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AD VALOREM TAXATION OF TIME-SHARE PROPERTIES: SHOULD TIME-SHARE ESTATES BE SEPARATELY ASSESSED AND TAXED?

I. INTRODUCTION

The condominium concept¹ of selling space is the most significant recent form of real property ownership.² Forecasts estimate that one-half of the United States' population will be living in condominiums by the year 2000.³ The condominium concept has been extended to include time-sharing ownership.⁴ The time-share format is a novel approach to real property ownership because it adds the "fourth dimension"⁵ of time to the traditional dimensions of height, width, and depth involved in real property ownership.⁶ Time-sharing generally encompasses all forms of recurring, fractionalized usage of real property.⁷ It is a method of acquiring an exclusive right to periodically own, occupy, or use a building or other structure.⁸

The application of time-sharing to real property originated in Europe as

1. A property interest in a condominium is defined as a fee simple ownership in a unit of a multiple unit building and an individual interest as tenant in common in the common areas of that building. *Susskind v. 1136 Tenants Corp.*, 43 Misc. 2d 588, ___, 251 N.Y.S.2d 321, 327 (Civ. Ct. 1964).

2. Mann & Pierce, *Time-Share Interests in Real Estate: A Critical Evaluation of the Regulatory Environment*, 59 NOTRE DAME LAW. 9, 9 (1983). See also Slette, *Buying Time in Idaho: The Need to Regulate the Timeshare Industry*, 20 IDAHO L. REV. 103 (1984) (examines various state time-sharing statutes and recommends a regulatory time-share plan for Idaho).

3. U.S. DEP'T OF HOUSING & URBAN DEV., *QUESTIONS ABOUT CONDOMINIUMS: WHAT TO ASK BEFORE YOU BUY* (1977). See generally P. ROHAN & M. RESKIN, *REAL ESTATE TRANSACTION: CONDOMINIUM LAW AND PRACTICE* (1983) (a comprehensive analysis of condominium law).

4. Mann & Pierce, *supra* note 2, at 9. The term "time-sharing" was appropriated from the computer industry. Gray, *Pioneering the Concept of Time-Sharing Ownership*, 48 ST. JOHN'S L. REV. 1196, 1197 (1974).

5. The term "fourth dimension" is acutely descriptive when one considers that: [O]riginally the concept of real property ownership applied to ownership of land. Later, the concept was extended to encompass the ownership of the improvement of land. Then real property ownership was extended even further to include the ownership of [a condominium]....Time-sharing brings real property to the fourth dimension by adding time as a divisible element that is ownable/possessable.

Pollack, *Time-Sharing, or Time Is Money But Will It Sell?*, 10 REAL EST. L.J. 281, 282 (1981).

6. Mann & Pierce, *supra* note 2, at 20.

7. Comment, *Time-Share Condominiums: Property's Fourth Dimension*, 32 ME. L. REV. 181, 184 (1980).

8. See, e.g., Block, *Regulation of Timesharing*, 60 U. DET. J. URB. L. 23 (1982); Davis, *The Second-Home Market, Time-Sharing Ownership — Legal and Practical Problems*, 48 ST. JOHN'S L. REV. 1183 (1973); Eastman, *Time-Share Ownership: A Primer*, 57 N.D.L. REV. 151 (1981); Gunnar, *Regulation of Resort Time-Sharing*, 57 OR. L. REV. (1978). Typically, the minimum purchase requirement is one week per year. K. CONROY, *VALUING THE TIME-SHARE PROPERTY* 1 (1981).

early as 1957.⁹ Time-sharing debuted in America in the early 1970s¹⁰ but did not significantly impact the American real estate market until 1976.¹¹ Beginning in the mid-1970s, steadily increasing development, construction, and financing costs made owning a vacation home economically impractical for most Americans.¹² As a result, recreational property sales declined.¹³ During this same period, middle class America was becoming increasingly leisure oriented.¹⁴ Consequently, the demand for vacation housing remained high.¹⁵ Developers, realizing second-home ownership was outside the financial grasp of most Americans, found time-sharing was a viable alternative to vacation home ownership.¹⁶ The time-share concept thus provided purchasers with affordable vacation opportunities which were otherwise unavailable.¹⁷ In addition, time-share purchasers could acquire future vacations with present dollars to protect themselves against inflating resort prices.¹⁸ The time-share concept spread like wildfire.¹⁹ The number of time-share projects increased from only three in 1973²⁰ to greater than 900 by 1983, while sales volume increased from a few million dollars to over \$1.2 billion during the same period.²¹

The dramatic nationwide growth of the time-share industry created the need

9. See, e.g., Pollack, *supra* note 5, at 283; Slette, *supra* note 2, at 104. See also Vogel, *The Tax Consequences of Time-Sharing*, 10 J. REAL EST. TAX 323, 325 (1983) (time-sharing originated in Switzerland in 1964). Time-sharing originated in Europe, where the Eurotel concept was established for a chain of hotels constructed throughout Europe. Ellsworth, *Condominiums Are Securities?*, 2 REAL EST. L.J. 694, 694 (1974). The Eurotel concept entitled room purchasers to periodic use of such rooms. Pollack, *supra* note 5, at 283. Eurotel room purchasers were also granted guest privileges at a discounted rate at all Eurotel hotels. *Id.* Proceeds derived from the Eurotel rental operations were divided among Eurotel room owners and Eurotel management. *Id.* Time-sharing was further refined when a Swiss Alp ski-resort introduced a program for the multiple ownership and use of dwelling units. Note, *Time-Share: The New Vacation Home*, 29 LOY. L. REV. 403 (1983). This creative approach was designed to increase occupancy rates and provide reservation security for vacationers. Vogel, *supra*, at 325.

10. Note, *supra* note 9, at 403.

11. Vogel, *supra* note 9, at 326.

12. See, e.g., Mann & Pierce, *supra* note 2, at 10; Note, *supra* note 9, at 404; Comment, *supra* note 7, at 182.

13. Slette, *supra* note 2, at 105.

14. Note, *supra* note 9, at 403.

15. Mann & Pierce, *supra* note 2, at 10.

16. Slette, *supra* note 2, at 105.

17. Vogel, *supra* note 9, at 326. Experts estimate that time-sharing can reduce vacation costs of hotels and restaurants by as much as 60 percent. *Time-Sharing of Resort Homes*, U.S. NEWS & WORLD REP., Mar. 14, 1977, at 49.

18. Vogel, *supra* note 9, at 326.

19. Miami Herald, Sept. 24, 1984, Business/Monday, at 1, col. 1.

20. Vogel, *supra* note 9, at 326.

21. Miami Herald, *supra* note 19, at 10. Condominiums in resort areas are the most common use of time-sharing. Catalina, *Real Estate Time-Sharing: Protecting the Buyer*, 9 REAL EST. L.J. 144, 146 (1980). Approximately 66 percent of the facilities used for time-share arrangements are condominiums. Note, *supra* note 9, at 404. Hotels and motels constitute about 30 percent of the time-share facilities. *Id.*

for state regulation.²² To date, twenty-five states have statutes which expressly recognize time-sharing as a form of real property ownership.²³ Initially, state condominium laws applied to time-sharing.²⁴ However, a growing number of states have subsequently enacted comprehensive legislation dealing solely with time-sharing.²⁵ Two proposed acts have been developed to assist state legislators who are considering time-share legislation. The National Conference on Uniform State Laws proposed the first model act, which is the Model Real Estate Time-Share Act.²⁶ The second act is the Model Time-Share Ownership Act, adopted by the Resort Time-Sharing Council of the American Land Development Association and the National Association of Real Estate Law Officials.²⁷

This Note traces the evolution of time-sharing as a form of real property ownership and describes the various methods of creating time-share ownership interests. It also analyzes the current state legislative approaches to the problems involved in assessing time-share estates for ad valorem taxation purposes, focusing primarily on Florida's legislative approach. This Note also suggests a proposal which provides for a more equitable real estate valuation of Florida time-share properties.

