

Analyse this

When tackling a time-share brief, make sure you look beyond the brochures to properly review the risks, says **Jonathan Silverman**

When it comes to advising clients on buying shared ownership assets, whether in this country or overseas, the immediate reaction may be – especially for those practitioners who recall the timeshare scams of the past – simply to tell the client not to bother.

But the dramatic collapse of the overseas property market over the last three years now means that clients are looking for a bargain and are beginning to consider the merits of shared ownership of an overseas home, yacht or supercar, no doubt reassured by the EU directive adopted in the UK earlier this year as the Timeshare Holiday Products Resale and Exchange Regulations which are intended to clear up the over-pressurised sales operations about which clients have rightly complained – albeit only usually once they have signed up and outside of any cooling-off period.

The marketplace has changed significantly in recent years with offerings of ‘long-term holiday vacation schemes’, ‘shared ownership’, ‘fractional ownership’, ‘holiday clubs’, ‘resort clubs’, ‘supercar clubs’ – all of which seem to provide different levels of ownership in the underlying assets. And that is the problem: trying to identify exactly what is on offer.

In many instances the client will either assume or be led to believe that he is buying a share in the asset which he intends to enjoy, in a similar way to acquiring a share of a UK freehold – but in many cases that is far from the case. Superbly produced glossy brochures of an overseas development still under construction or pictures of a fleet of yachts or of high-performance cars tell only part of the story.

Fine-tooth comb

Your role is to analyse the product on offer rather than taking things at face value. First, drill down through the sales literature and ask that either the developer’s sponsors or



sales agents make available to you a full set of papers which you need to review – many will be reluctant but you must insist. You cannot advise the client with any certainty otherwise. Work out clearly the structure on offer and how much or how little your client will actually have both on day-to-day matters and on key issues like resale.

Clearly at some stage you may need to work with local lawyers in other jurisdictions; choose your own through an established network rather than going to lawyers recommended by the developers or sales agents because the concept of ‘conflict of interest’ is missing in many other countries.

Check whether your client is being offered shared ownership in the underlying asset or only in a corporate body which owns the asset – or is he rather to be a beneficiary under a trust? All of those require different analysis.

In reality many projects offer no real element of ownership but merely grant a right to enjoy an asset for a set period of time for a number of years.

Look at the jurisdictional issues, if a client is being offered a property in Paris ask why it is being structured through a BVI company.

Try to establish how the property is to be run, who will have effective control on a day-to-day basis.

Initially at least ask the same questions as if advising on the purchase of a UK lease with the added aspect of considering the relationship between the other owners and managers of the property.

Try and verify the expertise and financial strength of any operating companies involved; having a quarter share in a luxury villa in the Caribbean may seem attractive, but it will need to be cleaned, repaired and perhaps resold.

Attempt to get behind the sales literature to establish the identity of all the parties involved and beware of assignability – your client may be impressed by the presence of a leading hotel operator, but what happens if he drops out?

Discuss with the client what they think they are buying. Is it a ‘lifestyle purchase’ or has someone suggested to them that it is an investment?

Weighing up

Remember that as a lawyer you will almost certainly be risk averse, whereas your client may not be. You must identify risks and minimise them where possible, don’t just tell your client what he has in mind is a bad idea.

It’s tricky to predict whether the risks of a shared ownership outweigh the capital and running costs of outright purchase – especially in the context of looking at how many weeks each year client will actually be able to use that yacht or villa – but you should understand the pitfalls as well as the attractiveness of the sales proposition and ensure your client goes into any offering knowing what is really on offer.

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