

Final Order No. BPR-2006-07785 Date: **10-20-06**  
FILED

Department of Business and Professional Regulation  
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: *Brandon M. Nishel*

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND  
MOBILE HOMES

IN RE: PETITION FOR DECLARATORY STATEMENT

**DS 2006-039**

Docket No. 2006046922

LIFESTYLE DEVELOPMENT COMPANY, L.P.

**DECLARATORY STATEMENT**

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to section 120.565, Florida Statutes.

**PRELIMINARY STATEMENT**

On August 22, 2006, the Division received a petition for declaratory statement from Lifestyle Development Company, L.P. (Lifestyle) requesting an opinion as to whether The Conservancy and Sporting Society, a vacation club that will primarily offer equitable memberships containing a variety of sporting experiences with a right to use accommodations on a first-come, first-served basis, is a timeshare plan within the meaning of chapter 721, Florida Statutes.

Notice of receipt of the petition was published in Florida Administrative Weekly on September 22, 2006.

RECEIVED  
FLSC&MH  
06 OCT 20 PM 12:45

RECEIVED  
FLSC&MH  
06 OCT 17 PM 12:26

## FINDINGS OF FACT

The following findings of fact are based on information submitted by Lifestyle. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. Lifestyle is a Florida corporation that intends to create and develop The Conservancy and Sporting Society (Club), an "equity club" formed under Cayman Islands law, as a "company limited by guarantee." The Conservancy and Sporting Society Membership Plan Overview at 1.
2. Lifestyle provided a copy of its proposed membership plan and disclosure statement. Lifestyle states that it is not a timeshare plan because it is similar in structure to a golf or country club. Lifestyle describes the Club as "a premier global equity club" that it will primarily market as a recreational experience in hunting, fishing and outdoor conservation pursuits. Petition at 1-2. Purchasers participate in one of these recreational experiences "on a purely space available basis" at a Club location. Petition at 3.
3. Lifestyle asserts that the "accommodations will not be the main feature of the Club and it is not expected nor will it be encouraged that Club members purchase a Club membership specifically to use the Club accommodations," which will vary from "luxury to rustic." Petition at 3-4. Accommodations may be a luxury suite or a tent, depending on the site of the recreational experience offered. Petition at 4. The Club will have accommodations in "exclusive private settings around the world." Overview at 1. The Club will offer "vacation experiences in urban settings and beach destinations." Membership Plan at 1.

4. Lifestyle estimates it will have 10-15 overnight accommodations at each Club location with the use available by reservation to an estimated 1800 members. Petition at 3. Lifestyle may acquire title or a leasehold interest in various Club locations when the location is ready for occupancy. Membership Plan at 4. Lifestyle may, but is under no obligation to transfer its interest in a Club location to a "Designated Local Entity," which is one of its subsidiaries. Id. at 5. The plan offers no guarantees that the real estate will hold its value, ownership costs will remain stable, or that the Club's locations will operate at the funding level predicted. Disclosure Statement at 1.

5. Under the plan, the developer reserves the right "in its sole and absolute discretion, to terminate or modify this Membership Plan and the other Governing Documents; to reserve Memberships; to cause the discontinuance of operation of any or all of the Club Locations; and to make or cause to be made any other changes in the terms and conditions of Membership or in the Club Locations available for use by Members." Membership Plan at 22. Once Lifestyle has sold the memberships, the right to make these changes transfers to the board, which can make any of these changes by a majority vote. Id.

6. Lifestyle may acquire title or a leasehold interest in various Club locations when the location is ready for occupancy. Membership Plan at 4. Lifestyle may, but is under no obligation to transfer its interest in a Club location to a "Designated Local Entity," which is one of its subsidiaries. Id. at 5.

7. Memberships will be offered for \$638,000 with an initial annual fee of \$35,000 to \$40,000. Petition at 3. The membership and annual fees cover the cost of the "sporting experience" and all overnight accommodations. See Estimated Schedule of

Annual Club Dues and Other Fees and Charges. The only additional charges are for food, beverages, lessons, guided tours, and helicopter fly-outs. Id.

8. The Club can revoke the membership for a violation of the rules and reimburse the member for a loss of his interest at either the original purchase price or the “current sales price of a Club membership” less any amount owed to the Club. Petition at 4.

9. Members may resell their memberships through the Club’s marketer as the exclusive sales agent. Membership Plan Overview at 8. Each resale is wait-listed in the order received and only offered to prospective purchasers after every third new sale. Id. The member may present a replacement member to the marketer, and if approved, the membership may be resold. Id. Memberships are not transferable to persons outside the member’s family during the member’s lifetime. Id.

