



Challenges: Vacation Ownership in Burgeoning New Markets

Let's say you are a lawyer in Managua, Nicaragua, working diligently in one of the reputable firms in town that handle real estate matters. You watch the once sleepy Pacific coast of the country suddenly come alive with the development of hotels and resorts, having been "discovered" by surfers, tourists, cruise ship stragglers—and dreamers with a vision of translating the highly successful tourism boom experienced by neighboring Costa Rica into a Nicaraguan story.

And why not, you say to yourself? Nicaragua has natural beauty, people hungry for training and a job, a good record for personal safety, and plenty of beachfront (or ocean-facing hill-top) property at still-accessible prices. The development fever proves contagious, and through your reception door comes many "developers to be." Some of them come prepared, i.e., they bring you forms of documents that they have collected in their recent visit to Vail, Colorado, or simply downloaded off the Internet.

"Here are the CC&Rs," says one of these developers. "This will work for the resort we want to do on that special lot near San Juan del Sur" (a current hot spot in Nicaragua).

You're not entirely unprepared; in fact, you know all about the "covenants, conditions, and restrictions" for which the acronym stands. But you also know that you will have to curb your client's enthusiasm, at least until you have had time for some creative legal wrangling. Or better yet, until such time as you have been able to call that U.S. international resort lawyer you met at the ARDA event not long ago, which you attended in anticipation

of development fever back home on the Nicaraguan coast. She mentioned having worked for years making resorts happen in Mexico, so she must have faced similar riddles when she got started.

Your situation reflects the growing problem faced by practitioners trying to assist their clients developing vacation product modeled after legal structures that evolved mostly under common law principles in civil law jurisdictions—many with hardly a condominium or "horizontal property" law in the civil code. And what law does exist may be rather stale, both due in part to infrequent use and current trends. The models that the clients have in mind do not exactly fit neatly into the letter of that thick volume of the Civil Code of Nicaragua where you are reviewing the horizontal property law.

In brief, you face the (good) problem of the vacation product development scenario getting way ahead of the existing law by leaps and bounds.

Creative Approach

What to do about your client then, who demands his CC&Rs? You still have to explain to him that under

Nicaraguan law, unlike in the United States, these are not "recordable."

In Nicaragua, CC&Rs will not "run with the land" and will only be effective as a contractual obligation between the original parties. Thus, if the purchaser resells his vacation ownership product or interest, essential obligations (such as the payment of assessments and/or maintenance fees) that make a resort project work can go flying in the wind if the new purchaser decides not to abide by them. But you also need to give your client some light at the end of the legal tunnel.

Fortunately, when you try your good friend, the experienced international resort practitioner and active ARDA member, she blesses what you had already begun to craft: a solution that uses such legal structures as are doable under the existing Nicaraguan law.

"Yes," she says, "go ahead and create a condominium regime under the law of Nicaragua. You will then have to record that declaration in the Public Registry of Property. In that declaration, you should not only create a condominium regime that will enable you to structure your client's vacation product of choice but you should also embed those 'covenants, conditions, and restrictions.'"

And you will have achieved the equivalent of, as we say in Anglo-Saxon jargon, the CC&Rs as obligations "running with the land." You are a hero.

The Challenge in a Capsule

The challenge that faces you and many of your colleagues in burgeoning markets, such as Nicaragua's at the moment, is how best to assist your cli-

ents who are developing and operating vacation resort products under a civil law system. Especially when this system doesn't have much experience with tourism real estate products in vogue—i.e., fractionals and condo-hotels—also while considering how to market and sell mostly throughout the United States and Canada under the common law system.

Thus, you need to design a world-class legal structure that is compliant with Nicaraguan (or other applicable local) law and may be implemented with state-of-the-art legal documents with which any international purchaser will feel comfortable (including title

insurance). You also need to learn the intricacies of the U.S. federal and state regulatory schemes that impact upon the sales and marketing of vacation real estate products, even if the resorts are located in places like Nicaragua, so that you can advise your clients of the risks involved in not following U.S. law.

A Solution

How do you achieve all of this and still keep up with developer clients? You might think about joining ARDA, for it is among peers that you will most likely find help, from those who have tread that route many times before. We always do. **D**

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