II. FORMS OF TIME-SHARE OWNERSHIP INTERESTS

Time-share properties are commonly classified as either a fee or a non-fee

22. Mann & Pierce, *supra* note 2, at 11.

23. See ALA. CODE § 34-27-50 to -69 (1984); ARIZ. REV. STAT. ANN. § 32-2197 (1982); ARK. STAT. ANN. §§ 50-1301 to -1338 (1983); CAL. REV. AND TAX. CODE § 998 (West 1983); COLO. REV. STAT. § 38-33-110 (1981); CONN. GEN. STAT. ANN. §§ 42-103w to -103bb (West 1985); FLA. STAT. §§ 721.01-.28 (Supp. 1983); GA. CODE ANN. §§ 85-1601(g) to -1646(g) (1984); LA. REV. STAT. ANN. § 9:1131.1-.30 (West 1985); ME. REV. STAT. ANN. tit. 33, § 591-94 (1983); MICH. COMP. LAWS ANN. § 559.110 (West 1982); MO. REV. STAT. § 448.1-103 (1983) NEB. REV. STAT. §§ 76-1701 to -1741 (1981); NEV. REV. STAT. § 119A.010-.20 (1983); N.C. GEN. STAT. §§ 93A-39 to -57 (1983); OR. REV. STAT. §§ 94.803-.991 (1983); 68 PA. CONS. STAT. ANN. § 3403 (Purdon 1980); S.C. CODE ANN. §§ 27-32-10 to -230 (Law. Co-op 1984); S.D. CODIFIED LAWS ANN. §§ 43-15B-1 to -15B-7 (1983); TENN. CODE ANN. §§ 66-32-101 to -135 (1984); VT. STAT. ANN. tit. 32, § 3619 (1984); VA. CODE §§ 55-360 to -395 (1984); WASH. REV. CODE ANN. §§ 64.36.010-.903 (1985); W. VA. CODE § 36-9-26 (1983).

24. Mann & Pierce, *supra* note 2, at 38. See also Catalina, *supra* note 21, at 146; Note, *supra* note 9, at 404; *supra* text accompanying notes 9-11.

25. See, e.g., ALA. CODE § 34-27-50 (1983); ARK. STAT. ANN. § 50-1301 (1983); FLA. STAT. § 721.01 (1981); GA. CODE ANN. § 85-1601 (1983); NEB. REV. STAT. § 76-1701 (1980); N.C. GEN. STAT. § 93A-39 (1983); TENN. CODE ANN. § 66-32-101 (1983).

26. See MODEL REAL ESTATE TIME SHARE ACT, 7A U.L.A. 269 (1979 & Supp. 1984) [hereinafter cited as MRETSA].

27. RESORT TIME-SHARING COUNCIL OF THE AM. LAND DEV. ASS'N & THE NAT'L ASS'N OF REAL ESTATE LICENSE LAWS OFFICIALS, MODEL TIME-SHARE OWNERSHIP ACT (1979) (cited in Comment, *Regulating Vacation Timesharing: An Effective Approach*, 29 U.C.L.A. L. REV. 907, 936 & n.135 (1982)).

28. W. INGERSOLL, THE LEGAL ASPECTS OF REAL ESTATE TIMESHARING 13 (1982). The proportion of fee and nonfee time-share projects is estimated to be close to 55. AM. LAND DEV. ASS'N, RESORT TIMESHARING FACT SHEET, OCTOBER (1981).

legal interest.²⁸ A fee time-share conveyance transfers a fractional fee ownership interest in real property.²⁹ A non fee time-share conveyance merely transfers a right to use and occupy real property for a certain period of time each year.³⁰

A. Fee Time-Sharing

Like traditional real property ownership, fee time-sharing encompasses all the rights inherent in owning property, such as the right to sell, lease, devise, or bequeath the interest.³¹ In essence, the fee time-share purchaser acquires fee ownership in a time-share unit for a fixed period of time each year.³² The three major ways to establish fee time-sharing of the unit are by tenancy-in-common, by interval ownership, or by fee simple.

Under the tenancy-in-common approach, the time-share purchaser acquires a deed granting an undivided interest as a tenant-in-commn with the other purchasers of a given time-share unit. The actual time-sharing of the unit is established by a recordable declaration which covenants that each time-share unit co-owner agrees to limit their use to a specific possession period each year.³³ The declaration further specifies the various rights and duties of each tenant-in-common.³⁴ The declaration is contemporaneously recorded with the deed,³⁵ and operates either as a covenant running with the land or as an equitable servitude which binds future time-share purchasers.³⁶

Interval ownership can also be used to establish a fee interest in a time-share unit.³⁷ This method is apparently the most popular form of fee time-share ownership.³⁸ Interval ownership, like the tenancy-in-common approach, presupposes an existing conventional condominium capable of being fractionalized into smaller interests.³⁹ Interval ownership consists of an annually recurring estate

29. Though thorough discussion of time-share property formats is beyond the scope of this Note, the reader is directed to further commentary on the topic. *See generally* K. CONROY, *supra* note 8, at 1; Mann & Pierce, *supra* note 2, at 11; SLETTE, *supra* note 2, at 105.

30. Mann & Pierce, *supra* note 2, at 11.

31. Slette, *supra* note 2, at 105.

32. *Id.*

33. K. CONROY, *supra* note 8, at 7.

34. Mann & Pierce, *supra* note 2, at 12.

35. Comment, *supra* note 7, at 185.

36. Note, *New Ideas in the Vacation Home Market*, 48 ST. JOHN'S L. REV. 1203, 1216 (1974).

37. *See* K. CONROY, *supra* note 8, at 7. The Uniform Condominium Act defines the interval estate as:

[A] combination of (i) an estate for years in a unit, during the term of which title to a unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with (ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.

1A P. ROHAN & M. RESKIN, *REAL ESTATE TRANSACTIONS: CONDOMINIUM LAW AND PRACTICE* B-6 (1983) (citing UNIFORM CONDOMINIUM ACT § 4-103) (1980)), *reprinted in* Mann & Pierce, *supra* note 2, at 17

38. Pollack, *supra* note 5, at 285.

39. Comment, *supra* note 7, at 201.

for years coupled with an undivided fee simple future interest in remainder as tenant-in-common with all other time-share unit owners.⁴⁰ The future interest in remainder becomes effective upon termination of the estate for years.⁴¹ This method differs from the tenancy-in-common approach in that title and right to possession are created by the same deed.⁴² Consequently, a separate declaration is not required to determine the right to occupancy.⁴³ Accordingly, immediately upon legal conveyance, the interval ownership purchaser is entitled to exclusive fee title for his possession period, whereas the tenant-in-common purchaser's possessory rights are not created until the declaration is recorded.⁴⁴

A fee simple conveyance is the third method of establishing a fee interest in a time-sharing unit.⁴⁵ A fee simple time-share interest differs from the tenancy-in-common and interval ownership methods because the fee simple purchaser is not a joint owner of the property, but is the sole owner.⁴⁶ Thus, a fee simple conveyance entitles the purchaser to all the property interests inherent in traditional fee simple ownership.⁴⁷

B. Non-fee Time-Sharing

In contrast to fee time-sharing, the non-fee time-share purchase does not receive legal title to the property.⁴⁸ The non-fee time-share purchaser receives only those rights that the developer specifically grants.⁴⁹ These rights typically involve the right to use a time-share unit and the surrounding premises.⁵⁰ The non-fee purchaser's rights and interests terminate in accordance with the agreement with the owner or developer.⁵¹ The three principal non-fee time-sharing methods are the vacation license, the vacation lease, and club membership.⁵²

The vacation license is the oldest form of time-sharing in the United States.⁵³

40. K. CONROY, *supra* note 8, at 6. An example of an interval ownership conveyance might resemble the following:

O grants to A Blackwood Condominium Unit One from 12:00 noon of the first day to 12:00 noon of the last day of Unit Week One as described in the Condominium Declarations, together with a remainder over in fee simple, as tenant-in-common with owners of all the unit weeks as described in the Condominium Declarations.

Slette, *supra* note 2, at 107.

41. Mann & Pierce, *supra* note 2, at 17.

42. *Id.*

43. *Id.*

44. Comment, *supra* note 7, at 202.

45. See generally Mann & Pierce, *supra* note 2, at 20; Roadhouse, *Fractional Time Period Ownership of Recreational Condominiums*, 4 REAL EST. L.J. 35, 48 (1975); Comment, *supra* note 7, at 211.

