-sharing? The question is not academic. The idea of selling off a resort in week-long slices started, in the mid-Seventies, as a mechanism for bailing out ailing projects. But since then, time-sharing has become big business. From almost nothing five years ago, the own-a-vacation industry has grown to $1.5 billion a year in sales. It includes everything from converted motels to self-contained complexes—such as Captran's Sanibel Beach Club, in Florida—built from the ground up for time-sharing.

Customers basically buy vacation homes or apartments for weekly intervals. Purchases are of two types: Customers get title to a fraction of their unit, a so-called fee simple transaction. Or, in what is called a right-to-use arrangement, they simply receive a week or more, usually for 25 to 40 years. At the moment, there are 270,000 time-share owners in the U.S., with some 270 companies hawking pieces of 450 resorts. Prices range from $1,700 per week to as much as $26,000.

This boom has come as soaring interest rates have pushed ownership of a vacation home out of the reach of the middle class. At the same time, rising

hotel costs make the idea of locking in future vacations at today's prices appealing. There is the promise of equity, too. In fee simple purchases (about 60% of all time-share sales), financing is commonly handled just like a home mortgage. As the buyer pays off his loan, he builds equity equal to the fraction of the unit he has purchased. There is, however, no equity buildup in right-to-use projects, which are often priced lower as a result.

For developers, the lure is clear: a broader market and a higher per-unit sales price. Financing is relatively easy to come by, too. Many lenders are active in time-sharing, including large banks, such as Citibank and Mellon. Lenders like the business because interest rates are often higher than conventional mortgage loans.

From a buyer's point of view, however, time-sharing involves more than its share of risks. "The idea may be simple. In operation, however, it is proving extremely complex," warns Alan Schlaifer, an attorney with the Federal Trade Commission who oversees time-share complaints. At the moment, the fast-growing industry shows several signs of overexpansion and potential trouble ahead. Among the danger signals:

- A ready availability of projects to convert and the promise of large amounts of upfront cash make time-sharing an easy business to enter. This, unfortunately, sometimes brings in undercapitalized, inexperienced—or even disreputable—operators.
- Heavy use of time-share units means a growing financial burden for owners as properties age; the cost of this extra wear-and-tear may not be reflected in maintenance fees.
- Time-sharing's high selling costs provide for fat commissions, which can breed deceptive market practices.
- Most time-share purchases are made with a view to exchanging with other owners, often in desirable locations such as Hawaii or Europe. This is a complicated, untried procedure that may not work.

At the moment, time-sharing is largely unregulated. It falls between the cracks of federal disclosure rules involving land sales, and only 12 states have specific legislation that applies to the industry. Not surprisingly, a host of colorful characters are involved—including developers like the Stanley Hotel's Quincy and Leonard Rosen of the infamous underwater land sales scam *(see box, p. 118)*. And there's Enerdine, a company that started out selling vitamins, then switched to time-sharing last December, three months after going public.

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It plans to sell units in Miami Beach, but corporate offices are still in a San Diego drug warehouse.

A sponsor's stability is particularly important in time-sharing because each unit may have as many as 50 different owners. That means the developer had better not walk away after a project is sold out. He, or someone he hires, has to be responsible for ongoing cleaning and upkeep. Typically, owners pay a maintenance fee each time they use the unit. Such fees rise every year at most resorts, in some cases by as much as 40%. So far, though complaints have been few, it remains to be seen whether such charges will skyrocket as properties age.

The advertisements of some resorts, such as the Sand and Surf, a Daytona Beach motel owned by Mass Enterprises Inc., claim there are no maintenance fees. Salesmen say that maintenance costs will be paid from the interest collected on an escrow account. But critics regard such aggressive promotion as an example of another looming problem for the industry.

Marketing costs at many time-share resorts are 35% of revenues, with commissions typically over 10%. With developers' carrying charges often well above the prime rate, there is tremendous pressure to move merchandise. This means a salesman wants an immediate commitment from a buyer on his first visit to a property. In popular vacation spots like Las Vegas, Florida and Hawaii, high-pressure tactics and dubious claims are becoming notorious.

In Hawaii, for example, time-sharing has become a $100 million-a-year industry over the last decade. It is also the leading source of complaints at the Better Business Bureau.

Hawaii passed laws regulating time-sharing last year, and state officials say their scrutiny is among the toughest anywhere. Still, the selling takes on a carnival atmosphere: Pamphleteers descend on beachgoers with promises of free meals for sitting through presentations, and some Hawaii tourist packages now advertise that they are not time-share gimmicks.

It is Florida, however, where pressure to buy may be the greatest. The Sunshine State is the home of one out of every four time-share resorts. Many of them are former motels that have been converted with minimal remodeling. Salesmen readily admit marketing costs are so high that they want to sell a unit the same day a prospect comes to look. It is common for Florida time-share salesmen to stress the investment value of ownership—even though there is at present no proven resale market. Another come-on is the privilege of exchanging time in, say, Miami Beach or Ft. Lauderdale for an equivalent or better week somewhere else.

RCI's Jon DeHaan and wife Chris

Can they handle 1 million members?

Despite the aggressive pitchmanship, many time-share owners profess to be satisfied with their purchase. Take Al Blalock, a personnel manager at General Mills who spent $16,000 for a month at Fairfield Harbour in North Carolina. "If you own a second home," he says, "you feel committed to being there. This way, we can trade to go to New England, the Virgin Islands and Europe. We're planning to do all this by exchanging."

The Blalocks, like most others, have owned their unit for just one year. They haven't seen how their vacation home looks after hundreds of other owners have trampled the carpet and barbecued on the terrace. Nor have they actually traded it for a similarly cozy spot in Maui or Monaco. How well that works for them and hundreds of thousands of other owners depends on two small companies, Indiana-based Resort Condominiums International (RCI) and Miami-based Interval International.

RCI, which handles two thirds of all exchanges, is crucial to the industry. Without the exchange privilege it provides, time-share developers concede it would be difficult, if not impossible, to sell buyers on vacationing in the same spot for 30 years or more. "If RCI defaults," says one time-share developer, "the industry would be in serious trouble."

The growth of RCI has been phenomenal. The family-owned operation is headed by Jon DeHaan, a self-described Ph.D. drop-out who got started selling camping parks coast-to-coast. When his camping scheme was killed by the energy crisis, DeHaan set up a condominium exchange program. He started RCI with his wife seven years ago, just as time-sharing came along. Some 540 resorts around the world have signed on with RCI—ranging from motels in Las Vegas to superluxurious ski condominiums in Vail, Colo. The firm has over 130,000 individual members and handled 20,000 exchanges last year. DeHaan claims he placed 90% of the members who wanted to use RCI's services last year.

RCI's revenues come from individuals, who pay a $39 membership fee and $38 per exchange. Resorts also ante up $4,900 to be put into the system. Says DeHaan, "By 1990, we should be a $100 million company. We are gearing up to handle a million members a year."

But there are obvious problems. Everyone wants to go to lavish fun-in-the-sun spots like Hawaii or ski resorts like Vail. Fewer folks want Arkansas or the Poconos. Conflicts are resolved by giving exchange priority to members with desirable units.

DeHaan also claims to reject 30% to

35% of the resorts that apply for membership. He will not, for example, accept resorts consisting only of small efficiency apartments. After all, who wants to vacation, even at the beach, with the whole family in one room? Interval International, RCI's smaller rival, is moving to suspend the exchange privileges of American International Vacations, a company with 12 resorts in six states, for misrepresentation and failure to maintain its properties. Still, the Grand Flamingo, a Las Vegas property operated by Leonard Rosen, is now on RCI's roster.

Many outsiders see potential dissatisfaction with the exchange system as the major immediate challenge facing time-sharing. Salesmen pitch the privilege as what amounts to a free, unlimited access to equivalent facilities just about anywhere. So far, use of the swapping option has been limited, with customers still enjoying their first week or two at "home" units. Once the urge to vacation elsewhere comes, many owners are likely to be

Has he got a deal for you?

In the Sixties, high-pressure real estate men managed to sell underwater lots. In the Seventies, it was the desert land boom. Now, at least for one of the players, the new game is resort time-sharing.

Leonard Rosen, 65, first caught the public's eye two decades ago with his creative land sales practices in Florida. Many of the lots sold through his Gulf American Land Corp. were literally under water. There was a wave of scandal, but no charges were filed against Rosen personally. In 1969 he sold Gulf American and left Florida.

Rosen next popped up in Nevada. He moved into desert real estate in 1970 through Preferred Equities Corp., a company that opened a development called Calvada, 60 miles west of Las Vegas. PEC salesmen were pushing $8,400 lots with the promise that Calvada would turn into another Las Vegas strip. Eager salesmen told prospects that the town's population would soar by 50,000—a figure Rosen was ordered by the state to stop giving out, since its official projection showed a net addition of only 4,000 people by 2020.

More than a decade later, Calvada boasts over 100 homes. Rosen is fighting a suit from numerous buyers charging they were misled about land values. In one case, a group of West German investors charged that they paid grossly inflated land prices that bore no relation to land values in the area. Says one Las Vegas real estate broker, "When someone calls us about selling a piece of property they bought in Calvada, we laugh." Rosen and PEC are still in the Nevada real estate business.

This time the big push is time-sharing. Rosen's vehicle is Vacation Spa Resorts, a division of Scottish Inns of America, with three properties: the Grand Flamingo in Las Vegas, the Reno Spa and White Sands in Hawaii. Vacation Spa claims to have 9,500 owners at its three clubs, in which time is sold on a right-to-use basis. Owners get no equity, just a 25-to-30-year block of vacation time. In Las Vegas, they pay $4,000 to $6,250 per week at each of the resorts, plus $140 to $200 a week maintenance for each visit. To reassure buyers, PEC has established a 30-year trust with the Bank of California, which holds title as trustee to its resort properties. BankCal collects payments and handles expenses. "The purpose of this trust is to protect the buyer," says Hal Billings, a BankCal trust officer.

Owners at Rosen's Las Vegas resort seem fairly satisfied so far. "We have no complaints," says postal worker Wayne Coffman, who with wife Jacque paid $3,600 for a one-week share in a junior one-bedroom at the White Sands. Then there's Lottie Arnold, a divorced secretary who paid $3,900 for a unit at the Grand Flamingo in Las Vegas. "I enjoy it so much," she says. "How can you go wrong?"—Ellen Paris

Lottie Arnold in her unit at the Grand Flamingo
"How can you go wrong?"

disappointed. "The question is, how can they (RCI) properly keep surveillance over so many member resorts?" says FTC attorney Schlaifer.

Bigger, better-established companies, like Fairfield or Captran, will perhaps eventually develop their own exchange networks. Meanwhile, even in an era of deregulation, there is the potential for federal involvement (most likely by the Federal Trade Commission) if states aren't successful in limiting the marketing abuses endemic in the industry. "We have to be very careful that the bad doesn't drive out the good," warns George Donovan, president and chief operating officer of Fairfield Communities, the fourth-largest time-share developer, with annual revenues of $100 million.

High interest rates pose another serious long-term problem. With today's cost structure, what if a developer can't sell out a time-sharing project? Or, what if buyers fail to keep up their own payments? Owners with one week at a resort that is half boarded up can hardly enjoy their holidays. More likely, however, they will never even show up at all. Instead, they could face a welter of litigation and the prospect of a vacation "investment" that provides little more in the way of fun than the opportunity to report a hefty tax loss to the Internal Revenue Service.

Meanwhile, how will the Blalocks fare when they want to trade North Carolina for the Virgin Islands? Ask the Walter Jacksons. They own a unit in Daytona Beach, which they have not yet visited, and were counting on RCI to fix them up in Hawaii. After weeks of negotiating, the Jacksons wound up at Fairfield Harbour, 20 miles from the beach in North Carolina.

It's not so bad, though. Mrs. Jackson had a good time, and the couple isn't losing sleep about how the exchange will work next year. "The worst that could happen," she says, "is that we would be stuck with two weeks in Daytona."

Let's hope she's right. ■

What the salesman won't tell you

If you are on the beach at Maui and a time-share salesman comes along offering a free champagne brunch just for listening to a sales presentation, the bait can be alluring. Before biting, though, here are some things you may want to consider.

Back away from the marketing hoopla and make some simple calculations. Owning the right to two weeks at a time-share in a choice spot such as Hawaii or Nantucket costs roughly $13,000. In addition, you will have to pay an annual maintenance charge. It is perhaps $250 now and will surely rise with inflation.

For comparison purposes, assume you bought your unit outright. If you locked in today's high rates on tax-free municipal bonds, you could be earning $1,300 per year on $13,000. Add your time-share maintenance fee to that income, and spending $100 per night for two weeks in a hotel is cheaper than owning a time-share.

By buying the unit, you are betting that its resale value will increase faster than the cost of comparable room rental rates. They will rise with inflation, of course, but perhaps no more rapidly than your maintenance costs. This leisure-time "investment" also constrains your holiday flexibility: In many cases you can use your space only during the specific two weeks you select now. If, five years hence, you develop a belated passion for skiing, too bad.

As for shopping tips, find out whether your unit is an ownership interest (fee simple) or just a block of time at a resort (right-to-use). With ownership, you have a chance to build equity, a voice in management and limited tax benefits. Right-to-use, while not offering equity, generally costs less and carries less management responsibility—a plus for some buyers.

There is, of course, the possibility of capital appreciation at ownership resorts. Over the past six months the average price of a time-share unit rose from $5,200 to $6,500 a week. But, with real estate values falling, it seems unlikely that such increases will continue. The industry is too new for a resale market to have developed. Also, if your unit is right-to-use, your resale rights may be limited.

Though the resort you buy into probably will belong to an exchange service, there is no guarantee that your right to exchange will work as planned once demand starts to build. You may have to settle for a third or fourth choice, or none at all. You will almost certainly not be able to trade up to a bigger unit or a higher season.

The Walter Jacksons in North Carolina
Fun, yes—but hardly Hawaii.

Don't forget that most ownership contracts provide for increases in management fees. They also provide for additional assessments for major expenses such as a new roof. Right-to-use resorts charge an annual maintenance fee, now averaging less than $200.

To protect against soaring operating costs, it is essential to know how long-term management has been provided for. Carl Burlingame, publisher of the magazine *Resort Timesharing Today*, sees this as the best tip-off to the quality of a time-share resort. Ask to see the operating budget. Cost projections should be detailed and based on actual experience with a reasonable adjustment for future inflation. The best developers often form their own management subsidiaries. After a project is sold out and management responsibilities pass to the new owners, they can then hire back the same firm.

Finally, have a lawyer review the contract. You should have protection against default by the builder/seller on loans, perhaps through a so-called nondisturbance clause. Provisions should deal effectively with co-owners who fail to pay, give up possession or carelessly damage property. There should also be a waiver of the right to partition in tenants-in-common time-shares. This keeps a single owner from suing to force the sale of the entire building.—C.E.C.

Taxing Matters

Edited By Richard Greene

There are some encouraging signs that the IRS may finally begin to clean up the inequities in foreign tax credits.

"On the top burner"

By Karen Cook

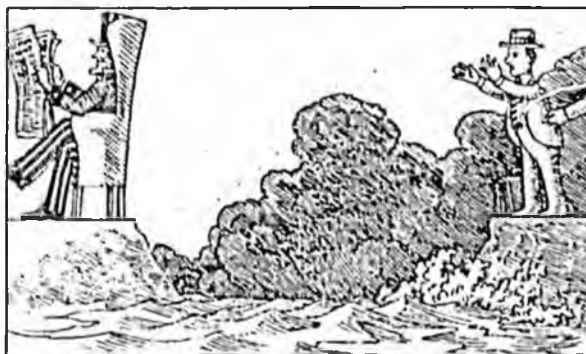
IT LOOKS AS IF the IRS is finally getting ready to straighten out the mess in foreign tax credits. The U.S. government has always tried to ease the tax burdens felt by companies doing business overseas. But even as the Carter Administration encouraged companies to do business abroad, it undermined such plans in late 1980. Mucking up the already messy rules for giving foreign tax credits made it almost impossible for companies to plan their taxes. Even now, the IRS seems thoroughly confused about the issue.

Granted, it's a tricky area. Here's how foreign tax credits work: Let's say a company makes $1 million abroad. Because the IRS taxes foreign earnings at U.S. corporate tax rates, the firm might receive a bill for $460,000 in U.S. taxes—at the 46% rate. Now let's suppose the foreign country has a tax rate of 50%. The company would pay $500,000 to the foreign country and then 46% of the remainder to the U.S. government. That would leave profits at a mere $270,000 with an overall tax rate of 73%. Nobody would do business in that kind of tax environment.

So, the U.S. government offers foreign tax credits. If the foreign income tax payment is ruled "creditable" against U.S. taxes, then the company has to pay only U.S. taxes on its foreign earnings—when the effective foreign tax rate is less than 46%. Beyond that, it pays nothing to the U.S. government.

At least that was the idea. But when soaring oil prices and profits in the Middle East hit in the late 1970s, it occurred to the Treasury that there was a mighty fine line between income taxes paid to foreign governments and royalties paid for such things as drilling rights.

As is par for the course, the IRS solution amounted to overkill. For example, Saudi Arabia imposes a 45% income tax, but an 85% tax that applies specifically to oil companies. So the U.S. government could claim that Saudi Arabia has no income tax for oil companies and is collecting an 85% tax that isn't an income tax at all. No income tax, no income tax credits.



That's just one example. Construction companies and even the motion picture industry run the risk that they may not get credits for taxes levied on gross receipts, interest payments or anything not explicitly labeled as an income tax. This causes considerable insecurity on the part of many firms.

"We've got what might be a major commercial project on the Ivory Coast that could be worth several hundred million," says Joseph O'Toole, general tax officer for Phillips Petroleum, "and we're hoping for a favorable ruling from the IRS. We've been waiting for six months." And if the IRS turns them down? "We would be seriously concerned."

There are far worse cases. "The AICPA and the American Bar Association asked for rulings from the IRS on the creditability of taxes from six of our major trading partners," says Paul Bodner, international tax partner for Main Hurdman. "They ended up not ruling on half of them. They seemed too puzzled, and finally said, 'We just don't know how to go.' " The matter was then dropped.

To circumvent that problem, Britain and Canada have made renewed efforts to sign tax treaties with the U.S. government to encourage investment there. By going over the IRS' head, these treaties would ensure that their taxes will be creditable no matter what the Service says.

Sidestepping the problem, however, works only some of the time. For example, it's very difficult to design tax treaties that will be effective with the more primitive tax systems of underdeveloped nations or OPEC countries. "They don't have all the complex regulations that we do," says Edward Saperstein, a partner at Ernst & Whinney. "We know what realized net income is. But they may think they're getting at net income when they are taxing something like gross receipts." So reaching agreement on such points is tough. "We're trying to impose one of the most complicated tax systems in the world on everybody else," Saperstein adds.