10. The plan does not provide purchasers with an assurance that their rights in the plan will not be disturbed by future interestholders, such as a nondisturbance and notices to creditors instrument. The plan discloses that all membership rights are “subordinate to the lien of any mortgage or deed of trust encumbering any of the Club Locations from time to time.” Subscription Agreement at 6. In fact, the Club can discontinue its operation, sell, lease or dispose of any or all of the Club property and none of the membership fees or costs is refundable, but any funds left after paying all obligations from a liquidation may be distributed to the members on a prorata basis. Id. As the plan says, the success of the plan is dependent on Lifestyle, the management and the marketer. Disclosure at 1.

11. The plan permits the board to expand the membership categories and classes. Membership Plan at 1. The plan reserves the right to limit the number of Memberships to give members "fair and adequate access" to the plan facilities. Overview at 3.

12. The plan does not have a specific term of years limit.

13. The Club plan mentions an annual estimated budget and reserves, but does not require an annual audit. Overview at 13, 17. Additionally, the plan is silent as to members' rights to see these financial documents.

14. The Club plan discloses that it is not subject to government regulation, but if it does become subject to regulation as a timeshare, then any future sales will comply with the regulations. Membership Plan at 6.

15. Lifestyle argues that the Club is not a timeshare plan because: (1) it is analogous to a recreation club similar to a golf or county club, which may provide members with a limited use of overnight accommodations; (2) its primary marketing feature will be the recreational activity and not the accommodations, which are secondary; (3) purchasers do not acquire a deeded interest or right-to-use interest in a unit but an equity interest in the Club; (4) exchanges are prohibited; and (5) it does not fall within the definition of a timeshare plan because purchasers do not receive ownership "rights to use accommodations" but have rights to use the recreational facilities. Petition at 5-7.

16. Lifestyle argues that the Club is not a multisite timeshare plan because: (1) purchasers do not have a recurring right to use the Club's accommodations, but do have a right to reserve the use of the Club's accommodations on a space-available basis only when the member reserves a sporting experience at the accommodation site; (2) some

accommodations and facilities are seasonal locations and will be closed during the “off season”; (3) there is no reservation system for purchasers to reserve a designated number of days of use to accommodations as all accommodations are reserved in conjunction with a sporting experience and on a space available basis; (4) it does not offer a one-to-one accommodation to purchasers ratio; and (5) the Club does not have any timeshare units. Petition at 7-8.

17. Lifestyle argues that a purchasers’ risk is slight because a purchaser may resign at any time and sell their membership through the Club subject to developer sales taking precedence and subject to payment of a transaction fee. Petition at 8. Each purchaser acquires an interest in the Club’s assets through participation in a Cayman Islands Membership Corporation. Petition at 9. Lifestyle argues that purchasers are sophisticated, wealthy people who do not need regulatory protection, and the developer will provide the disclosure statement to a prospective purchaser before closing the sale.

18. Lifestyle requests the Division to enter a Declaratory Statement finding that its equity Club is not subject to chapter 721, Florida Statutes.

### CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 721.26 and 120.565, Florida Statutes.

2. Lifestyle has standing to seek a declaratory statement.

3. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of

the agency, as it applies to the petitioner's particular set of circumstances.

4. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

5. The Florida Legislature enacted a comprehensive regulatory scheme, recognizing real property and personal property timeshare plans and establishing procedures for the creation, sale, exchange, promotion, and operation of these plans. § 721.02, Fla. Stat. The purpose was to regulate all timeshare plans located or offered in Florida and ensure that all purchasers received full and fair disclosures about the plan before purchasing an interest in a plan. *Id.* Additionally, the legislature intended to:

(5) Recognize that the tourism industry in this state is a vital part of the state's economy; that the sale, promotion, and use of timeshare plans is an emerging, dynamic segment of the tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being. In order to protect the quality of Florida timeshare plans and the consumers who purchase them, it is the intent of the Legislature that this chapter be interpreted broadly in order to encompass all forms of timeshare plans with a duration of at least 3 years that are created with respect to accommodations and facilities that are located in the state or that are offered for sale in the state as provided

herein, including, but not limited to, condominiums, cooperatives, undivided interest campgrounds, cruise ships, vessels, houseboats, and recreational vehicles and other motor vehicles, and including vacation clubs, multisite vacation plans, and multiyear vacation and lodging certificates.

§ 721.20(5), Fla. Stat.

6. Before a timeshare plan may be offered, the developer must file the timeshare instruments<sup>1</sup> and receive Division approval. Section 721.07, Florida Statutes, provides:

Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the division for approval as prescribed by s. 721.03 s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

7. A timeshare plan's public offering statement includes the written materials filed for review with the Division and those timeshare plan offering documents that must be given to purchasers. § 721.05(29), Fla. Stat. Once purchased, a purchaser has a 10-day non-waivable right of cancellation. § 721.10, Fla. Stat.