46. Mann & Pierce, *supra* note 2, at 20.

47. *Id.*

48. Crosson & Dannis, *Time-Sharing Ownership in Resort Developments*, 45 APPRAISAL J. 165, 166 (1977).

49. Mann & Pierce, *supra* note 2, at 23.

50. K. CONROY, *supra* note 8, at 9.

51. Slette, *supra* note 2, at 108.

52. Caron & Kinsolving, *Tax Considerations in Time-Share Development*, 13 STETSON L. REV. 25, 25 (1983).

53. Mann & Pierce, *supra* note 2, at 23-24.

It is created by the transfer of a license from the time-share developer to the purchaser.⁵⁴ The license creates the purchaser's right to periodically occupy a given unit and use the surrounding premises during the period specified in the vacation license contract.⁵⁵ The time-share project's developers retain the fee interest in the property.⁵⁶ Consequently, the vacation license is generally not considered an interest in real property.⁵⁷

A vacation lease⁵⁸ purchaser acquires a lease in a unit for a specific time period each year.⁵⁹ The vacation lease is conceptually similar to the vacation license except that a vacation lease purchaser receives a recordable interest in real property.⁶⁰ This recordable interest is, in essence, a prepaid lease arrangement similar to traditional real property leasehold arrangements.⁶¹ However, a vacation lease typically extends for less than a two week period.⁶²

The least used non-fee time-share method is club membership.⁶³ Club membership purchasers acquire a membership interest for a specified number of years in a club or association which owns, leases, or manages the time-share project.⁶⁴ The membership entitles the purchaser to the right to occupy a given unit for a specified time period each year and the right to use the recreational amenities available at the project.⁶⁵

Florida's time-share assessment statute specifically deals with both fee and non-fee time-share properties.⁶⁶ One time-share expert believes that "[c]urrent

54. *Id.*

55. See Walsh, *Licenses and Tenancies for Years*, 19 N.Y.U. L.Q. REV. 333 (1942) MRETSAs defines a time-share license as "a right to occupy a unit or any of several units during (5) or more separated time periods over a period of at least (5) years...." MRETSAs § 1-102(18), 7A U.L.A. 269, 273 (1979 & Supp. 1984).

56. Pollack, *supra* note 5, at 285.

57. Ingersoll, *supra* note 28, at 14.

58. The South Carolina Vacation Time Sharing Plans Act defines vacation time-sharing lease plans as

any arrangement, plan or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year.

S.C. CODE ANN. § 27-32-10(9) (Law. Co-op. 1983).

59. See Mann & Pierce, *supra* note 2, at 35.

60. Slette, *supra* note 2, at 109.

61. Mann & Pierce, *supra* note 2, at 10.

62. *Id.*

63. K. CONROY, *supra* note 8, at 9.

64. See Pollack, *supra* note 5, at 285-86.

65. *Id.*

66. FLA. STAT. § 192.037 (1983) in pertinent part provides that:

Fee time-share real property; taxes and assessments.—

(1) For purposes of ad valorem taxation and special assessments, the managing entity responsible for operating and maintaining fee time-share real property shall be considered the taxpayer as an agent of the time-share period titleholder.

(2) Fee time-share real property shall be listed on the assessment rolls as a single entry for each time-share development. The assessed value of each time-share development shall

experience within the timeshare industry indicates that most non-fee timeshare properties have continued to be assessed and taxed in an equitable manner."⁶⁷ However, because Florida's time-share assessment statute relates to both fee and non-fee time-share developments, the statute provides for inequitable treatment of all Florida time-share properties.

III. STATE LEGISLATIVE APPROACHES TO AD VALOREM TAXATION OF TIME-SHARE PROPERTIES

Ad valorem taxation is a method used for the taxation of real property and is a percentage of the property's assessed value.⁶⁸ A significant amount of nationwide discussion has occurred regarding whether each individual fee time-share estate constitutes a separate estate or interest in real property for ad valorem taxation purposes.⁶⁹ Most time-share developers feel that an appraisal method that individually assesses each time-share estate significantly overstates the actual property value of the time-share project.⁷⁰

An ad valorem taxation system's legitimacy and credibility depends upon an equitable assessment system.⁷¹ Uniform treatment of time-share properties for assessment purposes would greatly bolster the credibility of time-share assessments.⁷² To date, thirteen states have enacted specific legislation pertaining to time-share properties' ad valorem assessment.⁷³ No consensus exists among

be the value of the combined individual time-share periods or time-share estates contained therein.

A time-share estate is defined as "a right to occupy a time-share unit, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof." *Id.* § 721.05(24). A time-share period is defined as "that period of time when a purchaser of a time-share plan is entitled to the possession and use of the accommodations or facilities, or both, of a time-share plan." *Id.* § 721.05(27). Further, a time-share plan is defined as:

[A]ny 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, in exchange for a consideration, receives ownership rights in or a right to use accommodations or facilities, or both, for a period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than 3 years.

Id. § 721.05(28).

67. Conroy, *Assessing the Fee Timeshare Property*, 16 *ASSESSORS J.* 67, 69 (1981).

68. Youngman, *Defining and Valuing the Base of the Property Tax*, 58 *WASH. L. REV.* 713, 715 (1983).

69. *E.g.*, Slette, *supra* note 2, at 112; Note, *supra* note 9, at 432; Miami Herald, May 1, 1983, at 29H, col. 1; Orlando Sentinel, Dec. 22, 1982, at C-1, col. 1; Sarasota Herald Tribune, Oct. 13, 1982, at 3-B MI, col. 2.

70. See *supra* note 69.

71. Schwartz & Wershow, *Ad Valorem Assessments in Florida—Recent Developments*, 36 *U. MIAMI L. REV.* 67, 68 (1981).

72. *Id.* at 68.

73. See *ARK. STAT. ANN.* § 50-1305 (1983); *CAL. REV. & TAX. CODE* § 998 (West 1983); *COLO. REV. STAT.* § 38-33-110 (1981); *FLA. STAT.* § 192.037 (1983); *GA. CODE ANN.* § 85-1604q(c) (1983); *HAWAII REV. STAT.* § 514E-3 (Supp. 1981); *LA. REV. STAT. ANN.* § 9:1131.9 (West 1983); *ME. REV. STAT. ANN.* tit. 33, § 593(2) (1983); *NEB. REV. STAT.* § 76-1704 (1980); *TENN. CODE*

these states as to the best method of assessing time-share properties for real estate taxation purposes.⁷⁴

The Arkansas,⁷⁵ Georgia,⁷⁶ Nebraska,⁷⁷ Tennessee,⁷⁸ Virginia,⁷⁹ and West Virginia⁸⁰ statutes specify that each time-share estate constitutes a separate estate or interest in property except for ad valorem taxation purposes. The Georgia,⁸¹ Virginia,⁸² and West Virginia⁸³ statutes provide further that each fee time-share unit's real property shall be assessed as if a single taxpayer owned the unit. Hawaii,⁸⁴ California⁸⁵

ANN. § 66-32-103(b) (1983); VT. STAT. ANN. tit. 32, § 3619(b) (Supp. 1984); VA. CODE § 55-363(B)-(C) (1983); W. VA. CODE § 36-9-26 (Supp. 1984).

74. See *infra* text accompanying notes 75-89. MRETSAs specifies that "[E]ach time-share estate constitutes for all purposes a separate estate in real property. Each time-share estate [other than a time-share estate for years] must [not] be separately assessed and taxed." MRETSAs § 1-103(b), 7A U.L.A. 269, 275 (1979 & Supp. 1984). Hence, MRETSAs provides for optional treatment as to whether time-share estates are also separate estates for purposes of assessment and taxation. See *id.*

75. ARK. STAT. ANN. § 50-1305 (1983) provides that "each Time-Share Estate constitutes for purposes of title a separate estate or interest in property except for real property tax purposes."

76. GA. CODE ANN. § 85-1604q(c)-(d) (1983) provides that:

(c) For purposes of title, each time-share estate constitutes a separate estate or interest in property except for real property tax purposes.