The real problem with the new regulations may lie with small firms that can't absorb the loss of a tax credit and don't have access to tax expertise to warn them of the danger. "Some small architectural firm might go down to Latin America and not have a general tax counsel, and make an agreement to build a building," says Saperstein. "Later they might say, 'Hey, we thought we'd get income tax credit,' and then find out, 'No, we don't.' "

The real irony of the November 1980 regulations is that the IRS has hardly gotten a penny of increased revenues from them. Says Edward Norton, a spokesman for Mobil, "I don't think anybody has actually paid any of these taxes to the U.S. government."

But change is in the wind. The Reagan tax package calls for a proposal

November 5, 1982

Ms. Karen Hill
Sweetwater
50 South Main, Suite 1100
Salt Lake City, Utah 84144

Dear Ms. Hill:

This will acknowledge and thank you for your recent correspondence concerning timeshare projects, Sweetwater Kauai Condoshare Project I and Sweetwater San Diego Condoshare Project I.

Based upon representations that have been made in the submitted written materials, it appears that Sweetwater will be selling fee simple interests in the timeshare units.

You have asked for a "no action" letter. The division is not issuing "no action" letters. In the absence of clear legislative intent in this area, we are taking each program on a case-by-case basis. Our experience has been that often the oral representations of sales personnel differ from the written materials and such representations create conditions which bring the securities act into play thus requiring ~~past~~ post sales enforcement action on our part.

Properties are to be sold in Alaska through a licensed Alaska realtor, and the division suggests you contact the Alaska Real Estate Commission, 620 East 10th Avenue, Room 203, Anchorage, Alaska 99501. Their telephone number is (907) 272-5508.

Sincerely,

Lawrence P. Carroll
Senior Securities Examiner

LPC/cw#27013

Tribune (San Diego, Ca.), 12/22/82, pg. D-1.

Timeshare seller admits to violations

By Richard Spaulding
Tribune Financial Writer

Sweetwater, a Salt Lake City-based company selling timeshare condominiums in Pacific Beach, admits it hasn't paid its salespeople here in several months and has committed several violations of state securities and real estate law and federal labor law.

Complaints against the company are being investigated by California and U.S. authorities, but no charges have been filed.

Paul Allen, a former employee who was with Sweetwater selling timeshare condominiums at Capri-by-the-Sea in Pacific Beach for three months ending in mid-November, said the company owes him approximately $2,800 in commissions. Allen also alleges the company has sold out-of-state timeshare condominiums that have not been cleared by the California Department of Real Estate for sale in the state, and has also sold interests in limited partnerships, which are classified as securities, without clearance from the California Department of Corporations.

The company's president in Salt Lake City, Robert Whitman, does not deny the allegations.

He said commissions have not been paid because the money has been tied up in escrows which the owner of the condominium tower, Mission West Properties, would not release. Whitman said he expected negotiations with Mission West to conclude soon, enabling Sweetwater to pay its salespeople.

A spokesman for Mission West Properties said a conclusion of negotiations is "very close." An escrow on one of the second floor units may close today, with two others closing next week.

Whitman said each of Sweetwater's 14 sales offices, involving 20 resort properties in the U.S. and Mexico, is structured to be its own profit center. "Our California offices have had a bit of a problem," he said, due to a combination of slow sales, California escrow laws and Sweetwater's purchase agreement with Mission West Properties.

Whitman also acknowledged the illegal sale of unregistered real estate and securities. He said they were caught by the company's auditing system in Salt Lake City and that a letter was sent to the San Diego office ordering it to cease those sales. Letters, he added, were also sent in early November to all affected buyers offering them the opportunity to rescind the sale. None have, so far, he said.

Generally, buyers in such cases are allowed to keep their properties even if the goverment takes action against the seller.

Whitman called the estimated eight illegal sales "isolated instances," which he said would happen "no more." He said the sales were made to people who had already pruchased timeshare units in the Capri tower.

However, at least one buyer of a timeshare at Sweetwater's Jackson Hole property was not a Capri owner, and another claims she was solicited not from San Diego but directly from Sweetwater's Salt Lake City office.

Allen also alleges Sweetwater has used non-licensed people as real estate sales agents, including himself, quoting terms and prices to prospective buyers and, in his case, actually signing a sales contract. He also alleges salespeople were encouraged to push sales of unregistered out-of-state timeshare units and five-week packages as a means of getting their money. He said they were told that those sales would be funneled through Utah, which lacks California's stringent escrow laws, and that salespeople would get their commissions faster.

Supporting Allen's allegations were two current employees of Sweetwater here who work as presenters, salespeople who do not have real estate licenses and, thus, are not legally allowed to close the sale. The employees, Vera Giles and Terri Bahlman, who both claim they are owed back commissions, say the company encouraged them to act as sales agents.

Richard Nelson, manager of Sweetwater's Capri office, said those allegations are "just not true."

If Allen signed a document as "sales representative," Nelson said, it was for purposes of identifying who should get the commission.

Nelson blamed much of the pay problem on poor communications. He said he was just the middleman and that he was only relaying what Salt Lake City headquarters told him.

Allen, Giles, Bahlmann and others said all they got were excuses and promised paydays. Nelson would often conveniently be out of town when that day arrived, they claimed.

Nelson expressed disappointment that Allen never came in to see him, adding that Allen was going to be "surprised" to find out that a Sweetwater audit of his account shows the company only owes him about $5[illegible], not the $2,800 he claims.

Another salesman, Ed Wright, claims he is owed about $25,000. Nelson, who agreed with Wright's claim, said they have negotiated a settlement that would pay Wright his full amount straight out of the escrow closing instead of going through Salt Lake City, like the others.

Excluding himself, the assistant sales managers and Wright, Nelson said the company owes a total of about $17,000 to employees. He said he is owed more than Wright's $25,000.

Timeshare growing in popularity

By Richard Spaulding
Tribune Financial Writer

Timeshare is a relatively new concept in real estate, combining property ownership and vacations, that is making headway despite a rocky start.

Paul Allen, who has alleged several illegal practices by the San Diego office of Sweetwater, a Salt Lake City-based timeshare outfit, calls it a "good product." He is currently employed selling timeshare in Palm Springs.

Certainly its potential for profits is amazing.

For instance, Sweetwater agreed to purchase 48 condominium units on the first four floor in Capri-by-the-Sea in Pacific Beach, owned by Missin West Properties.

Each of the condominium units is divided into 51 weeks, allowing one week for maintenance. After 36 weeks are sold in a unit, it is sold by Mission West to Sweetwater.

In May 1981, Mission West sold unit 109 at Capri to Sweetwater for $113,500, which then recorded the sale of 38 weeks for a total of $306,500. Using that as an average for the remaining 13 weeks, the total sellout of unit 109 could exceed $411,000.

But problems, as in any real estate deal, do exist.

Robert Whitman, president of Sweetwater, said the sales agreement with Mission counted on esclating prices with each floor. But, he said, "we may have been a little naive in believing that Pacific Beach would have commanded the prices we sought."

The inability of Sweetwater to meet the acquisition schedule outlined in the Mission West agreement caused the Sweetwater's current difficulty in paying commissions to its salespeople.

At least two local buyers of Sweetwater's product have been happy. Kris James and her husband Steve purchased a one-week timeshare unit in Jackson Hole, Wyoming. This year they exchanged their week at Jackson Hole for a week at a Sweetwater property in Hawaii and she said it was "just great." They plan to go to Jackson Hole in March for some skiing, she added.

August 26, 1980

Mr. John W. Abbott, Chairman
Code Revision Commission
Abbott, Lynch, Farney & Rodey
601 West Fifth Avenue, Suite 820
Anchorage, Alaska 99801

Dear John:

Re: Time Sharing

Enclosed you will find copies of various materials relating to "time sharing." These programs are located primarily in sunshine areas which are naturally attractive to Alaska residents. The division has received numerous inquiries, both from within and without the state from people who have time share programs to market.

From a regulatory standpoint, the primary interest is to insure that if an individual purchases a 20-year time share, there is a reasonable likelihood that the program will effectively exist for 20 years.

As the Oregon Law Review article points out, securities administrators have assumed jurisdiction in this area more by default than design. If other legislation existed, administrators would probably only be interested in those programs which offered a common rental pool (investment contracts) or where time shares were being offered in a condominium yet to be built (risk capital).

In most time share programs, the logical administrative agency, if there is to be one, would be the Consumer Protection Division.

I understand that some states, including California, Hawaii and Florida, have time sharing legislation in place. In 1977, the National Conference of Commissioners on Uniform State Laws developed a Uniform Condominium Act, two small sections of which speak to time sharing, inadequately, in my opinion.

I am not aware of any Alaska purchaser complaints about time share units. However, those who wish to sell them are in a quandary as to whether they are operating under real estate law, securities law or no

law. I suspect that because of this, some of the better management programs may be avoiding the state altogether.

Please advise if you have any questions or if we can be of assistance.

Enclosures include:

57 Oregon Law Review 31 (1977)
Article - Buying Time
Blue Sky Law Reporter (CCH), ¶71,294 Time Sharing Units - Alaska
Wall Street Journal, 7/12/79
Seattle Post-Intelligencer, 7/30/78

Sincerely,

Edward C. Watkins
Securities Examiner

ECW/shB/1

1977

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Regulation of Resort Time-Sharing

PETER M. GUNNAR

PETER M. GUNNAR*

Regulation of Resort Time-Sharing

SINCE the end of World War II a rapid growth of resort facilities has occurred in many areas throughout the world, encouraged by the increasing number of middle and upper class families with the time, money, and inclination to patronize such resorts. Although individual and corporate investors have financed resort construction in some heavily-patronized areas, the majority of these developments have been financed by the ultimate user, generally through the purchase of condominiums. Oregon's resort housing inventory, for example, has increased by more than 5,000 units, over 85% of which are condominiums.[1]

A major limitation on second-home condominium sales is the necessity for the buyers to commit themselves to a repetitive vacation pattern. This commitment is reinforced by the substantial financial obligation incurred in the purchase and maintenance of the unit. The financial obligation, coupled with the repetitive vacation pattern and the probability of limited personal use, initially restricted the potential market to two groups: those whose income and wealth was such that the $40,000 to $250,000 investment was comparatively insignificant, and those who speculated on the rapid appreciation of the unit's value. To broaden the market by reducing the continuing financial obligation, developers turned to condominium securities, offerings which coupled condominiums with organized rental programs.

*Member, Oregon State Bar. Ph.B. (1946), University of Chicago; J.D. (1950), Willamette University. The author registered four of the first eight condominium securities with the SEC (1967–69); helped organize the first National Conference of the Regulation and Registration of Condominiums (1972); was the first chairman of the Joint Task Force on the Regulation of Second Home Rental Condominiums, American Hotel & Motel Association and American Land Development Association (1972-75); and represented the industry before the SEC's Real Estate Securities Advisory Committee (1972) and before the Midwest Securities Commissioners Association (1973–74). This information is included in order to comply with the spirit of the request by Mr. Justice Douglas that law review authors disclose any interest in, or connection with, the matter discussed, so that readers may evaluate their opinions accordingly. Douglas, *Law Reviewers and Full Disclosure*, 40 WASH. L. REV. 227 (1965).

[1] This estimate is based upon surveys conducted under the supervision of the author during 1971–73. Similar relationships can be found in the Colorado Rockies, New England ski areas, Florida, the Texas Gulf Coast, Hawaii's outer islands, the Algarve Peninsula, the Malaga coast, the Alps, and Mexico's west coast.

Then in the 1960s resort developers in Europe identified a large market which, while unwilling to purchase a condominium unit, would buy a repetitive right to use housing at a favored resort for a specified period of time if it was offered at a substantial discount.[2] Under the pressure of a declining economy in 1972–74, developers in the United States turned to this concept to sell time-segments of occupancy in their condominium inventories. Now, with the economy improving, time-sharing programs are providing a new segment of resort housing, with projects being specially designed to attract buyers to time segments.

The original concept has been refined substantially in this country. To reduce the repetitiveness of vacations, developers frequently offer exchange programs, often through independently operated exchange networks.[3] As offered now, time-sharing programs generally provide substantially discounted, repetitive vacation lodging combined with the ability to exchange such lodging for discounted lodging elsewhere.

The rapid growth in the number and size of such offerings has attracted the attention of not only the public,[4] but also federal and state regulatory agencies. Because these regulators have not been able to classify these offerings unequivocably as real estate, securities, or vacation plans,[5] they are subjected to a maze of potential and actual regu-

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[2] Historically, the resort condominium began with the Eurotel plan: "in each hotel, the rooms would be sold to individuals who were entitled to limited use of their respective rooms . . . and, in addition, were entitled to guest privileges at a dicounted rate at all of the other Eurotel hotels." Ellsworth, *Condominiums Are Securities?*, 2 REAL EST. L.J. 694, 694 (1974).

[3] While a number of exchange networks have been started, the major one is Resort Condominiums International (RCI) based in Indianapolis, Indiana. Presently RCI has approximately one hundred separate projects in its exchange network throughout the United States, the Caribbean, and Europe.

[4] A recent survey by the leading trade publication in the area disclosed that the number of time-sharing offerings has climbed from 8 in 1973 and earlier to 95 in 1976 and an estimated 120-150 in 1977. Offerings are being made in 26 states, Puerto Rico, and the United States Virgin Islands, as well as other Caribbean islands. [1977] RECREATIONAL DEV. TODAY (CHB) 251. In a subsequent issue, following the Resort Time Sharing Conference '77 in Atlanta, the editor acknowledged that this estimate could be 20% to 25% low. [1977] RECREATIONAL DEV. TODAY (CHB) 265. While the survey did not disclose the total dollar volume of such offerings, it did show that 2,000 hotel and condominium units were committed to time-sharing programs in 1976 and that 1,200 to 1,500 more units will be committed in 1977. With average per-week per-unit prices running from $1,168 to $3,253, time-sharing programs represent over $100,000,000 in business. The industry is currently growing at the rate of 50% to 70% each year. The *Recreational Development Today* survey covered responses from approximately 70% of the industry and included, in addition, the editor's personal knowledge of a dozen other major projects.

[5] As used in this Article, "vacation plans" are not tours or individual travel packages offered on a one-time basis. The term is employed to mean repetitive va-

lation. This often results in conflicting and irreconcilable requirements.[6]

The purpose of this Article is threefold: first, to review the present confused state of regulation, tracing its conceptual and legal background; second, to consider the conceptual applicability of the various regulatory schemes; and third, to suggest a legislative solution which will regulate time-sharing offerings realistically.

I

Forms of Time-Sharing Offerings

Time-sharing offerings have assumed three different legal forms. The first is the vacation license.[7] Under this program, the buyer acquires a right to occupy an undesignated unit at a certain resort during a specified time each year for a specified number of years. This type of offering gives the developer flexibility but requires it to subordinate any mortgage financing to the rights of the licensees.[8]

The second type of offering is the time-share ownership (TSO). This method gives the purchaser an undivided interest in the fee, coupled with an exclusive right of occupancy during designated time periods.[9] The units are declared to be condominiums initially, and the TSO covenants are superimposed upon the condominium regime. While this program offers the buyer the incentive of appreciation in the unit's value, it also creates title, security, and other problems.[10] Another form of TSO is interval ownership. This method of time-sharing also involves a fee simple conveyance. It is a revolving set of tenancies for years divided into weekly or longer periods coupled with a remainder in tenancy in common to all the time-share owners at the end of the useful life of the buildings. The grantee of the time period, through the interval warranty deed, receives the same recurring time period each year. The remainder is joined with the tenancies for years to prevent the application of the Rule Against Perpetuities under local law. The

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cations at the same place or prearranged group of places. Often, though not always, they are part of the financing program of the resort or the entity offering the plan.

[6] *See* notes 47–65 and accompanying text *infra*.

[7] "Vacation license" is a registered trade name. The more awkward "right-to-use" is generally accepted as the generic term for this type of offering.

[8] For example, when First Mortgage Investors went into a Bankruptcy Chapter proceeding and the Caribbean International Corporation was forced to suspend its offerings, the mortgage lenders agreed to honor the rights of the existing licensees.

[9] This type of program was first offered by Innisfree Corporation on a number of units at the Brockway Springs Condominiums on the north shore of Lake Tahoe.

[10] Particular problems arise in the financing of these interests by the purchaser. Title insurance policies, for example, frequently except the interest of the Treasury Department under an income tax lien against one of the cotenants because of the Department's right to sell the whole unit to recover the tax due.

remainder interest further assures that the interval method of conveyance is not construed as passing a leasehold interest.[11]

The third variation is the vacation lease. Under this plan, the buyer purchases a right to occupy a specific accommodation for a specified time period over a specified number of years. Mortgage subordination to the lessees is also highly desirable. All three plans are used throughout the United States.

The use of these programs as a source of financing for resort facility development has altered the nature of the developers' business; they have come to realize that they are no longer selling real estate ownership or investment. Instead they are in the vacation business. As a result, some have started packaging their time-sharing programs first with OTC and now with ABC air charters[12] to reduce further the costs of the vacations they are offering. As the non-real estate, vacation orientation of the market is becoming better understood, offerors are concentrating on the vacation license or vacation lease offerings rather than the fee title TSO.[13]

II

THE REGULATORY RESPONSE

Since their introduction in this country, time-sharing programs have attracted the attention of various state and federal regulators. But these regulators faced a major problem in defining what these offerings were: real estate, securities, or something else. This confusion in definition has created a corresponding confusion in regulation.

To understand the legal background of this dilemma, it is necessary to examine the history of the regulation of resort housing in general and resort condominiums in particular. This digression is required because regulators have approached time-sharing programs from their

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[11] T. DAVIS & M. LANGER, STRUCTURING THE INTERVAL PROJECT—FROM CONCEPTION TO MARKETING 19-1 (1975).

[12] One-Stop Tour Charter (OTC) and Advanced Booking Charter (ABC) are relatively new, reduced fare programs approved by the Civil Aeronautics Board. OTC requires at least one night's lodging at the destination as part of the tour package. The ABC program merely requires an advance booking of a minimum number of fares for which the tour operator is responsible. Both have been used to bring prospective buyers to time-sharing projects. They are now becoming part of the package of time-sharing programs.

[13] Indicative of the growing interest in time-sharing programs among hotel executives is the fact that, while only a few attended the Resort Time Sharing Conference in 1976, this group made up 20-25% of the attendees in 1977. [1977] RECREATIONAL DEV. TODAY (CHB) 264. Recently, Innisfree Corporation announced a joint venture with Holiday Inns to offer a vacation license type program covering 1,000 rooms at 15 Holiday Inns throughout the country. [1977] RECREATIONAL DEV. TODAY (CHB) 267.

experience in regulating resort housing. Regulators have treated time-sharing plans as a variant of the sale of resort housing.