8. A timeshare plan may be located at a single site or be a vacation club with accommodations and facilities available at many locations. A timeshare plan is defined by section 721.13(39), Florida Statutes, as:

"Timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time

---

<sup>1</sup> § 721.05(35), Fla. Stat. (documents creating and governing the plan).



less than a full year during any given year, but not necessarily for consecutive years. The term "timeshare plan" includes:

(a) A "personal property timeshare plan," which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and

(b) A "real property timeshare plan," which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

9. A personal property timeshare plan is one in which the purchaser acquires "a right to occupy an accommodation located on or in or comprised of personal property that is not permanently affixed to real property, whether or not coupled with a beneficial or ownership interest in the accommodations or personal property." § 721.05(28), Fla. Stat.

10. A real property timeshare plan is one in which the purchaser receives a deeded interest to an accommodation, a timeshare estate,<sup>2</sup> or a right-to-use an accommodation, a timeshare license. § 721.05(37), Fla. Stat.

11. The Florida Vacation Plan and Timesharing Act, chapter 721, Florida Statutes, regulates both the commonly known single site, 7-day use interest in a condominium unit, and multisite vacation clubs.

12. In a vacation club or multisite timeshare plan, the purchaser acquires a right to reserve the use of the accommodations and facilities of the timeshare plan through a reservation system. § 721.55(4), Fla. Stat. If the purchaser receives a right to use any of the accommodations and facilities but not one specific site within the plan, the plan is a non-specific site multisite timeshare plan. Id. § 721.55(5). If the purchaser receives a right to use a specific site's accommodations and facilities, it is a specific multisite plan. Id. §

---

<sup>2</sup> § 721.05(34), Fla. Stat.

721.55(7), Fla. Stat. A plan that is for less than 3 years or where the “contractually specified maximum total financial obligation on the purchaser’s part is \$3,000 or less, during the entire term of the plan” is not regulated under chapter 721, Florida Statutes. Id.

13. An “accommodation” is “any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals.” § 721.05(1), Fla. Stat. While the Division is not aware of a timeshare plan that has been filed with the Division that has included “tents” as the “accommodation” of the plan, the definition is broad enough to encompass “tents” as it includes “personal property ...designed for overnight occupancy.”

14. A “facility” is “any amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan.” § 721.26(17), Fla. Stat. This definition is broad enough to encompass the recreational facilities described in the plan along with the fishing rods and other sporting equipment provided purchasers when using one of the sporting experiences in the plan.

15. The act requires vacation club developers and property interest holders to record nondisturbance and notice to creditors instruments subordinating their interests in the plan’s accommodations and facilities to the purchasers, thus ensuring the purchasers’ continued use rights in the plan. § 721.53, Fla. Stat.

16. The Club plan does not include the filing of a notice to creditors and nondisturbance agreements. Lifestyle has sole discretion to dispose of any Club property or to cause liens to be placed on it. In effect, the property making it possible for the members to use the Club amenities may never even be transferred to the Club, may be sold without recourse by the members, or may be foreclosed on by liens imposed through Lifestyle's transfer of rights to non-Club parties.

17. The act protects purchasers by requiring a one-to-one purchaser to accommodation ratio, so that every purchaser receives a right of use to an accommodation. §§ 721.05(25) (definition); 721.552(2)(g), (3)(a)3, (3)(b)1, (3)(c), Fla. Stat. The plan does not provide a one-to-one purchaser ratio to the accommodations or the sporting experiences. The Club can increase the number of members without increasing the accommodations and facilities, but reserves the right to limit the number to give members "fair and adequate access" to the Club locations and sporting experiences.

18. The act protects non-specific multisite vacation club purchasers by restricting the way in which accommodations are added, substituted, or deleted, so that purchasers will continue to be able to exercise their rights of use in the plan. § 721.552, Fla. Stat.

19. The Club plan permits additions, substitutions, and deletions at the discretion of Lifestyle or to the board if Lifestyle transfers its interest to the board.

20. The act requires the developer to record a notice to creditors of a non-disturbance agreement to ensure that any subsequent owners of property included in the plan continue to provide the purchasers access to the accommodations and facilities in the plan. §§ 721.08, 721.53(1)(a), Fla. Stat.

21. The plan does not provide these assurances. The plan discloses that all membership rights “subordinate to the lien of any mortgage or deed of trust encumbering any of the Club Locations from time to time.” Disclosure at 6. In fact, the Club can discontinue its operation and none of the membership fees or costs is refundable, but members are to receive a prorata share of the Club's assets if any are left.