(d) For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit were owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the commissioner of revenue or other local assessing officers as a factor in determining the assessed value of such unit. A unit operated as a time-share unit, however, may be assessed the same as other income-producing and investment property. Tax records in a time-share unit shall be in name of the association or the managing agent.

77. NEB. REV. STAT. § 76-1704 (1980) specifies that: "Each time-share estate constitutes for purposes of title a separate estate or interest in property except for real property tax purposes."

78. TENN. CODE ANN. § 66-32-103(b) (1983). See *supra* note 77 for identical text.

79. VA. CODE § 55-363(B)-(C) (1983). See *supra* note 76 for similar text.

80. W. VA. CODE § 36-9-26 (Supp. 1984). See *supra* note 76 for similar text.

81. See *supra* note 76 and accompanying text.

82. See *supra* note 79 and accompanying text.

83. See *supra* note 80 and accompanying text.

84. HAWAII REV. STAT. § 514E-(2)-(3) (Supp. 1981).

-(2) Status of time share plan property. The temporal division of an interest in real property shall not, in and of itself, affect its status as real property.

-(3) Taxation. (a) The plan manager, if any, shall be primarily liable for the payment of real property taxes due on the time share units under his authority. The liability of the individual owners of the units, or temporal division thereof, for real property taxes, shall be primary to all parties except the plan manager.

Id.

85. CAL. REV. & TAX. CODE § 998 (West 1983).

(a) The full value of a timeshare estate or a timeshare use subject to tax under this division shall be determined by finding the real property value of the interest involved and shall not include the value of any nonreal property items, including, but not limited to, vacation exchange rights, vacation conveniences and services, and club memberships. Accordingly, the full value of a timeshare estate or timeshare use may be determined by reference to resort properties, condominiums, cooperatives, or other properties which are similar in size, type, and location to the property subject to timeshare ownership and are not owned on

Colorado,⁸⁶ Louisiana,⁸⁷ Maine,⁸⁸ and Vermont⁸⁹ take a different approach to assessing time-share properties. Under these statutes time-share interests constitute separate estates in real property and are separately assessed and taxed.⁹⁰

In Florida, the development and sale of time-share properties is an important and growing segment of the real estate industry.⁹¹ Florida has the largest number of time-share projects in the country.⁹² Certainty and uniformity in the as-

a timeshare basis. The aggregate assessed value of all the timeshare estates or uses relating to a single lot, parcel, unit or other segment of real property shall be determined by adding (1) the fair market value of the similar lot, parcel, unit, or other segment not owned on a timeshare basis, and (2) an amount necessary to reflect any increase or decrease to the market value attributable to the fact that the property is marketed in increments of time, or by any alternate method which will determine the real property value without regard to any nonreal property items which may be included.

Id.

86. COLO. REV. STAT. § 38-33-110 (1981).

87. LA. REV. STAT. ANN. § 9:1131.9 (West 1983).

(A). All kinds of taxes and special assessments authorized by law shall be assessed against the timeshare property as a single entity unless the timeshare property is subject to the Louisiana Condominium Act, R.S. 9:1121.101 et seq., in which case the taxes and special assessments shall be assessed as provided in R.S. 9:1121.105. Each owner shall pay the taxes and assessments in the same ratio as they share the timeshare expenses.

(B). The timeshare association, through its managing entity, shall collect each owner's share of the taxes or special assessments and shall have responsibility for its payment. For purposes of R.S. 9:1131.22, each owner's share of the taxes or special assessments shall be deemed an assessment for a timeshare interest expense.

(C). The assessed value of the timeshare unit subject to a condominium declaration shall not exceed the assessed value of a comparable apartment, condominium unit, dwelling, or other accommodation that is not the subject of a timesharing plan.

Id. § 9:1131.9(A)-(C).

88. ME. REV. STAT. ANN. tit. 33, § 593(2) (1983). "Each time-share estate constitutes for all purposes a separate estate in real property. Each time-share estate shall be separately assessed and taxed." *Id.*

89. VT. STAT. ANN. tit. 32, § 3619(b) (Supp. 1984).

With respect to property taxes, both real and personal, on time-share projects, each property owner of a time-share estate shall be liable for the payment thereof to the town. However, the owners' association, corporation, or whatever entity is authorized by the project instruments to manage the common property, shall be the agent of the time-share estate owners for the payment of property taxes from the individual owners to the town. The town shall set in the grand list as real estate the units and common property of the project of which the time-share estates are a part and shall list the entire property to the association, corporation, or whatever entity is authorized by the project instruments to manage the common property, which entity assumes the rights and liabilities of any owner of property in the grand list. However, with respect to each other, each owner of a time-share estate shall be responsible only for a fraction of such assessments, property taxes, both real and personal, and charges proportionate to the magnitude of his undivided interest in the fee to the whole estate of which he is a part, as covered in the association's, corporation's or entity's bylaws or other project instruments.

Id.

90. See *supra* notes 84-89 and accompanying text.

91. Miami Herald, *supra* note 19, at 1, col. 1.

92. *Id.*

assessment of time-share projects is essential to their continued development in Florida.⁹³ The remainder of this Note will analyze the ad valorem taxation of Florida time-share properties. It will demonstrate that for purposes of real property taxation, time-share estates should not constitute a separate estate in property. This Note will also recommend legislative and administrative options which would permit a more equitable assessment of time-share properties.

IV. THE FLORIDA APPROACH TO AD VALOREM TAXATION OF TIME-SHARE PROPERTIES

Florida local governments rely on ad valorem taxes as their primary source of revenue.⁹⁴ Article VII of the Florida Constitution requires that the quintessential equitable standard for assessing real property is the just valuation of all land parcels.⁹⁵ The Florida Supreme Court defined just value as being legally synonymous with fair market value.⁹⁶ The court defined fair market value as the amount a willing purchaser would pay to a willing seller.⁹⁷ Thus, property appraisers must consider the real estate market when valuing time-share units.

Property appraisers have wide discretion in property valuation and their assessments are presumed correct.⁹⁸ This presumption, however, is rebuttable.⁹⁹ For a valuation, the appraiser must separately examine each land parcel in the light of all relevant factors affecting the land's present market value to arrive at a just assessment.¹⁰⁰ Florida Statutes section 193.011¹⁰¹ establishes eight cri-

93. Miami Herald, *supra* note 69, at 29H, col. 1.

94. Schwartz & Wershow, *supra* note 71, at 67.

95. FLA. CONST. art. VII, § 4. "By general law, regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation...." *Id.*

96. Walter v. Schuler, 176 So. 2d 81 (Fla. 1965). *See also* St. Joe Paper Co. v. Brown, 223 So. 2d 311 (Fla. 1969) (fair market value is the gauge by which all methods of valuation, statutory or otherwise, must be measured).

97. Walter v. Schuler, 176 So. 2d 81, 85-86 (Fla. 1965). *See also* Bystrom v. Valencia Center, Inc., 432 So. 2d 108 (Fla 3d D.C.A. 1983).

98. Dean v. Palm Beach Mall, Inc., 297 So. 2d 298 (Fla. 1974).

99. *Id.*

100. Schwartz & Wershow, *supra* note 71, at 68.

101. FLA. STAT. § 193.011 (1983).

Factors to consider in deriving just valuation—

In arriving at just valuation as required under s. 4, art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable local or state land use regulation and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

teria that an appraiser must consider when assessing real property. The criterion dealing with the present case value of the assessed property¹⁰² is of particular importance because the price at which comparable property is bought and sold is generally the best indicator of fair market value.¹⁰³

As noted earlier, the addition of the fourth dimension of time to real property ownership has made time-sharing a unique member of the real property family.¹⁰⁴ Responding to this dimension, in 1981 the Florida Legislature enacted the Florida Real Estate Time-Sharing Act,¹⁰⁵ which recognized the time-share concept and established procedures for the creation, sale, and operation of time-sharing plans.¹⁰⁶ This Act, however, did not address the ad valorem taxation of time-share real property.¹⁰⁷ Following considerable statewide debate on this issue,¹⁰⁸ the Florida Legislature in 1983 enacted section 192.037 to establish guidelines for the assessment of time-share properties.¹⁰⁹ Section 192.037 specifies that "the assessed value of each time-share development shall be the value of the combined individual time-share periods or time-share estates contained therein."¹¹⁰

Many Florida county property appraisers have interpreted section 192.037 as requiring a separate assessment of each individual time-share estate.¹¹¹ Because the buying and selling price of comparable property is generally the best indicator of fair market value,¹¹² property appraisers are using each individual time-share estate's sale price or purchase price as the basis upon which the real property tax is calculated.¹¹³ This methodology is commonly referred to as the

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Id.