Resort housing sales were largely unregulated until the mid-1960s, at which time two independent regulatory methods were created. These two approaches have since developed separately.

One approach was to regulate the sale of resort housing as real estate. At the state level, the offerings were brought under subdivision control laws. This occurred in Oregon in 1969.[14] At the federal level, regulation was begun with the passage of the Interstate Land Sales Full Disclosure Act of 1969.[15] This act focused primarily on the sale of recreational lots. The National Association of Home Builders was able to obtain provisions which effectively exempted most recreational housing offerings from registration requirements.[16] The federal act, in addition to most state legislation, is structured so mechanically and is so oriented toward real estate that factors necessary for the consumer's analysis of second-home rental housing were covered only cursorily if at all. For example, the federal registration forms require disclosure of the distance to the nearest school and shopping area but not the number of tourists visiting the area, the seasonality of tourism, or an inventory of competing resort accommodations.[17] Furthermore, federal as well as some major states' regulation has been directed at suppressing as many offerings as possible. Thus even the most conscientious developers deliberately have structured their offerings to avoid regulation by the Federal Office of Interstate Land Sales Registration (OILSR) and by state agencies regulating out-of-state subdivisions.

In 1965 the Securities and Exchange Commission (SEC) entered the field.[18] It did so not by legislative action but through interpretation

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[14] Act of June 13, 1969, ch. 508, § 1, 1969 Or. Laws 931. This act deleted condominiums from the exemption statute, ORS 92.325(3) (1975).

[15] 15 U.S.C. §§ 1701–1720 (1970). The Act gave the Department of Housing and Urban Development jurisdiction over particular condominium sales. *See* Note, *S. 275—The Interstate Land Sales Full Disclosure Act*, 21 RUTGERS L. REV. 714 (1967).

[16] The Act exempts residential housing which is contracted to be completed and delivered within two years. 15 U.S.C. § 1702 (1970). In its regulations, the Office of Interstate Land Sales Registration has applied the two-year provision not only to resort housing, but also to the recreational amenities to which the housing is deemed incidental. 24 C.F.R. § 1700 (1977).

[17] *See* Statement of Record, 24 C.F.R. § 1710.105 (1977).

[18] For discussions of the securities laws as applied to condominiums, see Clurman, *Condominiums as Securities: A Current Look*, 19 N.Y.L.F. 457 (1974); Rohan, *The Securities Law Implications of Condominium Marketing Programs Which Feature a Rental Agency or Rental Pool*, 2 CONN. L. REV. 1 (1969); Rosenbaum, *The Resort Condominium and the Federal Securities Laws—A Case Study in Governmental Inflexibility*, 60 VA. L. REV. 785 (1974); Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective*, 62 GEO. L.J. 1403 (1974).

of existing law. In *SEC v. C.M. Joiner Leasing Corp.*[19] and *SEC v. W.J. Howey Co.*[20] the United States Supreme Court defined the term "investment contract" contained in the definition of a security in the Securities Act of 1933.[21] In *Howey* the Court held that an investment contract is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party . . . ."[22] The SEC construed this definition so that an offering of a resort condominium that included an organized rental program was an "investment contract" within the meaning of both the Securities Act of 1933[23] and the Securities Exchange Act of 1934.[24]

After a few successful enforcement actions,[25] which were settled at the inquiry letter and negotiation stage, the SEC relied upon voluntary compliance without a more comprehensive definition until 1972.[26] In May of that year, Commission Chairman William Casey appointed a Real Estate Securities Advisory Committee, headed by Raymond R.

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[19] 320 U.S. 344 (1943).

[20] 328 U.S. 293 (1946).

[21] Securities Act of 1933, § 2, 15 U.S.C. § 77b(1) (1970).

[22] 328 U.S. at 298-99.

[23] Securities Act of 1933, § 2, 15 U.S.C. § 77b(1) (1970).

[24] Securities Exchange Act of 1934, §§ 1-10, 15 U.S.C. §§ 78a-j (1970). Specifically, the SEC informed the Hale Kaanapali Apartment Hotel Development Co. that the offer and sale of condominiums, coupled with an option to have one's unit operate as part of a resort hotel, was an offer and sale of a security. Thus, the Commission obtained the first registration statement covering such an offering. Hale Kaanapali Apartment Hotel Development Co., Registration Statement No. 2-25489 (Apr. 13, 1967). See Rohan, *supra* note 18, at 7-8; Comment, *Condominium Regulation: Beyond Disclosure*, 123 U. PA. L. REV. 639, 652 n.67 (1975).

[25] Other enforcement actions against violations of the Securities Act of 1933 by condominium developers in St. Croix, Maryland, Hilton Head Island, and Colorado followed.

> In 1972, the regional office of the SEC in San Francisco issued stop orders to real estate brokers on the Island of Maui, Hawaii, to stop their sales of unregistered rental condominiums. The Woodmoor Corporation was the subject of an enforcement action in 1971. Woodmoor was required by the Securities and Exchange Commisison to file a recission offering in connection with its townhouse project.

Romney & Petty, *Resort Condominiums: History, Securities Aspects, Registration Requirements*, *reprinted in* HOW TO REGISTER AND MARKET CONDOMINIUM OFFERINGS 25, 27 (1973).

[26] In February, 1972, the first Conference on the Regulation and Registration of Condominiums was held at Lincoln City, Oregon. It was attended by SEC staff members, a number of state securities and real estate regulators, and over 100 developers. At that time over 500 resort rental condominium projects had been offered to the public but only 21 of them had registered with the SEC. Proceedings of the First Conference-Workshop on Regulation and Registration of Second Home Rental Condominiums 53 (Feb. 16-19, 1972) (copy on file with the Oregon Law Review).

Dickey, to advise the Commission on the regulation of real estate securities.[27] The Dickey Committee reported in October[28] and on January 4, 1973, the Commission issued Release No. 5347.[29] This release defined for the first time when a condominium is a security.[30] As soon as the release had been promulgated, the SEC was deluged with requests for no-action letters. The Commission's responses resulted in a narrowing of the release's definition.[31]

At the state level, security regulators followed the lead of the SEC. Oregon was the first state to impose securities regulations on condominium securities.[32] Other states soon followed.[33] When the SEC promulgated Release No. 5347, many states incorporated the release's definition, at least informally, into their regulations.[34] It was against this backdrop of dual and often conflicting real estate and securities

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[27] This committee was composed of Mr. Dickey, of Danzansky, Dickey, Tydings, Quint & Gordon (Washington, D.C.); David L. Schwartz, of Cravath, Swaine & Moore (New York); Francis J. Grey, CPA, of Coopers & Lybrand; Ralph Hocker, Associate Director, Division of Corporation Finance, SEC; and Milton Young, of Young, Kaplan & Edelstein (New York).

[28] SEC, REPORT OF THE REAL ESTATE ADVISORY COMM., [1972–1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,265 (1972).

[29] SEC Securities Act Release No. 5347, [1972–1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,163 (Jan. 4, 1973).

[30] The Release indicated that the offering of condominium units in conjunction with *any* of several collateral arrangements would constitute an offering of securities. The collateral arrangements included: (1) any rental arrangement or other similar service, offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party; (2) a rental pool arrangement; and (3) a rental arrangement requiring the purchaser to hold his unit available for rental for any part of the year, to use an exclusive rental agent, or to otherwise materially restrict his occupancy or rental of his unit. The Commission, however, did not limit the attachment of security status to only these guidelines. Other collateral arrangements may result in a condominium offering being a security. *Id.* at ¶ 82,539–40; *see* Note, *supra* note 18, at 1410–11.

[31] *See, e.g.*, SEC No-Action Letter, Brickell Place Condominium (Aug. 25, 1977); SEC No-Action Letter, Kauhale Makai, 384 SEC. REG. & L. REP. (BNA) C-2 (Dec. 11, 1976); SEC No-Action Letter, Sunriver Properties, Inc., [1973–1974 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,691 (Jan. 10, 1974); SEC No-Action Letter, Tahoe Donner Ski Bowl Condominium, [1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,440 (July 18, 1973); SEC No-Action Letter, *In re* Big Sky of Montana, Inc. (Apr. 13, 1973).

[32] Carefree Resorts, Inc., *In re* The Inn at Spanish Head, Or. Corp. Comm'n Order No. 4587 (June 27, 1967).

[33] For example, while California, Michigan, Wisconsin, and New York have adopted the SEC position, Washington, Colorado, and other states have not. Generally, until SEC Release 5347, state positions were informal and unrecorded. A lawyer working in the area made appropriate inquiry or simply ignored the problem.

[34] *See, e.g.*, OR. AD. RULES ch. 815, § 30-056(1) (formally adopted at a later date).

regulations that time-sharing programs developed.

Among the no-action letters spawned by Release No. 5347 was one to the Innisfree Corporation which held that the company's TSO offering at Brockway Springs on Lake Tahoe was not a security.[35] Other no-action letters on various time-sharing plans followed. Then in April, 1974, the Commission changed its position. It neither held that time-sharing programs were securities nor withdrew its previous no-action letters. Instead, the Commission said it would not issue further no-action letters,[36] and it warned the recipients of previous letters not to rely on them for future projects.[37]

What prompted this change in the SEC position remains unclear. Two months before the change, however, at the meeting of the Midwest Security Commissioners Association (MSCA)[38] a lively discussion occurred over a letter from the Oregon Corporation Commissioner to the state's securities bar.[39] In that letter and the accompanying memorandum,[40] Commisisoner Healy adopted the position that a time-

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[35] SEC No-Action Letter, *In re* The Innisfree Corp., [1973 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,398 (May 7, 1973). The developer offered 12 individual interests in each condominium unit. The interest was a tenancy in common. The owner was entitled to two two-week occupancies during a year. Where the owner did not use his occupancy period, a management group, other than the developer, was available to help the owner in renting. *See*, Dickey & K-Thorpe, *Federal Security Regulation of Condominium Offerings*, 19 N.Y.L.F. 473, 478 (1974).

[36] The specific language was:

> While no-action letters are limited to the facts presented and, even as to these, do not represent an interpretation of the law, the Commission is, nevertheless, concerned that inferences may be drawn from the issuance of no-action letters in this rapidly evolving area. Such inferences could lead to misunderstandings as to the Commission's position, and to contentions in future situations that the Commission had taken a position which it had not, in fact, taken. Consequently, the Commission has directed its staff not to issue no-action letters in this area, and to advise that no-action letters issued in the past in this general field do not extend beyond the particular issues involved and should not be relied upon by any other person or by the persons receiving prior letters for any other offerings.

SEC No-Action Letter, *In re* Tropics International, 252 SEC. REG. & L. REP. (BNA) C-1 (May 6, 1974).

[37] SEC No-Action Letter, *In re* The Innisfree Corp., [1974-1975 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 79,935 (June 19, 1974).

[38] The MSCA is made up of those states in which the commissioner has substantive control over securities offerings. Originally those were the midwestern states, but membership now includes states from throughout the country.

[39] Letter from Frank J. Healy, Oregon Corporation Commissioner, to Oregon securities bar (Dec. 18, 1973) (copy on file with Oregon Law Review).

[40] BLUE SKY L. REP. (CCH) ¶ 40,705. *See also* commentary of Ronald Shapiro, Maryland Securities Commissioner, BLUE SKY L. REP. (CCH) ¶ 23,631.

sharing lease was a security under Oregon securities law. In reaching this conclusion, the commissioner relied upon the "risk capital" theory previously advanced by Oregon's courts.[41] While many MSCA states employ the risk capital theory, the SEC has not. Whether the federal courts will accept this definition remains an open question.[42]

At least one senior SEC staff member at the MSCA meeting felt the risk capital concept was unnecessary because the lease or license for which the purchaser paid in advance was an "evidence of indebtedness"[43] which is defined as a security under the Securities Act of 1933.[44] The evidence of indebtedness theory, coupled with serious doubts as to the proper function of the SEC in relation to resort securities,[45] apparently caused sufficient concern at the Commission that it resulted in the peculiar "we are not going to say" position taken in April. Because exemption from OILSR regulation was available, the

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[41] *See* State *ex rel.* Healy v. Consumers Business Sys., Inc., 5 Or. App. 19, 482 P.2d 549 (1971).

[42] *See* United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975), where the Court noted: "Respondents urge us to abandon the element of profits in the definition of securities and to adopt the 'risk capital' approach articulated by the California Supreme Court in Silver Hills Country Club v. Sobieski. Even if we were inclined to adopt such a 'risk capital' approach we would not apply it in the present case." *Id.* at 857 n.24 (citations omitted).

[43] The reasoning was that the occupancy promised over the forty-year period had an ascertainable pecuniary value which rendered the license document an evidence of a promise to provide this pecuniary benefit in the future; therefore, an evidence of indebtedness existed.

[44] Securities Act of 1933, § 2, 15 U.S.C. § 77b(1) (1970).

[45] In the period since 1973, the SEC has been engaged in holding together the securities markets as the recession took many brokerage houses and issuers to the wall. It has also been organizing the congressionally mandated Central Market System and forcing the disclosure of bribery of foreign and domestic officials. With all its responsibilities, there appears to be a reluctance on the part of the SEC staff to pursue regulation of resort housing securities, an area with which it generally is unfamiliar. Thus, it is willing to let form triumph over substance. There are literally hundreds of resort condominium offerings being made in which there is only one rental management practically available to a purchaser. The management controls the front desk, the maids' closets, the linen supply, the reservation telephone, and the property maintenance. Some even own and control the recreational facilities. Theoretically, there are alternative rental agents, but such alternatives are so impractical as to be nonexistent. The sales people are instructed not to discuss rental results, but they can and do direct the prospect to the rental office, often operated by the developer or a subsidiary, where he can obtain such information. In one project during the Christmas holidays the sales force had to tell prospects for the 50% of the units remaining unsold that they could not show any units because they were all rented. The Commission refuses to allow enforcement actions in these cases despite the apparent approval of Release 5347 in United Housing Foundation, Inc. v. Forman, 421 U.S. at 858 n.25. This lack of enforcement leaves conscientious counsel in a dilemma. The majority have advised their clients to follow form rather than substance and hold their breath.

lack of a federal position thus left the regulation of time-sharing offerings to the states.[46]

The reaction of the states has been varied. In California, for example, the Department of Real Estate has asserted jurisdiction under the state's subdivision law.[47] Informally, the California Commissioner of Corporations has recognized a vacation lease to be a security but has not asserted jurisdiction as yet.[48] Similarly, in Nevada, real estate jurisdiction has been asserted over vacation licenses, but a lower court has rejected the state's claim to subdivision law jurisdiction.[49] In a well-reasoned declaratory ruling, the Director of the Michigan Corporation and Securities Bureau held a vacation license offering to be a security and issued a cease and desist order.[50] Oklahoma, Nevada, Alaska, and Wisconsin have also taken this position on the same offering.[51] Washington's Securities Administrator has held time-sharing offerings to be securities except in TSO plans which, because they offer a fee interest, are regulated under the state's subdivision law.[52] Texas and Colo-

[46] Most offerings are of existing housing units and therefore exempt under the construction in two years provision. *See* 15 U.S.C. § 1702 (1970).

[47] Cal. Bus. & Prof. Code §§ 11003, 11003.1, 11004.5 (West Supp. 1977).

[48] The author sent a questionnaire to securities regulators in states where time-share offerings were likely to originate or be sold. Included were Washington, California, Texas, Illinois, Wisconsin, Michigan, Colorado, and Florida. This statement and others following are based upon the responses received. (The completed questionnaires are on file with the Oregon Law Review).

[49] Carriage House Assocs. v. Division of Real Estate, No. A 159878 (Dist. Ct. Nev. Nov. 16, 1976), *appeal granted*, No. 9324 (Jan [illegible]

In January, 1976, the New Hampshire Attorney [illegible] that time shares must be registered under that state's Land Sales Fu[illegible] Act, *In re* The Winddrifter Resort (Dec. 17, 1975) (copy on file with [illegible]rsity of Oregon Law Review). In the 1977 legislative session, New Ha[illegible] enacted a second generation condominium statute. N.H. Rev. Stat. Ann. § 356-B (1977). The statute was modeled after Virginia's statute. *See* note 80 *infra*. The legislature also amended its Land Sales Full Disclosure Act which defines time shares as an occupancy right for less than sixty days a year for more than five years and which must be registered under the respective acts. N.H. Rev. Stat. Ann. § 356-A (1977).

[50] Blue Sky L. Rep. (CCH) ¶ 71,287. The decision adheres to the test in State *ex rel.* Comm'r of Sec. v. Hawaii Mkt. Center, Inc., 52 Haw. 642, 485 P.2d 105 (1971). The Hawaii Supreme Court molded together the *Howey* test as modified in respect to "solely" by SEC v. Glenn Turner Enterprises, Inc., 474 F.2d 476 (9th Cir. 1973), and in respect to "profits" by Silver Hills Country Club v. Sobieski, 55 Cal. 2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961), and the risk capital theory.

[51] Oklahoma: Blue Sky L. Rep. (CCH) ¶ 39,721; Nevada: Blue Sky L. Rep. (CCH) ¶ 71,200; Alaska: Blue Sky L. Rep. (CCH) ¶ 71,294. Wisconsin: Opinion Letter No. P-206 (Feb. 23, 1976).

[52] *See* note 48 *supra*.

rado securities regulators have not determined how they will treat time-sharing offerings.[53]

In Florida, the Division of Securities early in 1976 recognized vacation licenses and leases to be securities.[54] In July, 1976, however, the Attorney General of Florida, finding an emergency to exist because of the proliferation of these offerings,[55] issued stringent emergency regulations under his consumer protection powers. After public hearings, the Florida Cabinet issued final regulations.[56] These regulations contain strong substantive control over offerings in Florida. New York's Attorney General already had similar power under that state's condominiums statutes.[57]

In Hawaii, which has the highest number of time-sharing offerings,[58] condominium regulation historically has been handled by the Real Estate Commission. Consequently, its proposed time-sharing statute grants regulatory power to that body.[59]

The emerging state pattern is thus one dictated by who "got there the fustest with the mostest." To sell a time-sharing resort offering, a developer must register the offering as a security with the corporation or securities department in Oregon, Washington, Alaska, Nevada, Oklahoma, Michigan, Wisconsin, Minnesota, and Illinois; as real estate with the real estate department in California, Hawaii, Texas, and Colorado; and under the consumer protection laws with the attorney

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[53] *Id.*

[54] *Id.*

[55] The survey by *Recreational Development Today, supra* note 4, at 251, reports 14 offerings in Florida, the second largest number in the United States behind Hawaii which has 24. The Florida offerings represent sales of about $20,000,000 to $25,000,000 a year, while the more numerous Hawaii offerings are smaller and probably do not exceed $15,000,000 a year. Interview with Carl Burlingame, Editor and Publisher of *Recreational Development Today*, in Eugene, Or. (Sept. 30, 1977).