22. The act protects purchaser funds by requiring developers to present satisfactory evidence of fiscal soundness as a requirement of division approval of the plan and offering statement. § 721.56, Fla. Stat. The act requires an annual budget and audit of the accounts so that purchasers are kept informed of the fiscal soundness of the plan and of any financial responsibilities that arise. § 721.13, Fla. Stat. The members have a right to see the budgets and the audits, so that they can stay informed of the financial health of a timeshare plan. § 721.13(3)(c), (e), Fla. Stat.

23. The Club plan indicates that an estimated budget will be prepared by which the annual membership fees will be established. Reserves may be established. There is no obligation to prepare an annual audit. There is no obligation on the board to provide the financial documents to the members or corresponding right of the members to see these financial records.

24. The act requires extensive disclosures to prospective purchasers, which disclosures must be approved by the division to ensure that the disclosures comply with the purchaser protections under the act. §§ 721.55, 721.551, 721.57, Fla. Stat.

25. The plan does have a number of disclosures provided to prospective purchasers, but does not provide all disclosures required by the act. The plan would need

to be submitted for review in order for the Division to determine which disclosures would need to be added or amended.

26. The act provides further purchaser protections through government regulatory oversight of all timeshare plans. § 721.26, Fla. Stat. The division has extensive enforcement powers to ensure the integrity of the timeshare industry in Florida and to ensure that purchasers receive the benefits of the plan as it was offered. Id. §§ 721.02, 721.26.

27. The plan discloses that it is not subject to government regulation, but if it does become subject to regulation as a timeshare, then any future sales will comply with the regulations. Lifestyle asserts it is not a timeshare but just a country club or golf club like those in every large community.

28. It is not a local country club. With a local country club or golf club, the facilities are located in the same community where the members live. Members do not need overnight accommodations to enjoy the club amenities. The Club will have accommodations in “exclusive private settings around the world” and will offer “vacation experiences in urban settings and beach destinations.”

29. Because members do not receive a right to use a specific accommodation, the Club is not a single-site timeshare plan nor a specific site multisite timeshare plan. While many timeshare plans do offer owners a voluntary right to exchange their use rights, and some owners participate in exchange programs, it is not a mandatory part of the definition of a timeshare plan. §§ 721.05, 721.18, 721.52, Fla. Stat. The fact that exchanges are not permitted, does not remove the Club from the act.

30. The Club is a nonspecific multisite timeshare plan or vacation club. The Club will lease, own or operate a number of accommodations and facilities in different locations, some of which may be in “urban settings and beach destinations.” Frequently Asked Questions at 1. Apparent from the marketing and offering documents, members will of necessity travel to one of the “sporting” locations, which will entail an overnight accommodation. Even though the accommodation is not to be the primary marketing strategy for selling memberships, the accommodations are necessary for the members to exercise their use rights. The plan’s failure to offer its members a one-to-one accommodation ratio is a reason to regulate it, not a definitional defect.

31. The legislature intended the Florida Vacation Plan and Timeshare Act to be interpreted broadly to ensure the integrity of the timeshare industry in this state and to protect purchasers. § 721.02, Fla. Stat. The legislature limited exemptions to plans not exceeding a total financial obligation of \$3,000 or a term of less than 3 years. § 721.52(4), Fla. Stat.

32. The reasons offered by Lifestyle for not regulating the plan are the reasons supporting regulation. The plan does not provide a number of purchaser protections afforded by chapter 721, Florida Statutes. The relative wealth and sophistication of the purchasers does not exempt the Club from regulation. A member’s financial obligation far exceeds \$3,000 and there is no set term of the plan. The legislature, not this agency, has the authority to create exemptions from the act.

**ORDERED** that The Conservancy and Sporting Society is a timeshare plan vacation club regulated under chapter 721, Florida Statutes.

**DONE** this 12<sup>th</sup> day of October, 2006, at Tallahassee, Leon County, Florida.



  
Michael T. Cochran, Director  
Department of Business and  
Professional Regulation,  
Division of Florida Land Sales,  
Condominiums and Mobile Homes.  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1030

**NOTICE OF RIGHT TO APPEAL**

THIS ORDER DENYING PETITION FOR DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Michael B. Bradford, Paul, Hastings, Janofsky & Walker, L.L.P., 515 South Flower Street, 25th Floor, Los Angeles, CA 90071-2228, this 24<sup>th</sup> day of October, 2006.

  
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson,  
Chief Assistant General Counsel

Rudolph A. Prinz,  
Bureau Chief, Standards and Registration