102. *Id.* § 193.011(1).

103. Southern Bell Tel. & Tel. Co. v. County of Dade, 275 So. 2d 4, 9 (Fla. 1973).

104. See *supra* notes 5-9 and accompanying text.

105. FLA. STAT. § 721.01-.28 (1983).

106. *Id.* § 721.02.

—The purposes of this chapter are to:

(1) Give statutory recognition to real property time sharing in the state.

(2) Establish procedures for the creation, sale, and operation of time-sharing plans.

(3) Require every time-sharing plan offered for sale or created and existing in this state to be subjected to the provisions of this chapter.

Id.

107. See *id.* § 721.01-.28.

108. *Supra* note 69 and accompanying text.

109. FLA. STAT. § 192.037 (1983). See *supra* note 66 for text of statute.

110. FLA. STAT. § 192.037 (1983).

111. Conroy, *supra* note 67, at 70. See also Miami Herald, *supra* note 69, at 29H, col. 1.

112. Southern Bell Tel. & Tel. Co. v. County of Dade, 275 So. 2d 4, 9 (Fla. 1973).

113. See Conroy, *supra* note 67, at 70.

gross sellout method.¹¹⁴ Consequently, the gross dollar volume of each individual time-share estate sale or purchase prices becomes the basis for the assessed value of a time-share development.¹¹⁵ This particular assessment methodology significantly magnifies the real estate value and corresponding ad valorem tax on time-share developments. This valuation method fails to separate the real estate components from the non-real estate components inherent in a time-share estate's acquisition and ownership.¹¹⁶

For example, in 1983, industry time-share estate rates averaged \$6,000 per week. This means a typical newly-constructed time-share unit that would sell for \$75,000 as a single-owner condominium could be sold for \$300,000 as a time-share unit divided into fifty separate time-share estates.¹¹⁷ Hence, the property appraiser's starting point for the taxable value of a fifty unit time-share development would be \$15,000,000, as opposed to \$3,750,000 if the development was appraised as a single-owner condominium development. According to the classical definition of fair market value, the \$6,000 weekly purchase price represents the fair market value of the time-share estate.¹¹⁸ Thus, \$6,000 is the amount that a willing purchaser would pay to a willing seller. Additionally, the real property must be assessed at 100 percent of fair market value,¹¹⁹ which is determined by considering the eight factors enumerated in section 193.011 of the Florida Statutes.¹²⁰ Accordingly, property appraisers appear justified in using the summation of the individual sales prices, or the gross sell-out method, as the basis for assessing time-share properties.¹²¹

The property appraiser must also consider the eight criteria set forth in section 193.011.¹²² The eighth criterion of Section 193.011 is of particular importance. This criterion requires the property appraiser to deduct all the usual and reasonable costs associated with the sale of real property from the net proceeds the property seller received and to exclude from the proceeds any payments for household furnishings or other items of personal property.¹²³ Accordingly, for a just valuation of time-share properties the appraiser must analyze the gross sale price to adjust for usual and reasonable costs of sale. Additionally, the appraiser must separate the real estate components from the personal property components that comprise the sale price.¹²⁴ A time-share estate's sale price includes the following four items: the value of intangible benefits associated with time-share ownership; the value of personal property within the

114. Kirby, *Appraisal of Timeshare Resort Conversions*, 50 APPRAISAL J. 417 (1982).

115. *Id.* at 420.

116. Conroy, *supra* note 67, at 67.

117. Miami Herald, *supra* note 69, at 29H, col. 1.

118. See *supra* notes 98-100 and accompanying text.

119. District School Bd. v. Askew, 278 So. 2d 272 (Fla. 1973). See generally *Deltona Corp v Bailey*, 336 So. 2d 1163 (Fla. 1976); *Burns v. Butscher*, 187 So. 2d 594 (Fla. 1966); *Walter v Schuler*, 176 So. 2d 81 (Fla. 1965).

120. FLA. STAT. § 193.011 (1983). See *supra* note 101 for text of statute.

121. Conroy, *supra* note 67, at 70.

122. FLA. STAT. § 193.011 (1983). See *supra* note 101 for text of statute.

123. FLA. STAT. § 193.011(8) (1983). See *supra* note 101 for text of statute.

124. FLA. STAT. § 193.011(8) (1983).

unit; the value attributable to marketing, advertising, and other operating costs; and the fractional value of the real property.¹²⁵

A. *Intangible Benefits*

Time-sharing has been described as "the middle-class answer to expensive second-home vacations."¹²⁶ Time-share purchasers pay a premium for the intangible benefits of affordable, unique, and convenient vacation opportunities.¹²⁷ Time-share plans offer many intangible benefits including guaranteed access to recreational amenities such as sailboats, golf courses, and tennis courts, and customer and administrative services.¹²⁸ An additional convenience of the time-share concept is that it provides time-share purchasers with vacation security at fully equipped accommodations.¹²⁹ The time-share purchaser is able to purchase future vacations with present dollars.¹³⁰ Probably the most attractive intangible benefit of many time-share projects is the opportunity to participate in time-share exchange programs.¹³¹

Computerized exchange networks have made a major contribution to the growth of time-sharing.¹³² These networks help time-share owners swap their week(s) with owners at other time-share developments.¹³³ Hence, if a time-share owner at a Miami Beach, Florida, resort grows tired of vacationing in Florida and would rather vacation in Rio de Janeiro, Brazil, the networks will try to arrange a favorable swap.¹³⁴ Developers usually register their projects with these networks, and many have organized their own networks.¹³⁵ The availability of exchange opportunities makes time-sharing a more marketable and attractive concept.¹³⁶ Consequently, purchasers are willing to pay a premium in the time-share sale price for the ability to participate in time-share vacation exchange programs.¹³⁷

The portion of a time-share estate's gross sale price to the value of intangible benefits should not be subject to assessment for ad valorem taxation purposes.¹³⁸ Only land, buildings, fixtures and all other improvements to land are subject

125. Conroy, *supra* note 67, at 72.

126. Miami Herald, *supra* note 19, at 1, col. 1.

127. Conroy, *supra* note 67, at 72.

128. K. CONROY, *supra* note 8, at 12.

129. Conroy, *supra* note 67, at 72.

130. Vogel, *supra* note 9, at 326.

131. Miami Herald, *supra* note 19, at 10, col. 1.

132. K. CONROY, *supra* note 8, at 29. The largest time-share exchange network is Resort Condominium International (RCI) based in Indianapolis. Miami Herald, *supra* note 19, at 10, col. 1. In 1983 RCI arranged swaps for 77,362 of its members at 723 resorts in its network. RCI has 334,570 members. The second largest exchange network is Interval International, based in Miami, with 138,168 members. *Id.*

133. Miami Herald, *supra* note 19, at 10, col. 3.

134. *Id.*

135. K. CONROY, *supra* note 8, at 30.

136. Miami Herald, *supra* note 19.

137. See K. CONROY, *supra* note 8, at 29-31.

138. Conroy, *supra* note 67, at 72.

to ad valorem taxation.¹³⁹ The California Legislature, through section 998 of the California Statutes, recognized that a significant portion of a time-share estate's purchase price is attributable to intangible rights and services which are not real property and that such rights should not be assessed for ad valorem taxation purposes.¹⁴⁰ Consequently, section 998 provides that the real property taxable value of a time-share estate shall not include the value of non-real property items, such as vacation exchange rights, vacation conveniences and services, and club memberships.¹⁴¹

Unlike the California Statutes, neither section 192.037¹⁴² nor section 193.011 of the Florida Statutes¹⁴³ requires the separation of intangible benefits, such as vacation exchange rights, from the real property components to achieve a just valuation for ad valorem taxation purposes. Thus, Florida property appraisers have no statutory guidelines to justify separating the value of intangible benefits from the real property value.¹⁴⁴ Consequently, by not adjusting a time-share estate's gross sale proceeds by deducting the premium paid for intangible benefits, the real property value of the time-share estate is significantly overstated.¹⁴⁵

Arguably, the second criterion of section 193.011 addresses the intangible benefits attributable to time-sharing.¹⁴⁶ This provision provides that the property appraiser consider the highest and best use to which real property can be

139. FLA. STAT. § 192.001(12) (1983). " 'Real property' means land, buildings, fixtures and all other improvements to land." *Id.*

140. CAL. REV. & TAX. CODE § 998 (West 1984).
1983 Legislation.

Sections 1 and 3 of Stats. 1983, c. 1110, provides:

Sec. 1. The Legislature finds that the development and sale of timeshare interests is an important and growing segment of the real estate industry in California and that certainty and uniformity in the assessment of such interests is important to the continued development of timeshare projects in this state.