[56] FLA. AD. CODE ch. 2-23 (Rules of the Dep't of Legal Affairs, Oct. 28, 1976). The emergency rules were adopted by the Florida Cabinet on August 3, 1976, invoking the emergency powers authority for the Attorney General's Bureau of Consumer Protection to regulate the field for 90 days. This action was taken after a single "Emergency Public Hearing" on July 28, 1976.

[57] N.Y. GEN. BUS. LAW § 352-e (McKinney Supp. 1977).

[58] *See* note 55 *supra*.

[59] The first time-sharing legislation in Hawaii was introduced in the 1974 session. H.B. 2197-74. This bill passed both legislative houses but was vetoed by Governor Ariyoshi at the urging of hotel interests on June 3, 1974. A committee appointed thereafter by the Real Estate Commissioner and chaired by Hiroshi Sakai of Honolulu drafted legislation placing all jurisdiction in the Real Estate Department. In 1975, 1976, and 1977, the Hawaii Legislature considered a number of bills on time sharing, none of which passed the house in which they were introduced. *See, e.g.*, S.B. 1597-77; S.B. 1158-77. The drafting results of the Sakai Committee are found in H.B. 3094-76 of 1976 and H.B. 1158-77 of 1977.

general in New York, New Jersey, and Florida. In some states, such as California, dual registration may be required.

At the federal level a change may be coming. On April 12, 1976, the SEC issued a no-action letter concerning an offering of club memberships.[60] The offering allowed resale only to the club, and members acquired no property interest.[61] This letter, however, did not change the previous SEC position of not issuing such letters on time-sharing vacation licenses or similar offerings.[62] This is a narrow distinction, but one which some developers' counsel may find sufficient to avoid securities regulation.

Early in 1976 the Federal Trade Commission announced a study of time-sharing plans.[63] During recent years, the FTC has aggressively asserted its consumer protection authority. In the land sales area, the FTC has proceeded by filing actions and obtaining consent judgments. These judgments create a body of substantive regulation which the Commission treats as established case law. Violation of these regulations is viewed as an unfair trade practice.[64] It is probable that the FTC will proceed in the same manner to regulate time-sharing offerings.[65]

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[60] SEC No-Action Letter, St. Croix Haven Club, 424 SEC. REG. & L. REP. (BNA) C-1 (Oct. 19, 1977); SEC No-Action Letter, Stillwater Cove Club (Aug. 19, 1977); SEC No-Action Letter, *In re* Bronze Tree Club (May 12, 1976).

[61] In order to avoid classification of an offering as a security, counsel frequently structure a prohibition against resale at a profit. Where the offering primarily involves the use of housing, the Supreme Court, in United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975), has made it clear that mere expectation of an increase in value at later resale does not render the offering a security. In light of *Forman*, the Bronze Tree letter must be read to turn on the nature of the offering as a pure club membership and not on the resale profit prohibition.

[62] Letter of Neal S. McCoy, Associate Director, Division of Corporate Finance, Securities and Exchange Commission (June 15, 1976). This position was publicly reaffirmed by Barbara Leventhol, Special Counsel to the SEC Director of the Division of Corporation Finance, at the meeting of the MSCA in Seattle (July 18, 1977).

[63] [1975] RECREATIONAL DEV. TODAY (CHB) 135.

[64] An example is the FTC's case against GAC Corporation. The FTC obtained a consent decree which made certain land sales practices illegal in that engaging in any one of them or failing to do any affirmative act required in the decree subjects the defendant to liability for contempt of court. The Commission then used these substantive rules as the basis of enforcement actions against others in the same field. This procedure seems to be effective, if somewhat questionable.

[65] The Florida Attorney General has commenced action against First Mortgage Investors (FMI) over time shares sold by Caribbean International Corp. at Florida and Caribbean resorts. The gravamen of the case is that FMI failed to comply with an agreement made several years ago with the Attorney General to escrow 5-10% of Vacation License sales proceeds to create a $3,000,000 fund that would help assure licensees their promised occupancies over the 40-60 year terms of their licenses. [1977] RECREATIONAL DEV. TODAY (CHB) 251. FMI and its lenders have been honoring the licenses already sold, some 7,000 in all.

The present state of regulation of time-sharing offerings thus is one of confusion and uncertainty. The lack of a clear federal policy has left regulation of these plans to the states. The states have responded to this situation by adopting a number of regulatory schemes. The lack of consistency has resulted in uncertainty among developers and their counsel.

III

The Need for Consumer Protection

The Oregon Corporation Commissioner has correctly perceived the need for consumer protection in time-sharing programs, and he correctly distinguished right-to-use offerings from TSO offerings.[66] The Commissioner reasoned that because TSO condominiums were self-governing real estate holdings similar to any nonrental condominium, the benefits of TSO were not dependent upon the efforts of the promoter or a third party. The *Howey* definition of a security, as modified in Oregon,[67] therefore did not apply. Furthermore, regulation of condominiums sold solely for owner use clearly fell within the subdivision control law administered by the Real Estate Division.[68] Therefore, as long as rental income was not a significant inducement in a TSO purchase, TSO offerings are exempt from securities regulation in Oregon.[69]

Nevertheless, the Commissioner perceived real problems in the sale, for example, of an offering of two weeks' right-to-use of a condominium in Hawaii for forty years. What if the issuer went bankrupt, or merely dissolved and disappeared? What if there were no maid or laundry service? What recourse did the right-to-use purchaser have in these and similar events? The Commissioner correctly saw a need both to enforce full and complete disclosure and, when necessary, to invoke his substantive control to ensure that the offering was fair, just, and equitable. In most cases legal authority to regulate was provided

[66] Letter from Frank J. Healy, Corporation Commisioner, State of Oregon, to Peter M. Gunnar (Oct. 3, 1977) (copy on file with the Oregon Law Review).

[67] It is our conclusion that the *Howey* test should be modified so that the requirements are (1) an investment of money (or money's worth), (2) in a common enterprise, (3) with the expectations of a profit, (4) to be made through the management and control of others. By setting forth this modification we do not mean to imply that no other modifications in the rule will be forthcoming in situations in which reason seems to so direct when the purpose of the statutory scheme is considered. Neither do we mean to indicate that this will be the only rule used in all circumstances.

Pratt v. Kross, 276 Or. 483, 497, 555 P.2d 765, 773 (1976).

[68] ORS 92.305(4) (1975).

[69] Letter from Frank J. Healy, note 66 *supra*.

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[66] Letter from Frank J. Healy, Corporation Commisioner, State of Oregon, to Peter M. Gunnar (Oct. 3, 1977) (copy on file with the Oregon Law Review).

[67] It is our conclusion that the *Howey* test should be modified so that the requirements are (1) an investment of money (or money's worth), (2) in a common enterprise, (3) with the expectations of a profit, (4) to be made through the management and control of others. By setting forth this modification we do not mean to imply that no other modifications in the rule will be forthcoming in situations in which reason seems to so direct when the purpose of the statutory scheme is considered. Neither do we mean to indicate that this will be the only rule used in all circumstances.

Pratt v. Kross, 276 Or. 483, 497, 555 P.2d 765, 773 (1976).

[68] ORS 92.305(4) (1975).

[69] Letter from Frank J. Healy, note 66 *supra*.

confusing duplication and cross-current of regulation which exist to-day in the time-sharing field. One set of proper regulations can protect the public effectively.

The present confused, duplicative, and often conflicting regulations are self-defeating. They result either in legal avoidance of salutary regulations or a lack of enforcement.[75] In addition, the excessive costs of complying with a multitude of regulations are passed on to the purchaser. Thus neither the public nor the industry is benefited by the present situation.

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The Solution

In large measure the history of resort-housing regulation is a series of attempts to treat such housing as something it really is not by distorting existing concepts and statutes to accommodate the need for regulation to protect the consumer. The results of this distortion of the regulatory process has been duplicate and triplicate regulation and the imposition of artificial requirements which do not contribute to public protection. This distorted framework has been further strained in attempting to make it cover the new time-sharing programs.[76]

One possible solution to this regulatory dilemma is to treat time-sharing offerings as securities. This approach offers a number of potential advantages. The securities law conception of fraud, for example, is far broader and offers greater public protection. It also offers better, broader civil remedies. At the state level, the securities regulator has authority to regulate substantively, while real estate laws generally provide only for full disclosure. Most importantly, however, at both the state and federal levels the regulatory approach employed by securities and real estate regulators is clearly different. The SEC and most state securities administrators view it to be their responsibility to encourage an orderly, honest, and active market in securities. On the other hand, the Office of Interstate Land Sales Registration under its first administrator appeared to view its function to be that of an antagonist of the industry it was regulating. While this attitude did not filter down to

American Land Development Association, has drafted for comment a "model" act dealing with time share offerings and their regulation. This committee, chaired by J. David Penwell, of Bozeman, Montana, proposes to present its draft to the Commissioners on Uniform State Laws.

[75] *See* note 45 *supra*.

[76] This area of the law is in evolution, as is much of the real estate securities law. *Compare* SEC Securities Act Release No. 5347, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,163 (Jan. 4, 1973) *and* Silver Hills Country Club v. Sobieski, 55 Cal. 2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961) *with* United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975) *and* Larson v. Commissioner, 65 T.C. 10 (1975), *modified*, 66 T.C. 21 (1976).

most state regulators, neither did a philosophy of responsibility for a healthy market. In addition, the major drawback of securities regulation—the requirement of broker/dealer qualification in the sale of resort-housing securities—is gradually disappearing.[77]

It would be possible to create a single, perhaps hybrid, scheme of regulation with which the resort-housing industry could live; perhaps registration as securities with regulation of sales personnel under the real estate laws. The basic problem with this approach is that it ignores reality and strains the fundamental concepts of the laws being used to protect the public. Each statutory scheme carries with it a regulatory pattern which is hard, if not impossible, for regulators to apply to unrelated situations. A classic example of this tendency for inappropriate provisions to be extended beyond their original scope is the imposition of the marketing requirements of the Securities Exchange Act of 1934 and similar state laws to the sale of condominium securities registered under the Securities Act of 1933. The 1934 Act's concepts of suitability and portfolio balance[78] (supposedly applicable to the stockbroker who is assumed to be the customer's investment counselor) are inapplicable to a salesperson greeting a prospect as he enters the model unit to get a tour and sales pitch, and the prospect does not expect such advice at this time. Despite the recommendations of the Dickey Committee and the arguments of industry representatives, the SEC has refused to follow the lead of more realistic state administrators and exempt licensed real estate sales personnel from broker/dealer qualification, bonding, reporting, net capital, and Securities Investor Protection Corporation (SIPC) requirements.[79]

Because of this tendency for inappropriate requirements to be carried along with the more general substantive provisions of a regulatory

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[77] *See* note 79 *infra*.

[78] Securities Exchange Act of 1934, § 2, 15 U.S.C. § 78b (1970).

[79] While the SEC has refused to act, despite the recommendation of the Dickey Committee that it allow a limited broker/dealer registration for real estate brokers selling condominium securities, some states—Oregon and California by regulation and Virginia and Washington by statute—have exempted licensed real estate brokers from broker/dealer registration in the sale of condominiums securities. CAL. ADMIN. CODE tit. 10, §§ 260.204.1(e), .3; OR. AD. RULES ch. 815, § 30-005; VA. CODE §§ 54-730 to 731 (Michie 1974); WASH. REV. CODE ANN. § 21.20.040 (1976). The Real Estate Securities and Syndication Institute (RESSI), an affiliate of the National Association of Realtors, has prepared legislation for a limited broker/dealer registration for the sale of real estate securities at both the federal and state level. RESSI has had the assistance of the National Association of Securities Dealers (NASD). The legislation would allow either real estate or securities brokers to take a special examination and qualify for this limited registration. This legislation has not yet been introduced in Congress or in any state legislature. RESSI and NASD also have proposed a limited salesperson registration program to the SEC.

scheme, there is a trend to recognize the essential character of condominium securities as real estate to be regulated only by the real estate regulator. This trend started with the first second-generation condominium statute enacted in Virginia[80] and is now appearing in Oregon legislation.[81] If such legislation follows the Virginia statute and adopts the antifraud concepts and remedies of securities law, the legislature will have fashioned the conceptually most appropriate regulatory scheme for condominium securities.

A commendable federal approach is found in the Condominium Consumer Protection Act of 1975 sponsored by Senator William Proxmire.[82] The Proxmire bill would have established federal standards for state regulation of condominiums. The bill included a securities fraud definition. If a state's regulatory scheme meets the bill's standards, federal control of condominium offerings would be preempted by the state's regulations. If the state did not meet the standards, federal registration with the Department of Housing and Urban Development would be required. This bill recognized the essentially local character of condominium offerings as real estate, while providing for the necessary disclosure and other requirements deemed to be in the national public interest. This trend toward realistic condominium regulation points the way to the proper regulatory scheme for time-sharing offerings.

It is important to recognize that TSO programs are conceptually and factually different from other types of time-sharing plans. TSO is a form of tenancy in common in a condominium. While TSO covenants overlaying the condominium regime formalize occupancy, voting, and other condominium ownership rights, they do not alter the fundamental

[80] VA. CODE §§ 55-79.39 to .103 (Michie Supp. 1977).

[81] Act of July 18, 1977, ch. 484, 1977 Or. Laws Adv. Sh. pt. 6, at 114. This bill started out bravely to provide a single regulatory scheme for all condominiums. It was defective, however, in that it failed to provide the Real Estate Commissioner with the investigative powers which the securities laws give to the Corporation Commissioner and did not give the Commissioner substantive powers to deny registration to offerings which are not fair, just, and equitable. While the bill did adopt the securities fraud definitions of Rule 10b-5, it did not expressly provide civil remedies. Because civil remedies have been implied under Rule 10b-5 in federal cases, the adoption of the Rule 10b-5 definition probably carried similar civil remedies with it. When the elimination of these defects was suggested, the sponsor of the bill, the Oregon Association of Realtors, opted to reestablish Corporation Department securities jurisdiction over condominium securities by amendment rather than expand the powers of the Real Estate Commissioner. This election to avoid substantive regulation by the Real Estate Commissioner not only perpetuated dual regulatory jurisdiction over condominium securities but continued the limitation of the Real Estate Commissioner's control over other condominiums to the detriment of consumers. A bill should be adopted by the next Legislature to cure the defects in the legislation as it was finally adopted.

[82] S. 2273, 94th Cong., 1st Sess. (1975).

tenancy-in-common. Therefore, TSO programs should be regulated under the same regulatory scheme applicable to the sale of whole condominium units.

This is not the case with the right-to-use programs, vacation leases and licenses. Just as the trend in condominium regulation is to base the regulation on what the buyer conceives he is buying, that is, real estate, the proper regulation of right-to-use programs should be based on what the customer perceives he is purchasing. It has become increasingly obvious to observers that the customer sees himself as buying a long-term prepaid vacation.[83] Although such vacations can be viewed as "evidences of indebtedness" or as providing the "risk capital" for the construction of vacation housing, customers do not see themselves as purchasing securities. They would not go to a security broker/dealer to make such purchases. Although a long-term prepaid vacation can be viewed as a leasehold interest in real estate,[84] customers do not perceive themselves to be purchasing real estate and would not return to the real estate broker who sold them their houses to make such purchases. Attempts to force time-sharing programs into either of these patterns does violence to both the actual situation and the buyer's perception.

Furthermore, it is unlikely that purchasers of right-to-use offerings would compare such purchases with investments in AT&T or U.S. Steel, that is, consider them to be part of their investment portfolio. They are far more likely to compare such purchases with purchases of cabin cruisers, fur coats, or foreign sports cars. These purchasers are likely to have rejected the purchase of second-home real estate in favor of prepaid vacations because time-sharing plans will entail none of the responsibilities of real estate ownership. If prospective purchasers seek the advice of any of their advisors, they are more likely to turn to their travel agents.

If time-sharing programs are not securities or real estate, but need to be regulated to protect the consumer, then the one regulatory scheme which is appropriate already exists under state consumer protection laws and the regulations of the Federal Trade Commission. The only satisfactory alternative is the creation of an entirely new bureaucratic scheme. Neither the dimensions of the problem nor the public need justify a new bureaucracy.

Federal and state consumer protection procedures are particularly suited to regulation of the wide variety of programs which are found in right-to-use types of time sharing. Whether or not further statutory authority is necessary depends upon the particular statute involved.

[83] [1977] RECREATIONAL DEV. TODAY (CHB) 250.

[84] These rights are also licenses and as such are defined as real estate in Oregon. *See* note 72 *supra*.

Generally, however, the regulatory procedure should take the following form. After appropriate public hearings, the regulator should adopt regulations defining unfair practices. These regulations should outline required disclosures to be made before sale. Either by statute or regulation, the offeror should be prohibited from failing to state material facts or failing to state facts which under the circumstances tend to make the facts stated misleading—the standard securities fraud definition contained in Rule 10b–5.[85] The regulations should also contain substantive requirements on mortgage subordination or, in the alternative, fund escrowing.[86] While the regulator should be given the power to seek injunctive relief, the principal deterrents should be civil remedies such as double or treble damages, contract cancellation, and attorney fees. Although a notice of offering might be required, no complex registration process, with its attendant increase in government costs, should be included. Rather, the burden of establishing compliance should be placed on the developer—*caveat vendor.* Finally, the aider, abettor, and underwriter liability concepts of securities law should apply to legal, accounting, and sales personnel involved in the offering. Such a regulatory framework would offer full protection to the purchasers of time-sharings offerings.[87]

This regulatory process would limit the tendency of inapplicable concepts and procedures to be carried over such as would result from the application of either securities or real estate laws. The sales personnel would not have to be securities brokers/dealers when neither the seller nor the buyer perceives that he is dealing in securities; nor would such personnel have to be licensed real estate brokers when neither the seller nor the buyer believes that he is dealing in real estate. None of the restraints properly imposed on the sale of securities and real estate would be imposed artificially on the sale of long-term prepaid vacations. Instead, in addition to the developer's sales personnel, travel agents who are trained and qualified to compare vacation opportunities could engage in marketing these prepaid vacations.

Conclusion

Over the past decade, securities and real estate laws have been dis-

[85] 17 C.F.R. § 240.10b–5 (1977).

