

Timesharing Today Magazine Discusses Disclaiming a Timeshare Inheritance

Timesharing Today explores if heirs of deceased timeshare owners can disclaim their inheritance and how timeshare associations can respond to these situations.

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The graying of America is having a significant impact on the timeshare industry. It is apparent in issues such as service animals, accessibility issues for older guests, and ultimately in turnover when elderly owners pass on. This article focuses on whether heirs or beneficiaries of deceased owners can disclaim their timeshare inheritance and how timeshare association boards can respond to these situations.

When timeshare became popular and expanded rapidly in the 1980s, the most popular product being sold was legacy weeks, in which buyers received deeded property for the weeks they owned. This was a real property that the owner's heirs could inherit to keep or sell. Now as the years have spun forward, we find many long-term owners passing on.

In many cases, children or other heirs and beneficiaries are happy to acquire the continued benefit of a resort that they are familiar with and, in some cases, grew up enjoying every year. However, in a growing number of situations, an elderly owner dies, and an heir or beneficiary doesn't want the timeshare property and the costs associated with it.

Why disclaim an inheritance?

The first question one may ask is why someone would disclaim inherited property. From discussions with individual heirs and beneficiaries, I've heard three principal reasons:

- **Cost.** The heir may not be in a financial position to pay the annual fees or does not otherwise see the financial value of the timeshare.
- **Migration.** The heir or beneficiary has moved away from the area of the timeshare and does

not live in close enough proximity to enjoy the resort.

- Lifestyle. Many younger people are vacationing in different ways that are not compatible with timeshare vacationing.

How to disclaim

Assuming an heir or beneficiary does not want the timeshare property, can he/she disclaim the inheritance? The simple answer is yes, but as in many legal situations, it's not that simple. The heir/beneficiary cannot simply say, "I don't want it" and walk away from the inheritance.

Most, if not all, states have a specific legal procedure for disclaiming the inheritance of property. The specifics are usually found in a state's probate statute. I've reviewed several states' statutes, and the specific procedures vary considerably. In many cases, the heir has a specific time period in which to complete the disclaimer.

In Wisconsin, the disclaimer must occur within nine months of the transfer unless the court approves otherwise. Additionally, Wisconsin and many other states have very specific requirements as to how an instrument of disclaimer must be written, notified, and filed. Disclaiming an inheritance, if done properly, requires the assistance of an attorney licensed in the state in which the decedent's estate is probated.

Just walking away from the inheritance with the "I don't want it" attitude will not be sufficient for the heir or beneficiary to effectuate a completed disclaimer. In my opinion, if a disclaimer is not executed properly, the heir or beneficiary remains responsible for the property. If a disclaimer is done properly, it passes to the next heir or beneficiary of the estate.

Protecting a resort

As elderly owners pass on, what can timeshare association boards do to prevent unnecessary losses? Here are a few suggestions.

First, educate the owners. In their regular communications with owners, association boards should remind owners that when the time comes, they should include their timeshares in an estate plan and leave them to someone who will enjoy the timeshare as much as they have. Owners should also understand that they can make the transfer while they are still alive, and the association will help them.

Second, timeshare associations need to be on the alert. When an owner dies, management may learn about the passing from other owners, notifications from relatives, seeing obituaries in newspapers, or, often, by seeing annual fees not being paid.

Third, timeshares may want to consider deedbacks from elderly owners who express a desire to do so because they have no heirs interested in the property. A deedback program has many

pros and cons, and if a timeshare has one, it needs to be carefully administered. Taking back property will certainly forestall dealing with the estates of owners.

Fourth, timeshare associations must understand their rights if an owner passes away and an heir or beneficiary wants to disclaim the inheritance. Timeshare management must work with the board's attorney to find out information regarding the estate and whether the designated heir or beneficiary has followed the proper procedure for disclaiming property. What makes it challenging is that states differ in their procedures. The procedure must be followed in the state where the decedent resided at the time of his/her death, not the state where the timeshare is located. Other issues include the ability of the timeshare association to file a claim against an estate for any outstanding fees. Ultimately, if no heir or beneficiary is available, a foreclosure action may be needed to recover the week(s) in question.

The reality is that legacy timeshares will increasingly face the issue of longtime owners passing away and instances in which heirs or beneficiaries will not want the property. Timeshare boards and management must recognize this possibility and develop a plan to address and cope with the situation to effectively pass the property to future generations.

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