The Legislature also finds that a significant portion of the purchase price of a timeshare interest may be attributable to features and services that are not real property, in addition to the ownership of real property. These nonreal property items may include vacation exchange rights, vacation conveniences and services, club memberships, and other intangible rights and services which are not real property and are not subject to assessment for property tax purposes.

It is, therefore, the intent of the Legislature in enacting this act to provide uniformity and certainty in the assessment of timeshares by providing a method for valuing timeshare interests which identifies only that portion of the interest constituting real property subject to property tax in accordance with Article XIII and Section 1 of Article XIII A of the California Constitution.

Sec. 3. The Legislature finds and declares that Section 2 of this act is declaratory of, and not a change in existing law. It is the intent of the Legislature in enacting this act to clarify the application of existing law and provide uniformity and certainty in the assessment of timeshare estates and uses.

Id.

141. *Id.*

142. FLA. STAT. § 192.037 (1983). See *supra* note 66, for text of the statute.

143. FLA. STAT. § 193.011 (1983). See *supra* note 101, for text of the statute.

144. See FLA. STAT. § 192.037 (1983); *id.* § 193.011.

145. *Supra* notes 126-44 and accompanying text.

146. FLA. STAT. § 193.011(2) (1983). See *supra* note 101 for text of statute.

expected to be placed.¹⁴⁷ Hence, the intangible benefits inherent in the time-share concept could be attributed to placing the real property in its highest and best use.¹⁴⁸

B. *Personal Property*

The majority of time-share units come equipped with a sizeable amount of personal property.¹⁴⁹ Time-share units typically contain furniture, household appliances, and other amenities such as towels, sheets, and utensils.¹⁵⁰ A time-share estate's sale price thus includes the pro rata value of the personal property provided in the time-share unit.¹⁵¹

Florida's time-share assessment statute does not specifically provide for the pro rata separation of the value of personal property items from the value of real property components.¹⁵² Section 193.011(8), however, mandates that the property appraiser exclude that portion of the sale price attributable to payments for household furnishings or other items of personal property.¹⁵³ Consequently, for ad valorem taxation purposes, adequate existing guidelines are available to provide for the separate treatment of personal property items provided in a time-share unit.¹⁵⁴ Florida property appraisers must consider the pro rata value of the personal property provided in each time-share unit.¹⁵⁵ Hence, a methodology which employs the summation of the time-share estate sale prices should not overstate the real property value of the time-share development attributed to the value of the personal property items furnished in each unit.¹⁵⁶

C. *Marketing Costs*

Marketing costs associated with time-sharing are significantly higher than the real property industry norm.¹⁵⁷ By adding the fourth dimension of time to real property ownership, a typical condominium unit can be temporally fractioned into fifty time-share periods.¹⁵⁸ A fifty unit time-share project developer is faced with marketing 2500 separate property interests.¹⁵⁹ In contrast if the project is put to normal condominium use, the developer need only market fifty

147. FLA. STAT. § 193.011(2) (1983).

148. *Id.*

149. Vogel, *supra* note 9, at 324. "Each unit is fully equipped with such luxuries as furniture, china, plants, paintings, washer-dryers, and woodstoves. They may also provide access to saunas, Jacuzzis, swimming pools, tennis and racquetball courts, and perhaps access to an ocean or a ski slope." *Id.*

150. *Id.*

151. Conroy, *supra* note 67, at 72.

152. See FLA. STAT. § 192.037 (1983). See *supra* note 66 for text of statute.

153. FLA. STAT. § 193.011(8) (1983). See *supra* notes 108 & 123 and accompanying text.

154. FLA. STAT. § 193.011(8) (1983).

155. *Id.*

156. *Id.*

157. Pollack, *supra* note 5, at 287.

158. *Id.* at 282. Time-sharing makes it possible to divide a condominium deed into 52 slices. Usually two weeks per year are reserved for cleaning and maintenance purposes. *Id.* at 286.

159. The 2500 separate property interests figure is determined by multiplying the 50 units by 50 weekly time-share estates per unit.

separate property interests.¹⁶⁰ Due to the temporal division of property, marketing costs range from thirty-five to sixty-five percent of the actual time-share estate purchase price as compared to five to ten percent of the purchase price for other forms of real property ownership.¹⁶¹ Common sense economics dictate that a significant portion of the time-share estate purchase price is directly attributed to covering these enormous marketing costs.¹⁶² An assessment methodology which fails to adjust the gross sales volume to reflect the enormous marketing costs that are unique to the time-share concept will drastically overstate the development's real property value.¹⁶³

Florida's time-share assessment statute does not specifically recognize the marketing costs associated with selling time-share properties.¹⁶⁴ Florida Statute sections 193.011(8), however, does specify that the property appraiser must consider the net proceeds derived from the real property sale after "deduction of all of the usual and reasonable fees and costs of the sale."¹⁶⁵ Such usual and reasonable fees and costs typically include reasonable attorney's fees, broker's commissions, documentary stamp costs, survey costs, appraisal fees, and title insurance costs. Internal expenditures such as marketing costs are generally not included within the scope of this section.¹⁶⁶ Thus, the Florida real property assessment statutes do not recognize the exorbitant internal expenditures incurred while marketing time-share properties.¹⁶⁷ Some Florida county property appraisers have recognized this injustice and have been willing to subtract marketing cases from a time-share estate's gross purchase price when setting assessments.¹⁶⁸ Without statutory or administrative authority, however, no guarantee exists that appraisers throughout the state will consistently adjust the purchase price to reflect the costs associated with marketing time-share properties.¹⁶⁹

By failing to consider the enormous marketing costs associated with selling and promoting time-share estates, the Florida Statutes ignore the uniqueness of the time-share concept.¹⁷⁰ The time-share estate is, in essence, a consumer product of which real estate is just one component.¹⁷¹ By temporally dividing the time-share product into numerous slices of real property ownership the time-share concept closely resembles a retail operation that is marketing future vacations.¹⁷² The costs associated with marketing these temporal slices are con-

160. The 50 separate property interests are simply the 50 condominium units.

161. *Vistana Time-Sharing, Inc. v. Housman*, Orange County Property Appraiser, No. 82-13027 (Fla. 9th Cir. Ct. 1984). See generally K. CONROY, *supra* note 8, at 15; Pollack, *supra* note 5, at 287-88; Miami Herald, *supra* note 69, at 29H, col. 1.

162. Miami Herald, *supra* note 69, at 29H, col. 1.

163. *Id.*

164. See FLA. STAT. § 192.037 (1983). See *supra* note 66 for text of statute.

165. FLA. STAT. § 193.011(8) (1983). See *supra* note 123 and accompanying text.

166. Proposed Rule 12D-6.06(4)(i), 9 FLA. ADMIN. WEEKLY 3042 (Nov. 10, 1983).

167. FLA. STAT. § 192.037 (1983) (see *supra* note 66 for text of statute); *id.* § 193.011(8) (see *supra* note 101 for text of statute).