[86] Fund escrowing is the escrowing of part of the time-share sales proceeds, as was originally required in Florida to assure the buyers of proper care, maintenance, and service or timely mortgage payments on the entire property, or both. *See* note 65 *supra.*

[87] With the exception of double or treble damages (punitive damages are provided), aider and abettor provisions, and possibly the burden of caveat vendor, this regulatory scheme could be put into effect in Oregon by applying to right-to-use offerings the Attorney General's powers under the Oregon Unfair Trade Practices Act. ORS 646.608(1),(2),(4) (1975).

torted to accommodate the protection of buyers of various types of resort housing. More recently, these same laws have again been strained to provide such protection to the purchasers of time-sharing offerings. Regulators providing this protection are now having second thoughts as to the validity and priority of this protection in light of the basic functions for which their agencies were created.[88] After ten years, legislatures and regulators are returning to the basics. They are recognizing that condominiums, whether heretofore treated as securities or not, should be regulated as the buyers perceive them: as real estate. As part of this process, the broader antifraud and civil remedies of securities law, which originally justified securities regulation of resort housing, are being brought into real estate regulation.

A similar return to basic theory and public perception should be the foundation of time-sharing regulation. Where the buyer acquires a real estate interest in a condominium, as in TSO programs, regulation should be part of the general condominium regulation process. On the other hand, time-sharing offerings such as vacation leases and licenses, which actually are and are perceived by both sellers and purchasers to be long term prepaid vacations, should not be regulated as either securities or real estate. Instead, they should be regulated under the consumer protection laws as what they are: luxuries in the form of prepaid vacations.

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[88] *See* note 45 *supra.*

Real Estate: Alpert Corporation

Attorney General Duane Woodard reports that a major legal victory was made possible by a recent decision of the state's Court of Appeals. The decision held that the Colorado Consumer Protection Act applies to transactions involving the advertisment and sale of real property. The opinion reversed an Arapahoe District Court ruling of November 2, 1981, that dismissed the state's consumer protection lawsuit against Alpert Corporation, a home construction company.

The Attorney General brought suit against the defendant in 1980 alleging numerous deceptive trade practices associated with the defendant's advertisment, construction, and sale of new homes. District Court Judge Shivers dismissed the suit on the ground that the Consumer Protection Act does not apply to real estate transactions. The Attorney General's Consumer Protection Office appealed this decision to the Court of Appeals.

In its opinion, the Court of Appeals held that the specific language of the Consumer Protection Act read together with its broad protective purpose indicates an intent by the legislature to include real estate transactions under the Act. Writing the opinion for the Court of Appeals, Judge Kirshbaum stated:

> . . . We conclude that the general assembly has determined that false or misleading statements in the advertisment or sale of real property are subject to the provisions of the Consumer Protection Act.

For further information contact Assistant Attorney General J.T. Reed at (303) 866-3611.

Timesharing: Seatime Associates, Inc.

General Sachs announced that two former officers and one former employee of Seatime Associates, a now-bankrupt condominium timesharing firm, have been indicted on charges that they misappropriated over $1.3 million of the company's proceeds and counterfeited and recorded phony deeds to timeshare units in Ocean City apartments. The indictments against Kenneth F. Puckett, the former president of Seatime Associates, and Warren J. Rowe, Sr., the secretary-treasurer of the corporation, accuse them of misappropriating money paid by purchasers between September 18, 1978, and May 31, 1982, for timeshare intervals in Seatime's two buildings in Ocean City. Puckett is also accused of counterfeiting deeds that purported to transfer title to six timeshare intervals at Seatime, and Peggy J. Kelly, a former Seatime employee, is accused of filing the bogus deeds in the office of the Clerk of the Worcester County Circuit Court.

General Sachs also announced that Worcester County Circuit Court Judge Cathell has approved a final plan designed to resolve the outstanding claims of some 200 consumers who purchased vacation timeshare intervals from Seatime but never received clear title to the units and might have lost hundreds of thousands of dollars in investments because of the defendants' alleged illegal activities. (For more details see October *Consumer Protection Report* p. 12.)

An investigation of Seatime was launched last summer by the Maryland Real Estate Commission and the Attorney General's Consumer Protection and Criminal Investigations Divisions after information surfaced of irregularities in the promotion and sale of timeshare intervals in the Seatime Condominium. Because of the suspected irregularities, consumers faced imminent foreclosures on their property by the parties who had financed Seatime's acquisition of 54 units in the 100-unit project.

For further information contact Assistant Attorney General Gary Jordan at (301) 576-6389.

Telephone Solicitations: Casino Enterprises

General La Follette announced that his Office of Consumer Protection has completed the third of seven lawsuits started last year against "Wats-Line Hustlers" by obtaining a judgment against Casino Enterprises, Inc., of Las Vegas, Nevada, that requires the firm to make restitution to Wisconsin consumers who filed complaints with the office.

For further information contact Senior Assistant Attorney General Herschel Elkins at (213) 736-2097.

Pyramid Schemes: Illinois

General Fahner has recently obtained a decision holding that pyramid schemes are deceptive *per se* and a violation of the Illinois Consumer Fraud Act. The decision concludes a three-year legal battle that followed the filing of a consumer protection lawsuit against Eather M. Woolbright, the promoter of a chain and pyramid scheme. The suit alleged that pyramid schemes were deceptive *per se* and enumerated various misrepresentations made by Woolbright, such as indicating that the scheme was legal when in fact it constituted an illegal lottery. Residents complained to the Consumer Protection Division in 1979 that Woolbright and his partner Thomas Walsh induced them to participate by saying that the Attorney General had said the scheme was "legal." Court action against Walsh has been suspended pending the outcome of his efforts to seek financial protection in bankruptcy court.

Variations of the Woolbright-Walsh "Circle of Platinum" operate in practically every county in the state, eventually resulting in the loss of millions of dollars to several thousand Illinois residents. According to Assistant Attorney General Kent Sezer, the fad ran its course in 1980 due to bad publicity, arrests by local authorities, and exhaustion of the supply of potential participants. The pyramid scheme operated in the manner of old-fashioned "chain letters," but involved the gathering of participants at parties, rather than using the mails.

For further information contact Mr. Sezer at (217) 782-9020.

Telephone Solicitations: Business Supplies

General La Follette announced the filing of three lawsuits as the first part of a comprehensive program to combat frauds against Wisconsin businesses. General La Follette explained that there has been a dramatic increase in the number of Wisconsin businesses victimized by fraudulent out-of-state operations. "These so-called 'WATS-line Hustlers' prey on legitimate business people by engaging in a variety of fraudulent practices, including phony contests, product and price misrepresentations, deceptive billing schemes and even employee bribes." The office has filed lawsuits against Eastern Supply Corporation and Executive Supply Company for fraudulent telephone solicitations in the sale of photocopy supplies; Quality Promotions for an illegal contest scheme in the sale of pens and other promotional merchandise; and North American Lighting Products for billing customers for unordered merchandise. The complaints ask for injunctions to halt these practices and civil forfeitures of up to $200 per violation from each of the four firms.

The Attorney General's office is also establishing a "Fraud-Alert" system whereby reports of suspicious solicitations can be immediately relayed to the business community and appropriate law enforcement agencies.

For further information contact Assistant Attorney General David Gilles at (608) 266-1792.

Timesharing: Seatime Associates, Inc.

As a result of a suit filed against Seatime Associaties, Inc., Maryland Attorney General Stephen Sachs' Consumer Protection Division and the State Real Estate Commission obtained a court-ordered appointment of a receiver to oversee the operation of the financially troubled condominium timesharing firm. According to the suit, Seatime Associates owns about 29 condominum units in two buildings, Seatime North and Seatime South, located in Ocean City. Seatime also negotiated for the purchase of an additional 25 units in the 100-unit complex but never gained unencumbered title to them, General Sachs said. Nevertheless, the company "sold timeshare intervals in these units to Maryland consumers and others and failed to keep the money paid by the purchasers in an escrow account as required by the contract of sale, or to apply the money towards reducing the encumbrances on the condominium units, to which it did not have full title," according to the suit. The consumers, therefore, have not received clear title for their intervals in the units.

The suit states that in a few cases, the company sold the same timeshare interval in the same condominium unit to different consumers. Consumers purchased the right to occupy the condominium units for one or more specific weeks per year for 50 years, at prices ranging from $2000 to $8000 per interval, depending on the period of the year. Now that Seatime is "insolvent," the suit contends foreclosure on the units is "imminent" and approximately 1000 to 1500 consumers may lose their entire investment.

The suit also asked the court to order the company to pay refunds to consumers who bought timeshares in condominum units the firm did not own and to those who bought timeshare intervals after other purchasers were sold the same periods.

For further information contact Assistant Attorneys General Francis X. Puge or Martin Kandel at (301) 659-6220.

LEGISLATION

California

General Deukmejian announced that his state's legislature passed Senate Bill 1965, which is designed to provide consumers with greater protection when dealing with the mortgage brokering industry. Specifically, SB 1965 will require additional reporting and disclosure requirements of real estate brokers involved in soliciting or servicing real estate sales contracts and/or promissory notes. It will also provide the State Real Estate Commissioner with additional authority to protect investor assets in the real estate investment market more effectively and comprehensivley.

In addition, the bill permits a court appointed receiver to exercise all the powers of the licensee, including the filing of a petition in bankruptcy so that assets are fully protected by federal court.

Connecticut

Connecticut has strengthened its 1976 Health Spa Law, which covers health spas, sport and health clubs, figure salons, health studios, saunas, weight control studios, and self-defense programs such as judo or karate, to include racquet ball courts, tennis and golf clubs, platform tennis clubs, gymasiums, and organizations teaching martial arts. The law as amended now requires each facility to obtain a license from the State Department of Consumer Protection even though its main office already holds a license.

STATE ACTIVITIES

Massachusetts

General Bellotti recommended a sharp reduction in the automobile insurance rates that the industry has requested for 1983. General Bellotti called for a limitation of the overall increase to 2.5 percent, in contrast to the automobile insurance industry's request for a 19.4 percent increase. The proposal was contained in an advisory filing submitted to the state's Insurance Commission.

Research by General Bellotti's office of insurance claims handling practices on several companies suggests that the industry as a whole may have overstated its losses in this year's rate filing by nearly $10 million. The Attorney General's filing called upon the insurance commissioner to require an audit to review the industry accounting practice of including losses that were paid due to company error as justification for the industry's rate increase request.

Alabama

Alabama Attorney General Charles A. Graddick issued a warning to businesses in the state concerning misrepresentations made by out-of-state supply companies. "Paper piracy" is rampant in the state, according to General Graddick, and many businesses are being called to place orders. The majority of these companies are based in California and are under investigation by the postal authorities there. The supply companies misrepresent their affiliation with national suppliers, leading the buyer to assume he is purchasing from the national company.

Many unscrupulous sales tactics are used, including misrepresenting the source, prices, and reasons for contacting the local businesses. Complaints indicate that the

Federal Trade Commission

Office of Federal-State
and Consumer Relations
Washington, D.C. 20580

RECEIVED
Department of Law

January 5, 1982

Office of the Attorney General
Consumer Protection

MEMORANDUM

TO : Assistant Attorneys General
for Consumer Protection

FROM : Robert J. Hughes
Federal-State and Consumer Relations
Office of the General Counsel

SUBJECT: Timesharing Plans

Attached for your information and such use as may be appropriate in matters involving possible unfair and deceptive acts and practices in connection with the advertising and sale of timesharing plans are copies of the § 205 synopsis covering vacation certificates and a brochure prepared by FTC staff offering advice to consumers considering the purchase of a timesharing plan. The brochure contains the same suggestions as the FTC Factsheet, a copy of which is also attached.

If you have any questions, please feel free to call Alan Schlaifer on (202) 523-3861, the attorney in our Bureau of Consumer Protection most knowledgable about such matters, or this office on (202) 523-3630.

Attachments

SYNOPSIS OF FEDERAL TRADE COMMISSION DECISIONS
RELEVANT TO VACATION PROMOTION

The Federal Trade Commission has determined that the following acts and practices are unfair or deceptive and are unlawful under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

1. It is unfair and deceptive to use a fictitious promotional plan or illusory contest as a device to obtain leads to a prospective purchaser.[1]

2. It is unfair and deceptive to represent that prospective customers are specially selected recipients of offers for vacations, goods or services, when such is not the case.[2]

3. It is unfair and deceptive to represent that a particular product or service is being given away at no charge or that a bona fide contest is being conducted when such is not the case.[3]

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1 Market Development Corporation, et al., Docket Number 9067 (1980); Household Sewing Machine Company, 75 F.T.C. 207 (1969); Twentieth Century Business Builders, Inc., 23 F.T.C. 1311 (1939).

2 Market Development Corporation, et al., Docket Number 9067 (1980); Arthur Murray Studio of Washington, Inc., et al., 78 F.T.C. 401 (1971), aff'd, 458 F.2d 622 (5th Cir. 1972); American Music Guild, Inc., 68 F.T.C. 13 (1965); Basic Books, 56 F.T.C. 69 (1956), aff'd, 276 F.2d 718 (7th Cir. 1960); Kalwajtys v. F.T.C., 52 F.T.C. 721 (1956), aff'd, 237 F.2d 654 (7th Cir. 1956), cert. denied, 352 U.S. 1025 (1957); F.T.C. v. Standard Education Society, 16 F.T.C. 1 (1931), rev'd, 86 F.2d 692 (2d Cir. 1936), rev'd, aff'g Commission opinion, 302 U.S. 112 (1937).

3 Market Development Corporation, et al., Docket Number 9067 (1980); Arthur Murray Studio of Washington, Inc., et al., 78 F.T.C. 401 (1971), aff'd, 458 F.2d 622 (5th Cir. 1972); Kalwajtys v. F.T.C., 52 F.T.C. 721 (1956), aff'd, 237 F.2d 654 (7th Cir. 1956), cert. denied, 352 U.S. 1025 (1957); Moye Photographers, 50 F.T.C. 926 (1954); Champion Battery Co., 34 F.T.C. 423 (1941); F.T.C. v. Standard Education Society, 16 F.T.C. 1 (1931), rev'd, 86 F.2d 692 (2d Cir. 1936), rev'd, aff'g Commission opinion, 302 U.S. 112 (1937).

4. It is unfair and deceptive to fail to affirmatively disclose material facts, such as the requirement that a participant attend a land sales presentation or pay a service charge, which would affect a consumer's decision to make a purchase of a vacation, goods or services.[4]

5. It is unfair and deceptive to falsely represent that refunds are available or will be made where there is a failure or refusal to provide refunds.[5]

6. It is unfair and deceptive to falsely represent the true nature, character and activities of a business in order to induce the purchase of goods or services.[6]

7. It is unfair and deceptive to falsely represent the existence of a relationship with, or connection to, any company, firm, or individual, including arrangements for co-sponsorship or authority to act as a representative in order to induce the acceptance of an offer of a vacation, goods or services.[7]

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4 Market Development Corporation, et al., Docket Number 9067 (1980); Pfizer, Inc., 81 F.T.C. 23 (1972); All-State Industries of North Carolina, Inc., 75 F.T.C. 465 (1969), aff'd, 423 F.2d 423 (4th Cir. 1970), cert. denied, 400 U.S. 828 (1970); Tashof v. F.T.C., 74 F.T.C. 1361 (1968), aff'd, 437 F.2d 707 (D.C. Cir. 1970).

5 Jay Norris Corp., 91 F.T.C. 751 (1978), aff'd, 598 F.2d 1244 (2d Cir. 1979); Goodman v. F.T.C., 52 F.T.C. 982 (1956), aff'd, 244 F.2d 584 (9th Cir. 1957); National Optical Stores Co., 46 F.T.C. 694 (1950); Cookware Associates, 40 F.T.C. 654 (1945).

6 Product Testing Co., 64 F.T.C. 857 (1964), aff'd, 339 F.2d 603 (3rd Cir. 1964); Niresk Industries, Inc., 55 F.T.C. 1889 (1959), aff'd, 278 F.2d 337 (7th Cir. 1960), cert. denied, 364 U.S. 883 (1960); F.T.C. v. Royal Milling Co., 15 F.T.C. 38 (1931), rev'd, 58 F.2d 581 (6th Cir. 1932), rev'd, aff'g Commission opinion, 288 U.S. 212 (1933).

7 Market Development Corporation, et al., Docket Number 9067 (1980); Sterling Drug, Inc., 47 F.T.C. 203 (1950); The Richmond Brothers Co., 36 F.T.C. 482 (1943); Champion Battery Co., 34 F.T.C. 433 (1941).

8. It is unfair and deceptive to represent that there is any limited time in which to accept the terms of an offer of a vacation, goods or services, when such is not the case.[8]

9. It is unfair and deceptive to falsely represent the availability or quality of prizes or awards, including hotel/motel locations and accommodations.[9]

10. It is unfair and deceptive to falsely represent the true cost, value or worth of the vacation, goods or services, being offered.[10]

11. It is unfair and deceptive to fail to affirmatively disclose that an offer of a vacation, goods or services, is connected to the sale or promotion of any other goods or services, when such is the case.[11]

Approved: December 16, 1980
Resolution: Approved December 16, 1980 in File 812 3042, Unnamed Vacation Award Promoters

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8 Market Development Corporation, et al., Docket Number 9067 (1980); Basic Books, 56 F.T.C. 69 (1956), aff'd, 276 F.2d 718 (7th Cir. 1960); National Optical Stores Co., 46 F.T.C. 694 (1950).

9 Market Development Corporation, et al., Docket Number 9067 (1980); American Music Guild, Inc., 68 F.T.C. 13 (1965).

10 Grolier, Inc., 91 F.T.C. 315 (1973); Estee Sleep Shops, Inc., 65 F.T.C. 274 (1964); Giant Food, Inc., 61 F.T.C. 326 (1962), aff'd, 322 F.2d 977 (D.C. Cir. 1963), cert. denied, 376 U.S. 967 (1964); George's Radio and Television Co., 60 F.T.C. 179 (1962); Niresk Industries, Inc., 55 F.T.C. 1889 (1959), aff'd, 278 F.2d 337 (7th Cir. 1960), cert. denied, 364 U.S. 883 (1960); Kalwajtys v. F.T.C., 52 F.T.C. 721 (1956), aff'd, 237 F.2d 654 (7th Cir. 1956), cert. denied, 352 U.S. 1025 (1957); Thomas v. F.T.C., 30 F.T.C. 510 (1940), aff'd, 116 F.2d 347 (10th Cir. 1940); F.T.C. v. Standard Education Society, 302 U.S. 112 (1937), rev'd, 86 F.2d 692 (2d Cir. 1936); rev'd, aff'g Commission opinion, 16 F.T.C. 1 (1931).

11 Market Development Corporation, et al., Docket Number 9067 (1980); Pfizer, Inc., 81 F.T.C. 23 (1972); All-State Industries of North Carolina, Inc., 75 F.T.C. 465 (1969), aff'd, 423 F.2d 423 (4th Cir. 1970), cert. denied, 400 U.S. 828 (1970); Tashof v. F.T.C., 74 F.T.C. 1361 (1968), aff'd, 437 F.2d 707 (D.C. Cir. 1970).