168. Miami Herald, *supra* note 69, at 29H, col. 1.

169. *Id.*

170. See *supra* notes 158-69 and accompanying text.

171. Conroy, *supra* note 67, at 72.

172. *Id.*

siderably higher than the costs associated with marketing houses, apartments, or condominiums.¹⁷³ As such, marketing expenses are usual and reasonable costs inherent to the time-share concept.¹⁷⁴ Failure to adjust a real property appraisal to reflect these marketing costs results in an improper assessment of a time-share developer's business acumen and enterprise.¹⁷⁵

D. Real Property

Real property subject to ad valorem taxation includes land, buildings, fixtures and all other improvements to land.¹⁷⁶ The proportional cost of the real property is the only factor of the time-share package that should be the basis for calculating time-share properties' ad valorem assessment.¹⁷⁷ By recognizing each individual time-share estate as a separate taxable interest in property, the tax appraiser, in arriving at just valuation, is confronted with the task of equitably proportioning that fraction of the time-share estate purchase price attributable to the real property value.¹⁷⁸

To alleviate the difficulties of quantifying a time-share estate's real property value the Florida Department of Revenue Proposed Rule 12D-6.06 of the Florida Administrative Code.¹⁷⁹ Rule 12D-6.06 prescribed a methodology to assist real property appraisers in the assessment of time-share properties.¹⁸⁰ The proposed rule specifically mandated that only the pro rata value of the personal property included in the sale and the value attributable to unusual terms of seller financing at less than market rates should be deducted from the time-share estate selling price.¹⁸¹ Thus, intangible benefits associated with time-share ownership were not deductible from the selling price.¹⁸² Additionally, the pro-

173. See *supra* note 163 and accompanying text.

174. Miami Herald, *supra* note 69, at 29H, col. 1.

175. *Id.*

176. FLA. STAT. § 192.001(12) (1983). See *supra* note 139 for pertinent text of the statute.

177. Conroy, *supra* note 67, at 73.

178. *Id.*

179. Proposed Rule 12D-6.06, 9 FLA. ADMIN. WEEKLY 3041-43 (Nov. 10, 1983).

180. *Id.*

181. *Id.* at 3042 (Proposed Rule 12D-6.06(4)(f)-(g)).

(f) Deductions should be made from the selling price for personal property included in the sale. The tangible personal property return of the managing entity is usually the best evidence of the cost of the tangible personal property in the units. The property in each unit divided by the number of periods that exist in the unit will give the value attributable to each unit.

(g) If there are unusual terms of sale involving seller-financing as less than market rates, an adjustment may be made to a cash equivalency. If the financing is made by a third party, even though guaranteed by the developer, no adjustments should be made for unusual terms of sale, as the developer receives cash at closing.

Id.

182. *Id.* (Proposed Rule 12D-6.06(4)(h)).

(h) Developers of time-share properties will frequently claim that "all" they are selling is a prepaid vacation, and not an interest in land, therefore all of the so-called "intangible benefits" of time-share ownership should be deducted, leaving a value of the time-share periods in a particular apartment or property what the value of the unit would be if sold

posed rule prescribed that the seller's marketing costs were not included within section 193.011(8)'s definition of usual and reasonable costs of sale.¹⁸³ Thus, the proposed rule would have included marketing costs and intangible benefits in the assessed value of time-share properties.

Florida time-share developers staunchly opposed this proposed rule and filed numerous petitions for an administrative determination on its validity.¹⁸⁴ The Florida time-share industry opposed proposed Rule 12D-6.06 because the rule was an administrative attempt to substantiate the appraisal methodology which uses the gross sellout value as the basis for calculating the ad valorem tax assessment.¹⁸⁵ Time-share developers strongly believe that an assessment methodology that includes the value attributable to intangible benefits and marketing costs will significantly overstate the real property value of time-share properties.¹⁸⁶ Subsequent to this heated protest, the Department of Revenue withdrew the proposed rule.¹⁸⁷

V. PROPOSAL FOR A MORE EQUITABLE SYSTEM

The Florida system of ad valorem taxation of time-share properties does not achieve a just valuation of real property as required under article VII of the Florida Constitution.¹⁸⁸ Current assessment statutes and administrative rulings

not subject to the time-share periods. All of the benefits of ownership of time-share property with the exceptions of the nonassessable items listed above are attributes of property ownership and are real property. That same "bundle of rights" can be sold by the owner of the time-share estate to another, which is the fundamental basis of appraisal according to the market.

Id.

183. *Id.* (Proposed Rule 12D-6.06(4)(i)).

(i) Subsections 193.011(1) and (8), F.S., require consideration of costs and expenses of sale in arriving at "just (market) value." Any developer has marketing costs and expenses (newspaper ads, give-aways, etc.). However, such internal expenditures as promotional or advertising costs incurred by a seller prior to the time the contract for sale is executed are not included within the definition of costs and expenses of purchase and sale as used in Section 193.011, F.S. This can easily be shown, since the owner of a time-share period is free to sell it on the open market, and will incur none of the expenses involved with the large-scale sales effort and promotion. Under no circumstances must the criteria found in subsections (1) and (8) be applied in any manner that would result in an appraisal of a time-share period at less than "just valuation."

Id. at 3042-43.

184. See 9 FLA. ADMIN. WEEKLY No. 51, at 3487 (Dec. 23, 1983); 9 FLA. ADMIN. WEEKLY No. 50, at 3410 (Dec. 16, 1983). For the disposition of petitions for administrative determination filed by Division of Administrative Hearing, see 10 FLA. ADMIN. WEEKLY No. 31, at 2465 (July 20, 1984).

185. 9 FLA. ADMIN. WEEKLY No. 51, at 3487 (Dec. 23, 1983) (petition for administrative determination of the invalidity of proposed rule 12D-6.06 filed by Orange Lake Country Club, Inc.); 9 FLA. ADMIN. WEEKLY No. 50, at 3410 (Dec. 16, 1983) (petition challenging validity of proposed rule 12D6.06 filed by Vistana Condominium Ass'n, Inc., Vistana Resort Management, Inc. and VTSI, Inc.). See also Miami Herald, *supra* note 69, at 29H, col. 1; Orlando Sentinel, *supra* note 69, at C-1, col. 1.

186. See, e.g., Orlando Sentinel, Oct. 21, 1982, at C-3, col. 1-2.

187. 10 FLA. ADMIN. WEEKLY No. 29, at 2272 (July 20, 1984).

188. FLA. CONST. art. VII, § 4. See *supra* note 101 for text of article VII, § 4. See also *supra* notes 103-87 and accompanying text.

are not adaptable to the unique real property concept of time-sharing.¹⁸⁹ Time-sharing is radically different from other forms of real property ownership.¹⁹⁰ The temporal division of real property makes the time-share concept more of a vacation retail operation that markets a consumer product of which real estate is just one product component.¹⁹¹

The Florida Legislature or the Florida Department of Revenue should enact a time-share assessment statute or propose an administrative rule similar to the statutes enacted in California,¹⁹² Georgia,¹⁹³ Louisiana,¹⁹⁴ Virginia,¹⁹⁵ and West Virginia.¹⁹⁶ This statute or rule should recognize that each time-share estate constitutes a separate estate or interest in property except for ad valorem tax purposes.¹⁹⁷ Property appraisers would thus be relieved of the burdensome task of separately assessing each individual time-share estate. Furthermore, the statute or rule should specify that the value attributable to personal property and intangible benefits should not be included in the property appraiser's assessment.¹⁹⁸ To ensure that property appraisers do not use the gross sellout value as the basis for calculating their assessment, the statute or rule should indicate that the total cumulative price paid by time-share estate unit owners shall not be used to determine the assessed value of such units.¹⁹⁹

Rather than separately assessing each individual time-share estate, the statute or rule should provide that each time-share unit shall be appraised as if a single

189. See generally FLA. STAT. § 192.037 (1983); *id.* § 193.011. See *supra* notes 99-187 and accompanying text.

190. Slette, *supra* note 2, at 103-04.

191. Conroy, *supra* note 67, at 72-73.

192. CAL. REV. & TAX. CODE § 998 (1983). For text of statute, see *supra* note 85.

193. GA. CODE ANN. § 85-1604q(c)-(d) (1983).

194. LA. REV. STAT. ANN. § 9:1131.9 (West 1983).

195. VA. CODE § 55-363(B)-(C) (1983).

(B). Each time-share estate constitutes for purposes of title a separate estate or interest in a unit except for real estate tax purpose.