TEN TIMESHARE TIPS

Planning your next vacation? You may have considered "vacation timesharing," the use of a vacation home for a limited, pre-planned time. It's an increasingly popular way to take vacations. In fact, timeshare sales have nearly doubled every year since 1975, with sales in 1980 exceeding $1 billion. But buying a getaway to paradise can have problems. You should carefully consider the risks as well as the benefits before signing a contract or check.

There are two main kinds of timesharing plans. With the deeded type, you own an interest in a piece of real estate. In the nondeeded plan, you buy a lease, license, or club membership which lets you use the property for a specific amount of time each year for a stated number of years. With both types, the cost is proportional to the length of time per year you want to buy.

As with any purchase which costs thousands of dollars, be sure you understand what you're getting BEFORE you sign any papers or pay fees. We suggest you consider the following points before you purchase any type of timeshare. This information is intended only to assist your decision, and should be used with careful analysis and professional advice concerning all aspects of a timeshare purchase.

1. Consider the value of "gifts" and "awards" often used to promote timeshare sales. Many sellers offer prizes to interest consumers in listening to sales talks. However, you must sit through the sales presentation in order to receive the gifts, which are usually inexpensive items. Common promotional giveaways include gems with little or no value as jewels, "solid-gold" ingots with minimal gold content and worth no more than a few dollars, or "vacation awards" which don't cover major costs such as travel and food.

2. A major reason people buy timeshares is for the convenience of having pre-arranged vacation facilities. However, if your vacation plans are subject to last minute changes, if they vary greatly in length and season from year to year, or if it is possible that you'll move a long distance to a new city, you should consider whether you'll regularly use a timeshare facility.

If you join a club or other timeshare plan with units in more than one place, find out as much as you can about the facilities in each location and the frequency with which you can travel to each place. In other words, will you be able to go to a beach resort you like every year or, for example, only one year in four?

3. Evaluate any investment claims made by the seller. The future value of a timeshare depends on many factors. Resale of the timeshare may be difficult. The seller's prices, even if they increase, may be higher than you could get if you resell. You may face competition from the firm that sold you the timeshare, or local real estate brokers may not want to include the timeshare in their listings. Closing costs, broker commissions, and arranging financing should also be considered. And even if a building increases in value, a one-week deeded timeshare, for example, will give you a return on only 2% of a single unit in a building.

4. Calculate what the total cost of your timeshare will be by planning for added expenses such as finance charges, travel costs and annual fees. Be aware that annual maintenance costs may well rise at rates which equal or exceed the inflation rate. Find out if there are limits to cost increases at your project. Compare estimates of what your timeshare would cost on a weekly basis with the rates of similar accommodations you could rent in the same location.

5. Review all documents and don't act on impulse or under pressure. Comparison shop, and have an attorney familiar with timesharing review all papers before you make a purchase. Find out if the contract provides a "cooling-off" period during which you can cancel the contract and get a refund. If there is a provision like this, use that time to carefully investigate and consider your decision. If there is no cooling-off period, be absolutely sure you understand all aspects of the purchase and review all materials before you sign.

6. Make sure everything promised orally by the salesperson is included in the written contract. Be especially cautious if verbal claims contradict the contract.

7. Remember that exchange programs, which offer the opportunity to arrange swaps with other resorts in different locations, usually can't be guaranteed. Are you buying a timeshare only or mainly for the exchange privileges? There may be some limits on the exchange opportunities. For example, you may need to request use of the facility far in advance. Travel costs may be prohibitive, or you may not be able to "trade up" to a bigger unit or a more popular time of year. Of course, your unit must be built and operating properly, or you may not be able to exchange at all.

8. Your resort may be a good place to vacation only if it is run properly in the future. Therefore, research the "track record" of the seller, developer, and management company. Visit the facilities and, if possible, talk to other users. Try to obtain information from local real estate agents, Better Business Bureaus, and consumer protection offices. Learn about what will be done to manage and repair the property, replace furnishings as needed, and give you promised services. Will these arrangements be adequate? If so, for a long period of time, or just for the near future?

9. If you're buying a timeshare in a property where the facilities haven't been completed, get a written commitment from the seller that they will be finished as promised. One way to protect your financial interest during this waiting period is to ask that enough of your money be held in escrow to ensure that the facilities will be completed and free of claims against the developer.

10. Find out what your rights are if the building or management company has financial problems or in some way defaults. See if your contract includes two clauses concerning "non-disturbance" and "non-performance." The non-disturbance provision will protect you from claims by a third party against the developer or management firm which could prevent you from using your unit. The non-performance protection clause will allow you to keep all your rights, even if a third party, such as a bank, needs to buy out your contract. See an attorney for more information about these provisions.

Council of
Better Business Bureaus, Inc.
1515 Wilson Boulevard
Arlington, Virginia 22209

North American
Securities Administrators Association, Inc.
100 East 9th, Suite 204 • P.O. Box 1516
Topeka, Kansas 66601

January 1984 Re: Investor Alert on Vacation Timesharing

Dear Better Business Bureau Chief Executive Officers
and North American Securities Administrators:

Enclosed you will find the latest quarterly "Investor Alert" prepared by the North American Securities Administrators Association (NASAA) and the Council of Better Business Bureaus (CBBB). This Alert, which is of interest to both U.S. and Canadian citizens, warns investors about problems that can be encountered when investing in the burgeoning vacation timeshare industry. It not only describes possible problems investors can encounter when buying timeshares, but also explains how timesharing works and gives eight tips for potential investors.

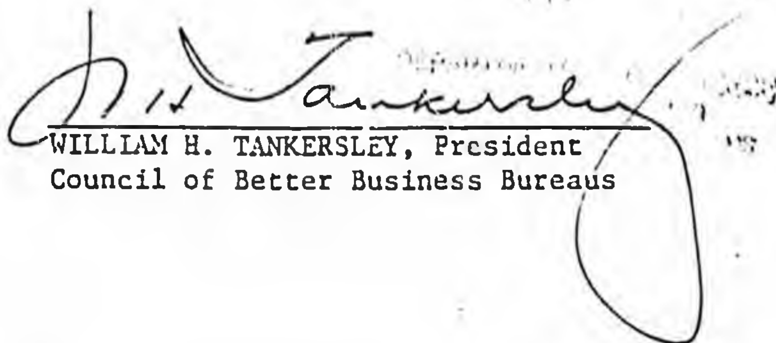
As has been our practice, we have included with copies of the Alert a model press release that you may feel free to use in whole or in part to help disseminate the important information presented by this program. It generally follows the national press release issued by NASAA and CBBB. Space is provided for insertion of names of appropriate state or local securities administrators.

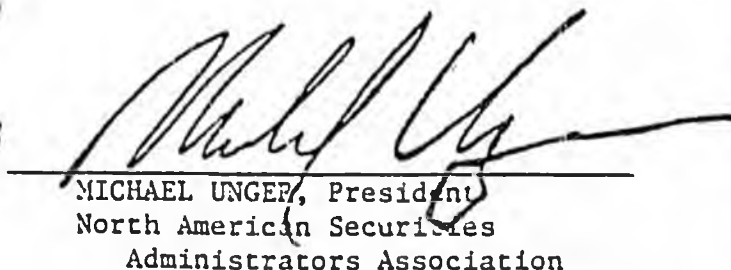
This is the first anniversary issue of Investor Alert, the joint NASAA/CBBB program. Both organizations have been enthusiastic over it and feel national interest and response has grown as the program has progressed. There has been excellent coverage of the Alerts in both national and local media, including national magazines and network television.

We again encourage as wide as possible distribution of the information contained in the Alert. Feel free, if you wish, to create or use your own logo for local or state distribution or to simply reproduce the Alert bearing the program logo.

Regardless of the manner in which you choose to distribute the Alert, we encourage the insertion of the names, titles and addresses of your BBB or security administrator's office at the end of the document as a message to media that you are available for questions and interviews on the subject. We again urge as wide as possible distribution of this release through your own local mailing lists of newspapers, radio and television stations and cooperation with your local BBBs or securities administration counterparts.

Best regards,





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Council of Better Business Bureaus

MICHAEL UNGER, President
North American Securities
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STATE OF ALASKA

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___ STATE COURTHOUSE, ROOM 26
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VALDEZ, ALASKA 99686
PHONE (907) 835-2462

April 9, 1984

Honorable Richard I. Eliason
Attention: Sheila Peterson
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

Dear Senator Eliason:

Re: Senate Bill 494 relating to the sale of timeshares

Enclosed are some additional materials which might be helpful in consideration of the above-mentioned bill.

I am looking forward to testifying before this Senate Labor and Commerce Committee on Thursday, April 12, 1984, at 11:30 a.m. in Room 211 of the Capitol Building. Please notify me if there are any changes in the schedule.

Thank you very much for your interest in this legislation.

Yours very truly,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Linda M. O'Bannon*
Linda M. O'Bannon
Assistant Attorney General
Consumer Protection Section

/aw

Enclosures

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TIME SHARING INDUSTRY REVIEW

The Information Resource for the Time Sharing Professional

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Swaim barred at Massanutten

By Lisa Frenette
CONTRIBUTING WRITER

The legal and financial catastrophe which befell Florida developer John R. Swaim has put timesharing resorts in New York and Virginia at the brink of a bank auction.

• Lake Placid Resort Club in Lake Placid, N.Y., sold some 1,190 shares in 35 units before the state attorney general ordered a halt to sales Dec. 9, 1982. Four months later, April 21, 1983, the Key Bank of Northern New York foreclosed on the project, and a court upheld the foreclosure in December 1983. Now the bank plans to auction the resort by April 1984.

• Massanutten Village near Harrisonburg, Va., was facing problems at the same time the attorney general clamped down on Lake Placid. At the Virginia resort, construction of Phase 30 (a five-unit building) was stopped in November 1982 when the resort failed to make payments to the contractors. The Washington Post detailed the predicament of 120 owners of the incomplete units of Phase 30 in a Nov. 5, 1983 story, and as many as 500 additional owners in Phases 31 through 35 may be in jeopardy. On Dec. 14, 1983, Union National Bank of Pittsburgh foreclosed on the resort. Union National then intended to buy the resort at a January auction, but Swaim's parent company, First Federal Corporation, filed a Chapter XI reorganization petition in U.S. Bankruptcy Court in Harrisonburg on Dec. 16, 1983.

All the while, John R. Swaim, 52, was free on $10,000 bond after his March 7, 1983 arrest in St. Petersburg, Fl., where he was charged with grand theft for "using property of another in excess of $300,000" for his own purposes. At a pretrial hearing Jan. 16, 1984, Swaim pleaded "no contest" to third-degree grand theft and was placed on 18 months' probation and ordered to pay $11,515 although adjudication of guilt was withheld.

And in the wake of the Lake Placid and Massanutten foreclosures, a bank in Minnesota and a savings and loan in Mississippi have succumbed. The Federal Deposit Insurance Corp. (FDIC) took control of the Minnesota lawsuit against Swaim, and the Federal Savings and Loan Insurance Corp. (FSLIC) joined a Mississippi S & L and charged him with "illegal conspiracy" in attempting a takeover of the Mississippi thrift which made a $32.5-million commitment to Swaim.

On Jan. 6, 1984, Judge H. Clyde Pearson of the federal bankruptcy court barred Swaim from Massanutten Village except to prepare the reorganization plan. The judge's order read:

"John R. Swaim shall not, directly or indirectly, interfere or participate in any way in the operation and management of business conducted at Massanutten Village."

Swaim also was prohibited from getting paid or having any access to funds held by First Federal Corp. The corporation, now directed by Ronald Petcher, has payroll and operating costs of $317,000 a month. The judge ordered Petcher to be bonded for $100,000 and required him to file weekly financial reports, which will be sent to creditors. More than $3 million is owed, and there are 26 major unsecured creditors.

Meanwhile, Swaim is still operating a timesharing resort at French Lick Springs, Ind.

If this knotted spool of thread seems difficult to untangle, judges and attorneys are overwhelmed by it as well. When mechanics liens of $126,000 were filed at

Continued on page 13

Massanutten Village is protected under Chapter XI of U.S. Bankruptcy Code while a solution is sought for as many as 600 interval owners of unbuilt units.

'Vacations as usual'

Sweetwater on course, final plans due March 1

By Fred Gebhart
CONTRIBUTING WRITER

PARK CITY, UTAH — Sweetwater, Inc., of Salt Lake City and five associated companies filed for reorganization under the protection of Chapter XI of the U.S. Bankruptcy Code four months ago. While the Sept. 23, 1983 filing has kept company officials and creditors alike busy trying to come to terms, owners at Park City, Utah, Sweetwater's flagship timeshare development, seem unaffected by the corporation's financial difficulties.

"As far as I can see," Park City manager Cathy Oblan said in mid-January, "there hasn't been any change. The owners are still using their weeks."

Resort Systems, which owns and operates the completed Park City development, is a wholly-owned subsidiary of Sweetwater, Inc. Resort Systems also filed for protection under Chapter XI, but, said Sweetwater publicist Heidi Swinton, only as a "technicality" to protect the owners.

Resort Systems co-signed a Sweetwater note large enough to bankrupt the management company if it were forced to pay the parent corporation's debt, which may be as much as $22 million. Oblan called the co-signing an "indescretion."

Income from owner maintenance fees has been steady and, as always, sufficient to provide fo the routine upkeep and maintenance of the property. "The owners," she added, "are not seeing anything happen to them. They've been able to continue with vacations as usual."

Owners questioned by TSIR at the resort echoed Oblan's assessment. "I haven't come across any problems at all," said San Francisco owner Brian Sours, "and I don't expect to."

Sours and other owners report no apparent changes in maintenance, upkeep, or maid service from prior visits to the 92-unit development.

"We were notified by mail," said a San Diego woman who visits Park City regularly. "We've kept up with our maintenance fees and can't tell any difference in our unit or in the way the place is being run from the last time we were

Continued on page 14

Vt. buyers get refund of $500,000

By Deborah Sline
CONTRIBUTING WRITER

MONTPELIER, VT — The influx of timesharing resorts in this tourist haven has resulted recently in an unusual crackdown by the state attorney general against a Stowe resort suspected of fraudulent sales practices.

In an agreement of unprecedented magnitude, the state forced Mountainside Resort to cancel $1.5 million in contracts with 140 customers and permanently alter questionable sales techniques. The legal agreement reached with Mountainside's owner, Avenue Resort Properties Inc. of Florida, marked this state's first major attempt to control the burgeoning timeshare industry.

Vermont Attorney General John Easton said Mountainside was singled out from a half-dozen major timesharing companies located in Vermont because its tactics resembled bullying:

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INSIDE LOOK

One of the crucial elements of a successful timeshare project is an accurate budget for the homeowners association. When done properly, a professional budget lends credibility to the resort. Susan Kelley of SKF Management Inc. Owners Association Division explains some important fundamentals of the budget.

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Continued from page 1

Vermont refund order based upon research of 'investment' buyers

"Our point is, under the consumer fraud law, something can be literally truthful and still be deceptive to violate it."
— John Easton, Vermont Attorney General

"We'd been looking at everybody," Easton said. "It just so happened that Mountainside turned out to have the biggest sales volume and the worst sales practices."

Under the agreement reached in October 1982 and made public a year later, Mountainside refunded nearly $500,000 in initial purchase payments made by 110 Vermonters and 30 out-of-state residents for one-week rights to condominiums in the resort.

The refunds were doled out based on buyers' responses to an independent survey, and only about 15 percent of those who bought shares in the complex were reimbursed. Some buyers left out of the settlement were unhappy, but the repayment ceiling contained in the agreement made it impossible to reimburse everyone.

In fact, state officials said, that would have defeated the purpose of the secret pact. Mountainside accepted radical changes in its procedures under threat of a lawsuit for violation of Vermont's consumer fraud laws, upon which Easton relied in the absence of state statutes regulating timesharing. The limited reimbursement plan was in the best interest of the state and Mountainside, Easton said, since a lawsuit might have forced the company out of business.

"We wanted to protect consumers, but we don't want to protect consumers at the expense of those who have already purchased," Easton said. "It's a real problem for us."

Resort Denies Violations

Mountainside "strongly and categorically" denied any violation of state law at the time of the agreement, and company officials could not be reached for further comment. However, the company has replaced its sales staff, changed its marketing techniques, and promised to clear all new sales materials with the Attorney General's Office in the future.

The "unfair and deceptive" practices which Mountainside allegedly used ranged from deceptive profit projections to high-pressure sales methods. Potential buyers were enticed to the resort with offers of free gifts, then required to sit through lengthy sales presentations before receiving them. Buyers were urged to make a deposit on a unit that day "or lose the opportunity to buy at a 'discount' or to receive financing from Mountainside."

The Attorney General said the resort used the threat of "internally-generated price increases" and failed to inform buyers that there was no proven resale market for its timeshares, "misleading purchasers to believe that they could sell their unit for a substantial profit."

The Attorney General said some purchasers were told that Easton, who lives in Stowe, had personally approved of the timeshares or bought one himself.

"I've tried not to appear anti-timesharing," Easton said, noting a visit he made to Mountainside during its development may have lent a "kernel of truth" to such claims.

"Our point is, under the consumer fraud law, something can be literally truthful and still be deceptive to violate it," he said.

The list of allegations against Mountainside is lengthy in the 17-page agreement reached with the state. Buyers were told, for example, that timeshare units could easily be traded with ones throughout North America and Europe through an exchange program known as Resort Condominiums International, but they were not advised about risks and inflationary costs involved. The resort sales staff also created the false impression that timeshare units were scarce at the prices offered, which state officials said ranged from $3,000 to $12,000, depending on the size of the unit and the week reserved.

Despite such techniques, Mountainside sold one-week timeshares in its 33 condominiums to nearly 1,000 buyers prior to the agreement, according to Edwin Hobson, an assistant attorney general assigned to the case.

The state tracked down buyers allegedly defrauded by the resort with the aid of Becker Research, a Boston survey firm, which was directed to find people who bought the units chiefly as an investment. So that buyer responses would not be affected before the survey was finished, a Vermont court sealed Mountainside's agreement with the state.

Easton only made the case public last November, after buyers had been identified and repaid.

The publicity prompted complaints from some of the 850 buyers left out of the deal.

"I feel I've been victimized," Underhill resident Roy Allen said at the time. Allen vowed not only to pay the $5,000 he still owes on his unit, which he already has spent $3,400 on.

Paul Hansen of Alburg was even more upset about his $3,200 investment in an $11,000 two-bedroom condominium. He said Mountainside's "high-pressured sales pitch" convinced him the purchase was a good investment and, although that was his key motive, he was overlooked by the surveyors.

Hobson admitted people like Hansen had come forward in the weeks since the refunds were announced. As a result, he said, those people are being resurveyed and some could receive refunds from leftover portions of Mountainside's original $500,000 allocation.

"There's a small amount for the people we weren't able to identify and who had a right to be surveyed," Hobson said.

Easton also stressed that remaining Mountainside owners could sue the resort themselves if they feel they were deceived. "Our settlement with Mountainside left open the right of any individual to bring his or her action," he said.

Excellent Cooperation

State officials took pains to make it clear, however, that Mountainside has cooperated fully. "The management really attempted to address the problem and did stop all the practices we objected to," Hobson said. "They really have cleaned up their act."

That "clean-up" included a series of elaborate promises Mountainside made

Continued on page 18

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Continued from page 1

Lake Placid, Massanutten reeling

Loan defaults by developer create havoc

Lake Placid in March 1983, Swaim's attorney remarked. "It took me 30 hours just to review this material," State Supreme Court Justice William S. Crangle responded. "I'm not sure how long I can remember all this."

Swaim had spectacular dreams for the posh, old-fashioned mountain hotel at Lake Placid when he bought it for $10.8 million in November 1980. At a Jan. 14, 1981 unveiling, he described a $160 million, 15-year grand plan to rejuvenate the rambling 1,065-acre complex. His plan included renovation of the 230-room hotel and construction of 65 timesharing condominiums (13 buildings with five units each). Sales began in May 1981.

Seven buildings (35 units) were completed and three other buildings were started. Lake Placid Resort Club offered a luxurious product for $8,000 to $10,000 a week.

"It's like living in a furniture showroom," remarked one Lake Placid Club timeshare owner. "And any gadget you can possibly think of is in the kitchen — you name it, it's there."

The five units in each building were staggered to achieve privacy on the outdoor decks. Thick carpeting and tasteful furniture add comfort to the corner fireplace with stones stacked to the ceiling, and each unit boasts a private whirlpool and sauna. Two bedrooms upstairs and a den downstairs affords plenty of guest space.

Swaim fueled the Lake Placid purchase and development with a $13.5-million, wrap-around mortgage from North Mississippi Savings and Loan Association of Oxford, Miss.

But the dream began turning into a nightmare on Dec. 9, 1982 when Attorney General Robert Abrams of New York stopped sales of Lake Placid timesharing units because of consumer complaints about sales tactics by DEL Marketing.

Investigation by the Attorney General's Office centered on three areas: alleged deception in mailings to prospective customers, unregistered salespeople, and the "removal or masking" of a page in the sales contract concerning the seven-day right of cancellation. One set of mailings promised a home computer, according to Nathan Reilly of the Attorney General's Office, and the "prize" was actually a small, electronic device programmed to translate English into Russian for visitors to the 1980 Winter Olympics.

Lake Placid Club Lodges, Inc., the Swaim subsidiary which owns the timesharing units, failed to submit an offering plan that was acceptable to the Attorney General's Office. Thus, sales were never resumed at Lake Placid.

Swaim's original company, Massanutten Village, Inc., became involved in the 3,150-acre Virginia resort in 1980 although timesharing had been sold there since the mid-1970s. The rustic beauty of Massanutten Mountain and the resort's ski facilities, golf course and 60-room hotel had attracted more than 6,500 timeshare buyers.

Massanutten Village, Inc., was changed to First Federal Corp. One of Swaim's subsidiaries, First Federal Mortgage Corp. of St. Petersburg, sold mortgages from timeshare sales to various lenders.

On Jan. 17, 1983, the state Bank of Barnum (Duluth, Minn.), which held $3.6

Lake Placid Club Resort sold 1,190 intervals before state's attorney general halted sales Dec. 9, 1982. Bank foreclosure followed in four months.

million in such mortgages, sued Swaim for wrongful conversion of funds, breach of contract, and fraud. Swaim had sold some 400 mortgages to Barnum in August 1982. Swaim then was supposed to collect the payments, subtract a one-percent servicing fee, and forward the money to the Minnesota bank.

Swaim missed the August and September 1982 payments; when Barnum was paid Oct. 11, 1982, the checks for $910,951 were returned twice for insufficient funds. He finally made the payments by Nov. 26, 1982; two weeks later, sales were halted at Lake Placid.

Then on Feb. 9, 1983, the State Bank of Barnum was ordered closed by the Minnesota banking commissioner, who charged "gross mismanagement," and the FDIC became receiver of the bank and reimbursed its depositors.

The FDIC took over the lawsuit initiated by the bank before it closed. The suit claimed Swaim owed at least $294,589 in

"John R. Swaim shall not, directly or indirectly, interfere or participate in any way in the operation and management of business conducted at Massanutten Village."

back payments and interest, and it asked for $3 million, which included $2 million for damages.

The bank collapse set in motion the arrest of Swaim in Pinellas County, Florida, on March 7, 1983. He was accused of diverting the Barnum money into a Florida account to pay First Federal Mortgage Corp. expenses, an affidavit charged.

It then developed that Lake Placid Company, the Swaim subsidiary which owns all of the New York resort except the timesharing units, had defaulted on a $13.5-million mortgage with North Mississippi Savings and Loan. The Federal Home Loan Bank Board took over the failed Mississippi thrift April 11, 1983. The Mississippi loan included $8.2 million in May 1982 for Lake Placid Club Resort construction plus $1.34 million to the Farmers National Bank, which enabled Swaim to purchase the resort in November 1980.

The Mississippi S&L had given Swaim a letter of commitment in April 1982 for up to $12.5 million. In the arrangement, Swaim was supposed to make mortgage payments for the over-all loan. The Mississippi S&L would then make payments to Key Bank of Northern New York (formerly Farmers National). However, both Swaim and the Mississippi S&L defaulted on payments, spurring more lawsuits and adding to the confusion.

Swaim was accused Aug. 24, 1983 by the New North Mississippi Savings and Loan and by the FSLIC of illegal conspiracy, alleging that Swaim met with a bank officer and a Louisiana physician who was in the process of acquiring the S&L through stock purchases. In its suit, the Mississippi thrift claimed that the men conspired to divert funds to Swaim and then to Dr. Joseph Villard to enable the latter to gain control of the S&L.

Swaim contended, in a strongly worded, billion-dollar countersuit he filed in May 1983 against Key Bank, that officials of Key Bank and North Mississippi conspired to let payments lag to Key Bank so that it could seize the Lake Placid Club Resort. Swaim said he never knew Key Bank wasn't being paid by North Mississippi until Key Bank announced on April 21, 1983 that it was foreclosing on the resort.

Also in August 1983, Judge Thomas Mercure of the New York State Supreme Court dismissed all of Swaim's counterclaims except one, which involved a breach of contract related to the estate of G. Alan Cruickshank, a planner of Lake Placid Club Resort who was murdered in November 1982. Cruickshank's estate filed mechanics liens of $426,000 against the resort in March 1983.

Laying the blame for most of his financial troubles on North Mississippi Savings and Loan, Swaim argues that the many defaults of his various loans are a result of North Mississippi reneging on its $12.5 million commitment.

Stockholders of the Lake Placid Resort Club had their stock, which cost $166 per share in 1982, returned to them because Swaim defaulted on a second loan from Key Bank. He was to make one yearly payment for 5 years; the first payment was made in January 1982 and the next one never made its way to the bank.

The Lake Placid Education Foundation, which is the majority of stockholders in the Lake Placid Club Resort, has sued Swaim for $265,023 plus interest for payment of the stock. The suit was filed against Massanutten Village, Inc., and First Federal Corp. of Virginia.

It was the latter corporation that saved Swaim from the loss of an 18-room house situated on two acres at Lake Placid. In April 1983, the Internal Revenue Service seized the house after filing tax liens for $227,865 and $316,195 against various Swaim corporations. The second lien was for failure to pay taxes Swaim had withheld from employees' paychecks.

He eventually recovered the house, called Camp Goodhurst, because of a legal technicality. The IRS had confused two of Swaim's corporations, First Federal of Virginia and First Federal of Delaware.

The New York Attorney General's Office for now is making sure that Lake Placid timeshare owners will get the amenities promised to them. As recently as December 1983, timeshare owners arrived for their weeks and found shoveled sidewalks, cross-country ski trails, fresh linens, garbage removal, and so forth at their condominiums.

In Virginia, owners at Massanutten Village may not be so fortunate. Liens and judgments of more than $120,000 have been filed against First Federal Corp., Swaim's parent company which sought Chapter XI, and as many as 600 timeshare owners are waiting for their townhouse units to be constructed. The FDIC is holding some 25 of the mortgages at Massanutten through the failed Minnesota bank.

A Massanutten Group Action Committee, consisting of some 120 families who purchased units in Phase 30, was formed after the 120 deed-holders were named along with Swaim and the FDIC in a mechanic's lien May 9, 1983. The contractor, Edward L. Hultman, sought to have the building (Phase 30) sold off so that he could recover a $25,961 court judgment he won against First Federal Corp.

Now the Attorney General's Office in Virginia has petitioned the U.S. Bankruptcy Court to allow the state to halt sales of timeshares at Massanutten Village. The state claims that buyers were misled when they were told the developer would provide title insurance, provide general warranty deeds, file the deeds on time and complete construction within a year of signing the sales contract.

[illegible] of the Attorney General's Office said that the pleading contends that those assurances were untrue, deceptive and misleading. ■

... expert testimony. Furthermore, it is the point that helps state the developers' case most clearly.

associate professor of law at the Franklin Pierce Law Center in Concord, may help speed up the process. Hurn has negotiated with the attorney for the city of Laconia in order to bring the issue to trial. According to Hurn, "As a practical matter, the only way to increase the probability of prompt action was to get the city to join in requesting a specific date."

Hurn felt the only way to do this was for both sides to agree to a complete exchange of information, including proposed witness lists. Each side would have to make concessions for this to happen. The developers must agree to prepare and deliver the detailed information that has already been requested by the city attorneys for preparation of their request.

This is no small concession on the part of the developers as the request is for "all records." Hurn feels providing the city with a tabular list of sales, repurchases, etc., including names, dates and prices, should sufficiently cover the city's request. It would be further agreed that if specific documentation of a certain transaction is desired, such documentation would be provided on a case-by-case basis.

Hurn has requested that the resorts

This point is particularly important in the agreement as each of the three developments fighting the issue — Boatslip, The Summit, and Village of Winnepesaukee — had units not timeshared which were physically identical to those units whose valuation is being contested.

Hurn, in turn, stipulates that the main issue at stake is how to evaluate timeshare units in a fair manner. In a detailed letter sent last October to the Board of Tax and Land Appeals, Hurn outlined four specific requests, and in a November letter, the city agreed to those requests as follows:

First, the city will not conduct an appraisal on the resorts prior to the hearing.

Second, all three appeals will be consolidated for a single hearing.

Third, the city will set aside a full day or the equivalent for the presentation of the appellant's case, with additional time allocated as the city sees fit for the presentation of their case.

Lastly, the city agreed to give the parties at least a month's notice of the hearing date to allow for travel arrangements and/or depositions of experts who live outside the state of New Hampshire. There has been no further notification to date as to when the hearing will be held.

The same tax problem is striking at the heart of several timeshare resorts in other New England states as well. The battle lines have been drawn between the development community and the municipal association in the state of Maine, according to Harry McCoy, of Fox, Edward & Gardiner, who represents the Samoset Resort on Maine's coast. They intend to go ahead with plans to file an appeal of the assessments levied against Samoset and litigate the issue.

Suits have also been filed in Vermont and Florida.

This remains the industry's major issue, one which strikes at the very heart of the economic viability of the timesharing concept. ■

Miller plans London show

NEW YORK — Miller Marketing Network will present its second American Real Estate Show at the American Club in London, England, May 29-31. The show will bring together American residential investment properties and qualified investors.

Kenneth Miller, president of the New York-based international real estate marketing firm, said there will be more than $2 million in prime property being offered.

Exhibit space is $5,000 per booth, or $4,000 if Miller Marketing Network receives one percent of sales made at the show. ■

Continued from page 11

Vermont enacts refund

"to resolve the matter amicably." It agreed not to imply timeshares are a good investment "or in any way making reference to a possible investment value of the property" without furnishing satisfactory proof to the Attorney General's Office. The resort no longer can make "anecdotal references to any incident, true or fictitious, regarding the profitability of owning timeshares" unless it applies specifically to Mountainside units.

The resort also cannot suggest timeshares are scarce without proof, nor can it imply that buyers will profit from resale or rental of the units. Mountainside agreed to give all future buyers five days to pull out of their purchase contracts, and it promised to suspend high-pressure sales methods and only gave away prizes on the spot without qualification.

Mountainside, which paid the state of Vermont $10,000 to cover the cost of the investigation, also agreed to finish an "amenities building" for recreational use at the resort.

Although this was an extreme case, the state is keeping an eye on other timeshare resorts scattered throughout the state. Easton entered agreements to force minor changes in practices at two other resorts — prize distribution methods at the Crafts Inn in Wilmington and mailing methods used by Village-on-the-Green in Stowe.

His office also is surveying people who bought timesharing units in the Killington Townhouses, but Easton said no determination has been made yet that any laws were violated.

The state's experience with Mountainside ended on a positive note. But the long-term problem of regulating timesharing resorts remains unresolved. Easton is pushing the Vermont Legislature this year to enact strong regulations to prevent further problems with timeshares in the future. ■

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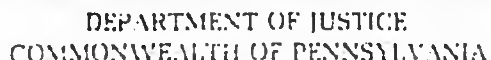

DEPARTMENT OF JUSTICE
COMMONWEALTH OF PENNSYLVANIA

Bureau of Consumer Protection

CONTACT Terry W. Lazin

(717) 787-9707

FOR IMMEDIATE RELEASE SEP 2 1980

A Bureau of Consumer Protection investigation into a Pocono "time-sharing" development has resulted in the filing of two legal actions against the developers and marketers of a facility known as "Country Squire Lakeshore Club." According to Bureau Director Terry W. Lazin, in a Complaint filed against the marketers, the Bureau is asking that the Court order the marketers to pay Civil Penalties of $100,000. In a Consent Petition, the developers have agreed to pay $6,000 in Civil Penalties and cease certain alleged unlawful conduct.

The Complaint names the marketers as Richard and Susan Ronk together with their corporation Ronk and Associates, Inc., a New Hampshire Corporation doing business at Court House Square, Stroudsburg, PA. The Consent Petition for Permanent Injunction was signed with the developers of the facility, three Stroudsburg Corporations, Masthope Rapids, Inc., Falling Waters at Masthope, Inc., and American Landmark Corporation, all located at 18 N. 7th Street, Stroudsburg, Pa.

The Bureau charges that from August 1979 till June 7, 1980 Ronk and Associates, Inc. was employed by Masthope Rapids, Inc. to market and sell time-sharing plans for a facility located at Lackawaxen, Pike County, PA. Time-sharing is a relatively new real estate concept which allows consumers to buy the right to use a vacation unit for one or two weeks per year for up to twenty-five years. Management details are supposed to be handled by the developers or an owner's association.

The Bureau contends that Ronk and the defendants instituted various direct mail marketing programs pursuant to which letters were sent to consumers in central and eastern Pennsylvania and Connecticut in order to induce them to travel to Country Squire Lakeshore Club. The Bureau alleges that these direct mail letters informed recipients that they had won or were eligible for prizes in a sweepstakes but that the prizes had to be claimed at the resort. The Complaints further

charge that the mail pieces represented that the persons who visited Country Squire would have a reasonable opportunity to win the prizes depicted in the mail pieces. However, the Bureau alleges that the promotion used by Ronk and Masthope was part of a national "Sweepstakes" which included the mailing of similar mail pieces to millions of persons throughout the country. As a result, the Bureau contends that virtually everyone who visited Country Squire received one of the least expensive prizes and that the opportunity to win one of the more expensive prizes was either nonexistent or largely illusory.

Upon arriving at Country Squire, prospective buyers were required to take a tour and receive a sales presentation encouraging them to purchase "memberships" which cost from three to five thousand dollars as an "initiation fee." The Bureau also alleges that members would be required to pay "annual dues" which could increase from year to year.

The Bureau further alleges that the defendant's sales persons often represented that consumers were buying an investment which could be resold and which would be nearly certain to increase in value. However, the Bureau contends that the resale of memberships in other similar time-sharing facilities is difficult if not impossible.

The Complaints go on to charge that the defendant's sales persons misrepresented the characteristics and benefits of joining Resorts Condominium International, a corporation involved in the exchange of time-sharing interests among its members. For example, the Bureau contends that the sales persons misrepresented that Resorts Condominium International had two jumbo 747 jets for the use of its members and that members would be eligible for huge air fare discounts up to 50 percent.

Other false representations which are alleged to have been made are that a nine hole golf course would be built, that money has already been set aside to build an indoor pool and that Country Squire would host the only rodeo on the east coast. The Bureau alleges that, as an incentive for purchasers to buy memberships the sales persons falsely represented that the facilities, the contract and related marketing had been approved by the Attorney General or the Department of Justice.

Further, the Complaints aver that the sales persons regularly refused prospective purchasers enough time to read the contract and instead summarized the contract for the purchasers, often inaccurately. The Bureau alleges that the defendants uniformly refused consumers permission to take contracts home prior to signing.

The Complaints also allege that the defendants employed the use of a "first day discount" as an additional incentive to induce potential purchasers to sign binding contracts on the first day of their visit. However, the Bureau alleges that this "discount" was largely illusory since the "discount price" was the normal and usual selling price and consumers were not afforded any reasonable opportunity to purchase other than the first day.

The developers have signed a Consent Petition for Permanent Injunction in which they have agreed to cease certain alleged practices and make additional disclosures in the future. Upon Court approval, the developers have agreed to pay Civil Penalties of $6,000.

In the Consent Petition Masthope Rapids, Inc., Falling Waters at Masthope, Inc., and American Landmark Corp., have agreed to tell all people who purchased prior to July 1, 1980 that there may have been misrepresentations made during the sales presentation and that they may revisit the facility and have the time-sharing program re-described to them. At the conclusion of such meetings, purchasers are to be given the option of cancelling their memberships and receiving a full refund.

Also according to the Consent Petition, the existence of first day discounts is not to be represented by the developers unless the prospective purchasers are given a reasonable opportunity to purchase other than the day of their initial visit to the resort. Further, the defendants are to maintain records in order to establish the usual selling price from which the price reduction is taken. In the legal action, the developers have also agreed not to represent that they will assist in the resale or rental of a time-sharing unit unless there is a formal program for such assistance which is disclosed in writing as part of the contract signed by the purchaser. In

addition, the developers are not to make representations about the investment potential of purchasing a time-sharing membership unless they possess material that constitutes a reasonable basis for such representations.

In the Consent Petition Masthope Rapids, Falling Waters at Masthope, and American Landmark have agreed not to utilize sweepstakes or games of chance without clearly disclosing the total number of prizes to be awarded, the exact nature of the prizes including their approximate retail value, and all of the terms and conditions which individuals will be asked to comply with in order to obtain prizes and the odds of winning each prize.