(C) For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit was owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the Commissioner of Revenue or other local assessing officer as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income producing and investment property. The Commissioner of the Revenue or other local assessing officer shall list in the land book a time-share unit in the name of the managing agent.

Id.

196. W. VA. CODE § 36-9-26 (1983).

For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit were owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the local assessing officers as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income-producing and investment property. Tax records in a time-share unit shall be in the name of the association or the managing agent.

Id.

197. See generally GA. CODE ANN. § 85-1604q(c)-(d) (1983).

198. See CAL. REV. & TAX. CODE § 998 (West 1983).

199. See W. VA. CODE § 36-9-26 (1983).

taxpayer owned the unit.²⁰⁰ Because most time-share projects are condominiums that are temporally divided into numerous ownership interests,²⁰¹ such units should be assessed in the same manner as if owned on a condominium basis.²⁰² Assessing a time-share project on a condominium basis will properly result in excluding the premium paid for a time-share interest. This premium is comprised of non-real property items such as personal property, intangible benefits, and marketing costs.²⁰³ As such, an assessment methodology which values time-share units on a condominium basis is more likely to yield a just valuation of land, buildings, fixtures and all other improvements to land. The statute or rule should provide that the assessed value of a time-share unit shall not exceed the assessed value of a comparable condominium unit or other facility not employing a time-sharing plan.²⁰⁴ In establishing the real property value of time-share units on a condominium basis, the appraiser should use a methodology that employs the cost and/or market data approaches to value.²⁰⁵

The cost approach, if properly applied, is an effective and practical valuation tool for ad valorem assessment of time-share properties.²⁰⁶ By dealing exclusively with land, buildings, fixtures and all other improvements to the land, the cost approach ameliorates the problem of apportioning the time-share estate purchase price to equitably reflect the real property value.²⁰⁷ The possibility of including non-real property items in the ad valorem assessment is thus eliminated.²⁰⁸ The cost approach allows the assessor to distinguish the portions of the price which is attributable to the realty and the actual improvements.²⁰⁹

The market data approach uses comparable property sales as the basis for the time share unit's real property value.²¹⁰ The market data approach is widely used and accepted by real property appraisers.²¹¹ Because most time-share projects are condominium units that have been temporally fractioned into numerous real property interests,²¹² an analysis of recent condominium sales should be used in calculating the time-share project's real property value.²¹³ The appraiser should convert comparable condominium prices to a cost of livable area unit basis.²¹⁴ The comparable condominium sales unit basis should then be adjusted

200. *Id.*

201. Catalina, *supra* note 21, at 144.

202. See CAL. REV. & TAX. CODE § 998 (West 1983).

203. Conroy, *supra* note 67, at 72-73.

204. See LA. REV. STAT. ANN. § 9:1131.9 (West 1983).

205. Crosson & Dannis, *supra* note 48, at 167. The income approach does not lead to an accurate appraisal of time-share properties because the purchaser of a time-share estate is buying, in essence, a vacation rather than an investment upon which a rate of return is expected. Conroy, *supra* note 67, at 73-74.

206. Conroy, *supra* note 67, at 74.

207. *Id.*

208. *Id.*

209. *Id.* at 74.

210. Crosson & Dannis, *supra* note 48, at 168.

211. See *id.* at 168-70.

212. Catalina, *supra* note 21, at 146.

213. Conroy, *supra* note 67, at 75.

214. *Id.*

to reflect any distinguishing factors of the subject time-share unit.²¹⁵ Such factors include time of sale, project location, unit size, construction quality, recreational facilities, and any other relevant factors.²¹⁶ The adjusted unit basis of comparable condominium sales thus represents a range of values for the proper valuation for the units.²¹⁷

In assessing the ad valorem value of a time-share unit, the market data approach will be most helpful when the time-share project is located within a highly developed condominium market.²¹⁸ Florida's condominium market, provides property appraisers with adequate sales activity and information to achieve an accurate valuation of time-share properties.²¹⁹ Under the market data approach the appraiser still confronts the problem of equitably quantifying that portion of the sale price attributable to personal property and intangible benefits.²²⁰ However, dissecting the value of personal property and intangible benefits included in the sale price of a condominium unit is not as technically difficult as quantifying the non-real property elements inherent in time-share ownership. In addition, marketing costs associated with selling condominium units are not nearly as high as the marketing costs associated with selling time-share properties.²²¹ Consequently, this approach excludes the extremely high percentage of the time-share estate purchase price attributable to marketing the time-share project.

The gross sellout method uses sales information similar to the information used in the market data approach.²²² Rather than using condominium sales, the gross sellout method uses comparable time-share estate sales as the cumulative basis for its assessment.²²³ On its face, the gross sellout method seems ideal for assessing time-share projects because there are few distinguishing factors for time-share units within a particular project. Hence, property appraisers have readily obtainable sales data of virtually identical properties. However, as shown above, the time-share estate sales prices are not adequate indicators of real property market value because real property value is just one component of the time-share estate sale price.²²⁴ As such, comparable condominium sales more accurately indicate a time-share project's real property value.

Arguably, as the resale market for time-share properties matures, time-share estate sales may provide comparable sales data.²²⁵ Upon resale the time-share estate seller will not confront the exorbitant marketing costs which the time-

215. *Id.*

216. *Id.* at 75-76.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. See generally K. CONROY, *supra* note 8, at 15; Pollack, *supra* note 5, at 287; Miami Herald, *supra* note 69, at 29H, col. 1.

222. See *supra* notes 110-16 and accompanying text.

223. *Id.*

224. See *supra* notes 94-204 and accompanying text.

225. Crosson & Donnis, *supra* note 48, at 171.

share developer incurred,²²⁶ because the individual time-share estate seller only has to sell that particular estate. In contrast, the time-share developer must market up to thousands of individual time-share estates.²²⁷ Thus, the resale figure will represent the value of real property plus the value of intangible benefits. Consequently, the extremely high value attributable to the developer's marketing costs will not be reflected in the resale price. However, because time-sharing is such a new concept of real property ownership, an insufficient amount of resale data exists to justify using comparable time-share estate resale prices as a basis for assessing the subject time-share properties.²²⁸ As such, until the time-share resale market matures, comparable condominium sales will be the best indicator of time-share property values.²²⁹

VI. CONCLUSION

Time-sharing is a unique real property interest because it adds the fourth dimension of time to real property ownership. This uniqueness has created considerable debate as to whether a time-share estate constitutes a separate estate in property for ad valorem taxation purposes. Florida's time-share assessment statute provides that a time-share project's assessed value shall be the value of the combined individual time-share estates. Real property's fair market value is best determined by an analysis of comparable property sale prices. As such, many Florida county property appraisers are using the summation of each individual time-share estate's sale price as the basis for the project's real property value. This gross sellout method fails to deduct the value of non-real property items such as personal property, intangible benefits, and marketing costs which comprise each individual sale price. The value attributable to these non-real property items can run as high as seventy-five percent of the time-share estate's sale price. This percentage is high because the time-share developer is primarily marketing future vacations. The real property interest associated with time-share ownership is generally of secondary concern to the purchaser. By failing to adjust the gross sellout value to reflect the value of non-real property components, Florida county property appraisers are improperly construing the gross sellout value to be the project's entire market value as to a single purchaser. Consequently, the project's real property value is extremely overstated. As such, the gross sellout method does not yield a just valuation of real property as required by the Florida Constitution.

A more equitable approach to the assessment of time-share properties would be to assess each time-share unit in the same manner as if such unit was owned on a condominium basis. This approach will properly disregard the non-real property items inherent in the time-share concept. By recognizing the time-share concept's uniqueness, this approach is more likely to produce a just valuation of real property. Consequently, for ad valorem taxation purposes, each time-share estate should not constitute a separate estate in property.

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226. *Id.*

227. *See supra* notes 154-60 and accompanying text.

228. Crosson & Dannis, *supra* note 48, at 168.

229. *Id.* at 169-70.