The Consent Petition also calls for the developers not to misrepresent that the number of participants in any contest has been limited or to misrepresent that the prizes have been purchased unless they have actually been purchased before the sweepstakes or contest. Individuals who request the names of winners of all prizes having a retail value of $100 or more are to be furnished with such a list. Signing of the Consent Petition by Masthope Rapids, Falling Waters at Masthope and American Landmark Corporation does not represent an admission of wrongdoing.

In its Complaint against Ronk, the Bureau is asking that the Court order the marketers to pay Civil Penalties of $100,000 for willful violations of the Consumer Protection Law. In addition, the Bureau is asking that the Ronks and their Corporation be enjoined from continuing their unlawful practices in connection with the marketing and sale of time-sharing plans.

The legal actions were filed in Commonwealth Court of Pennsylvania by Deputy Attorney General B. Chistopher Lee of the Bureau's Lehigh Valley office.

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG

LEROY S. ZIMMERMAN
ATTORNEY GENERAL

16TH FLOOR
STRAWBERRY SQUARE
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For Immediate Release

Friday, May 21, 1982

Contact: Robert R. Gentzel
Assistant Press Secretary
717-787-3391

HARRISBURG -- This week's mass mailing from "United Parcel Claims Service" — which was designed to draw business for Pocono resorts but which misled thousands of consumers -- has cost the promoters a $10,000 civil penalty, Attorney General LeRoy S. Zimmerman announced today.

The mailing, in the form of 25,000 to 30,000 postcards, purported to be a "final notice" from "United Parcel Claims Service ... regarding merchandise UPCS has for you."

The mailing was targeted most heavily at the Harrisburg area, but many cards were sent to the Lehigh Valley and Philadelphia areas, and some went to residents of the Northeast.

In the cards, most of which were delivered on Monday, recipients were directed to call "the claims department" at a toll-free number.

Persons calling the number received a sales pitch to visit a Pocono resort and get a gift -- the "merchandise" alluded to on the card, Zimmerman said.

"Most, if not all, of the citizens who received the cards thought they were a warning from United Parcel Service, and for good reason," said Zimmerman. "The cards were blatantly designed to mislead."

"As a consequence, an estimated 90 percent of those receiving cards tried to call the toll-free number, jamming the phone bank which promoters set up in anticipation of a typical 2 percent response."

--more--

When they couldn't get through, recipients called United Parcel Service, only to learn it had nothing to do with the cards, and hundreds then called regional Bureau of Consumer Protection offices.

The bureau, which is part of Zimmerman's office, won verbal agreement from the promoters on Monday to cancel plans for additional mailings.

On Thursday, deputy attorney general Thomas G. Saylor Jr., director of the bureau, notified the promoters they would be sued unless they immediately agreed to a settlement which included a "substantial" financial penalty.

Representatives of the involved companies flew to Harrisburg, and late yesterday agreed to Zimmerman's terms. The agreement was filed with Commonwealth Court this morning (Friday, May 21).

The settlement is in the form of an "assurance of voluntary compliance," a binding legal document signed by Saylor on Zimmerman's behalf and by these representatives of the three firms directly involved in the promotion:

-- David F. Corson, vice president of Continental Marketing and Finance Ltd. of Pocono Summit, Monroe County, which organized the promotion.

-- Thomas J. Finnerty, vice president of Markdata Inc. of Kingston, Luzerne County, which provided the mailing facilities.

-- Joe Cardoni, vice president of Rothchild & Co. Ltd. of Pittston, Luzerne County, which registered United Parcel Claims Service as a fictitious name in Luzerne County Court. Cardoni also is vice president in charge of marketing for Markdata Inc.

--more--

In the document, the three firms acknowledge that the mailing violated the state Unfair Trade Practices and Consumer Protection Law, which bans misleading advertising.

They formally promise not to repeat the United Parcel Claims Service mailing or any similarly misleading advertising campaign.

And they agree to a $10,000 civil penalty, which Zimmerman said already has been paid.

The $10,000 check, payable to the Commonwealth of Pennsylvania, was handed to Saylor at yesterday's meeting.

Any future violations could place the defendants in contempt of court and subject them to additional penalties, Zimmerman noted.

Saylor said Continental organized the promotion to attract customers to visit Pocono time-sharing resorts, including two owned by Vacation Charters Ltd.: Split Rock Lodge at Lake Harmony and Carriage House at Pocono Manor.

Time-sharing is a system in which the resorts sell guaranteed annual blocks of vacation time, typically one week a year for 20 years, he explained.

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Alaska State Legislature

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Senate
Committee on Transportation

MEMORANDUM   Date: April 9, 1984

Subject: SB 538 "An Act relating to mandatory safety inspections of certain commercial motor vehicles."

To: All Senators, Speaker Hayes

From: Senator Pappy Moss, Chairman

Attached please find information taken from the January 31, 1984 OMB report entitled "Performance and Policy Review of Alaska Transportation Commission Regulation Practices." The section attached provides an excellent summary of the need for a mandatory commercial vehicle inspection program.

ALASKA'S EFFORTS TO ENSURE COMMERCIAL VEHICLE SAFETY HAVE BEEN SPORADIC AND INCONSISTENT

Under AS 42.07 and AS 42.10, the Alaska Transportation Commission has the responsibility to develop and administer a commercial vehicle safety program. The objective of a commercial vehicle safety program is to protect the public, the driver, and the cargo.

Since statehood, the ATC has had responsibility for a commercial vehicle safety program; however, Alaska's efforts to ensure commercial vehicle safety have been sporadic and inconsistent in past years. From 1976 to 1982, the Alaska State Troopers operated the scale houses and performed safety inspections. By 1980, the AST had developed a commercial vehicle safety program. This program was called the Federal Weighing and Inspection Demonstration Project and it was partially funded by the Federal Highway Administration.

The Demonstration project was funded as a three-year program, beginning in March 1980 and ending in March 1983. There were approximately 15 troopers and 23 civilians who were funded under this program. The uniformed troopers provided road enforcement while the civilian employees operated the scale houses and conducted vehicle inspections. The Alaska State Troopers had responsibility for enforcing all weighing, inspection, and other safety standards and regulations.

In 1982, the responsibility for enforcement of the weighing and other measurement standards was transferred back to the Division of Measurement Standards. The 23 civilians were transferred to the Division but the 15 Troopers remained in the Department of Public Safety. Thus, from June 1982 to March 1983, the responsibility for the commercial vehicle safety program was shared between the Department of Public Safety and the Department of Commerce and Economic Development, Division of Measurement Standards.

In March 1983, the responsibility for commercial vehicle inspections was returned from the Division of Measurement Standards to the ATC. Currently, the Division is responsible for enforcement of weighing and load regulations; the ATC is responsible for enforcement of other commercial vehicle safety regulations; and the Troopers enforce commercial safety vehicles regulations on highways.

THERE IS NO COMPREHENSIVE COMMERCIAL VEHICLE SAFETY PROGRAM IN ALASKA

Since March 1983, ATC has had statutory responsibility to establish and enforce commercial vehicle safety. The ATC has not developed a comprehensive safety program, primarily due to staffing and funding limitations.

THE STATE SHOULD COMMIT TO A POLICY OF AGGRESSIVE COMMERCIAL VEHICLE SAFETY ENFORCEMENT

The transfer of program responsibilities and functions from agency to agency with inadequate funding or definition of responsibilities has resulted in a fragmented and ineffective approach to commercial vehicle safety. It demonstrates a lack of planning or commitment to the program.

It has been suggested that safety program responsibilities were transferred from the Department of Public Safety to the Division of Measurement Standards in 1982 because the Troopers were too aggressive in their enforcement of the commercial vehicle safety. Complaints and lobbying efforts by the trucking and related industries led to the transfer of those enforcement functions without adequate funding. Consequently, enforcement of commercial vehicle regulations was relaxed.

Before the State decides on a better method to enforce commercial vehicle safety, it must commit to a policy of aggressive safety enforcement. Once this commitment has been made, efforts to correct the complaints or the problems experienced in past commercial vehicle safety efforts can be addressed.

Conclusion

The agency responsible for planning and implementing a commercial vehicle safety program must receive consistent and uniform policy direction from the Administration and Legislature. Without this commitment and direction, consistent enforcement and public protection will be jeopardized.

INCONSISTENT SAFETY ENFORCEMENT HAS RESULTED IN DUPLICATION OF EFFORT AND A LOWER QUALITY OF SERVICE

Three entities are responsible for enforcing different but overlapping safety functions concerning the same vehicles and essentially the same territory. Because functional enforcement responsibilities for the agencies overlap, enforcement is sometimes uncoordinated and confusing.

For instance, both the Alaska State Troopers and the ATC field agents issue citations for safety violations. There is currently little or no communication between the two agencies regarding what citations have been issued and to whom. The ATC and AST officers do not have access to each other's citation records through an integrated communications network. When asked about the possible duplication of efforts and the confusion it could cause (if each cited the same violation), an ATC official stated that the ATC officers relied upon the drivers to inform the troopers or the ATC officers that citations had already been issued.

The situation is further complicated because different judicial processes are employed by the two agencies for citations of the same type. If a driver is cited by an ATC official for faulty brakes, the citation will be processed through the quasi-judicial hearing process employed by the ATC. If a driver is cited by a State Trooper for faulty brakes, the citation will be processed through the courts. If the driver has questions about the citation or a preparation for defense, it can be confusing to determine which agency and judicial proceeding will be employed.

Conclusion

Conducting two types of judicial proceedings for the same infraction misleads and confuses the public. From a fiscal standpoint, it is not cost effective for the State to administer two judicial processes and to have two agencies perform the same function, where one process and one agency would be sufficient.

LACK OF AN ADEQUATE INFORMATION SYSTEM, LACK OF ADEQUATE TRAINING AND LACK OF ENFORCEMENT STANDARDS AND PROCEDURES MAY RESULT IN AN UNNECESSARY PUBLIC RISK

The absence of a comprehensive commercial vehicle safety program may inadequately protect the public. Inadequate training, ineffective standards and procedures, and an inadequate management information system may expose the public to unncessary risk.

Lack of Management Information System

There is currently no management information system which provides statistical data to measure or enhance the effectiveness of commercial vehicle safety. There is no central data base where inspection and citation data can be analyzed and manipulated to show problems with carriers and vehicles or increases in violations.

Although the ATC keeps records on the numbers and types of citations issued, it does not develop statistical information detailing trends or specific problems. Furthermore, citation information concerning commercial vehicle safety infractions recorded by the Alaska State Troopers is not included in any of ATC's records.

Without comprehensive information and adequate analysis, a commercial vehicle safety program cannot be effectively planned and implemented.

There is no way to evaluate current enforcement efforts because:

- -- The functions are undefined from agency to agency. Therefore, accountability for functional responsibilities in unclear.
- -- Statistics are not maintained regarding reduction in accidents, or reductions or increases in trucking violations.

Lack of Adequate Training Program

Commercial vehicle safety enforcement is a complex and technical subject. Field Enforcement officers should have knowledge of both safety regulations and safety inspections. Officers should have the ability to provide answers to field inquiries on technical matters which might have taken a vehicle out of service for hours or days. Knowledge of law enforcement procedures necessary to ensure competent and complete citation processing is also important. Even though these criteria exist, the ATC does not have a training program for the field enforcment officers charged with enforcing technical regulations and inspections.

ATC officers are not required to receive the appropriate special training to ensure technical competency. In some cases, the ATC field enforcement officers have little or no training in one or more of these areas when they are hired. A brief period of on-the-job training is provided before officers enforce these regulations. Such a practice does not ensure that technical safety regulations are uniformerly or adequately enforced. Inadequate training can result in inadequate enforcement and perhaps more risk to the public.

Lack of Enforcement Standards and Procedures

There are no documented enforcement standards and procedures for ATC enforcement officers to use. The ATC has published a safety manual which outlines regulations to be followed by commercial vehicle operators; however, the ATC has not developed standards and procedures to be used when commercial vehicles are inspected.

Furthermore, there is no system to ensure that all commercial vehicles are periodically inspected for safety compliance. Currently, field enforcement officers periodically visit highway scale houses and randomly inspect loaded trucks. However, the trucking industry objected to this practice because it delays loaded vehicles. Truckers would prefer that inspections take place when trucks are not in use.

The random inspections at the scale houses and at roadside locations are not adequate to ensure comprehensive commercial vehicle safety. The method of inspecting vehicles does not ensure that all commercial vehicles will be inspected uniformly and consistently during a given period of time.

Conclusion

The public may not be adequately protected by the State's current commercial vehicle safety program. Inadequate training has resulted in a system which does not ensure that enforcement officers are technically competent. Inadequate standards and procedures have resulted in inconsistent treatment towards the trucking industry.

The lack of an effective management information system inhibits planning for a safety program. The State cannot plan an adequate, comprehensive commercial vehicle safety enforcement program without information available from such a system.

THE CURRENT ATC SAFETY ENFORCEMENT FUNCTION IS UNDERSTAFFED

The commercial vehicle safety program, as administered by the Department of Public Safety from 1978-82, employed approximately 38 employees who enforced all commercial vehicle safety regulations. The current ATC enforcement staff consists of just seven employees.

In addition to enforcing safety regulations for commercial vehicles, these seven enforcement officers are charged with enforcing economic regulations. All duties associated with that function, including the issuance of citations, preparation of cases, and appearances at hearings, are the responsibility of enforcement officers. The ATC estimated that approximately 40% of all enforcement duties pertain to the enforcement of economic regulations. Thus, the staff of seven enforcement officers can spend no more than 60% of their time on safety enforcement.

In OMB's opinion, the ATC cannot develop, administer, or enforce an effective commercial vehicle safety program with its current staff. The present staff does not even adequately ensure that a commercial vehicle inspection program is properly developed and administered.

Conclusion

The current enforcement officer staffing level in the ATC is inadequate, given its current statutory responsibility to develop and enforce a commercial vehicle safety program.

If the Administration and Legislature support OMB's recommendation to economically deregulate the air and motor carrier industries, the enforcement officers will have significantly more time to devote to the exclusive enforcement of safety regulations. However, even with economic deregulation, the enforcement staff will need to be increased if the ATC is to develop a comprehensive vehicle safety program.

RECOMMENDATIONS

Recommendation 1. The State of Alaska should combine the commercial vehicle safety enforcement functions currently performed by the Department of Public Safety, the Division of Measurement Standards, and the ATC. The functions should be consolidated under one agency charged with developing, administering, and enforcing a comprehensive commercial vehicle safety program.

In OMB's opinion, the current duplicated efforts between the entities would be eliminated by implementing this recommendation.

Recommendation 2. A civilian agency in the Department of Public Safety could assume responsibility for the commercial vehicle safety program and all functions pertaining to that program could be transferred to that agency. The Commander of the Alaska State Troopers, Department of Public Safety, is familiar with requirements and has developed a program (the Federal Weighing and Demonstration Project for the AST in 1979).

In OMB's opinion, that project represented the State's only successful attempt to develop a comprehensive commercial vehicle safety program. With direction from the Department of Public Safety, the program could once again become effective and efficient. The Commissioner of Public Safety agrees.

The Alaska State Troopers are charged with enforcement of all highway safety. The ATC and the Division of Measurement Standards duplicate that effort by enforcing segments of highway safety--those which apply to commercial vehicle safety. More cost efficient economies of scale could be accomplished by combining all highway safety enforcement functions under one department.

In OMB's opinion, Public Safety is the logical agency to assume commercial vehicle safety responsibilities. There are currently several State Troopers trained in commercial vehicle safety enforcements under the federally-sponsored program.

Recommendation 3. OMB recommends that a Transporation Safety Task Force be established to develop a comprehensive commercial vehicle safety program. The task force should also include ATC management; representatives from the transportation industry; personnel from Division of Measurement Standards, Department of Transportation and Public Facilities and Department of Public Safety; representatives of local and municipal agencies involved in commercial vehicle safety enforcement, and Governor's office representatives.

The plan should include the following:

A. Goals, objectives, standards and procedures so that a clear, concise definition and implementation of commercial vehicle safety can be accomplished.

B. A mandatory (sticker) inspection program should be developed as part of the commercial vehicle safety program. Mandatory inspections would ensure that <u>all</u> commercial vehicles are periodically inspected.

OMB believes that a mandatory program could also be an efficient program, one which would enhance public protection. By charging for the inspections the state could recover the costs associated with the program. The program might eventually benefit the trucking industry by reducing risks and therefore reducing insurance premiums.

OMB suggests that the following program guidelines be considered when the structure of the mandatory sticker program is being developed:

1. Inspections should be performed on all commercial vehicles every six months.

2. A cost study should be performed to determine the program costs. This data will be used to establish the fee charged for the inspections; the fee of the inspection could be a prorated program cost or more.

C. A consumer affairs function should be established as part of the commercial vehicle safety program. This function would plan mechanisms to deal with the public.

D. A transportation liaison function should be established as part of the commercial vehicle program. It is important that commercial vehicle safety issues include participation by the transportation industry. Cooperation between the industry and the State will make the program more successful and effective.

E. A liaison function for municipal, local, and federal participation should be established since those agencies also participate in local safety enforcement.

<u>Recommendation 4</u>. Following the development of a comprehensive commercial vehicle safety plan, OMB recommends that the task force identify manpower requirements, estimated program costs and the funding sources for implementing the proposed program. This analysis should include the possible transferred functions and funds from other agencies.

Recommendation 5. The commercial vehicle safety plan, including manpower and funding requirements, should be submitted to the Administration and Legislature this year.

Recommendation 6. Following the development of a comprehensive commercial vehicle safety plan, OMB recommends that the task force propose revised legislation and regulations for the Administration and Legislature to consider.

SB
496

Version Passed

Original sponsor: Rules/Governor

What L+C added is in yellow —

1 IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 496 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to commercial fishing loans; and

7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 16.10.310(a) is amended to read:

10 (a) The department may

11 (1) make loans to

12 (A) individual commercial fishermen who have been

13 state residents for a continuous period of two years immediately

14 preceding the date of application for a loan under AS 16.10.300 -

15 16.10.370 and have had a crewmember or commercial fishing license

16 under AS 16.05.480 or a permit under AS 16.43 for the year imme-

17 diately preceding the date of application and any other two of

18 the past five years, and who actively participated in the fishery

19 during those periods, for the purchase of entry permits;

20 (B) an individual who has been a state resident for a

21 continuous period of two years immediately preceding the date of

22 application for a loan under AS 16.10.300 - 16.10.370, who (i)

23 because of lack of training or lack of employment opportunities

24 in the area of residence does not have occupational opportunities

25 available other than commercial fishing; or (ii) is economically

26 dependent on commercial fishing for a livelihood and for whom

27 commercial fishing has been a traditional way of life for the

28 individual in Alaska; [,] for the repair, restoration or upgrad-

29 ing of existing vessels and gear, for the purchase of entry