

Official Opinion No. 84-50, Time-Share licenses

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Attention: For Hart Ranch
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Time-Share licenses

Gentlemen:

You have requested an official opinion based on the following factual situation.

FACTS:

The Hart Ranch Camping Resort Club, a South Dakota non-profit corporation, is the owner of a vacation camping resort in Pennington County, South Dakota. The vacation camping resort consists of a number of camping sites and various recreational facilities.

The Hart Ranch Development Company is the owner of all charter memberships in the Hart Ranch Camping Resort Club and the Hart Ranch Development Company is selling the charter memberships. A purchaser of a membership in the Hart Ranch Camping Resort Club does not receive a Warranty Deed evidencing any title or interest in real property. The memberships do not entitle the member to any particular campsite. A member simply has

a choice of any campsite that is unoccupied. The memberships are not for any particular time period nor are they for any certain number of weeks per year. The only restriction on use of the campsites is that a member shall stay no longer than fourteen consecutive days on any one campsite and no longer than twenty- one cumulative days in any thirty-day period. After an interruption of seven or more consecutive days, a new twenty-one day period can begin at the resort.

The parties have requested an opinion regarding the applicability of SDCL 43-15B, the time-share estates provision, as well as the Rules and Regulation of the South Dakota Real Estate Board, specifically Chapter 20:56:20, Time- Share Estates, and Chapter 20:56:21, Limited Time-Share Licenses, to the above factual situation.

The South Dakota Legislature has defined a time-share under SDCL 43-15B-1 as follows:

. . . the right to use and occupy a living unit, of which the use and occupancy right is divided among persons holding similar interests within _that living unit according to a fixed or variable time schedule on a periodic basis and allotted from the use or occupancy into which the time-share project is divided. There is no distinction between a 'time-share use' and a 'time-share estate.'

The remaining six provisions of the chapter very generally discuss restrictions on sales, (43-15B-2), registration of projects (43-15B-3), fees for registration (43-15B-4), inspection fees which may be charged by the real estate board when examining a project (43-15B-5), the authority granted to the real estate board for the adoption of rules to implement the provisions of Chapters 43-15B, (43-15B-6) and lastly, restrictions on the sale of unregistered projects (43-15B-7). It is readily apparent that the range of legislation surrounding time-share estates is extremely limited.

Pursuant to SDCL 43-15B-6, the real estate board has attempted to pass extensive rules and regulations surrounding the operation of a time-share estate. Indeed, it is not the South Dakota Legislature which has passed the laws by which a time-share project must abide. The real estate board has in effect attempted to do so by the adoption of rules and regulations pursuant to what they perceive to be a delegation of power from the Legislature.

The delegation of rule-making authority which the real estate board envisions it received from the Legislature does not appear to be present. SDCL 43-15B-6 provides: _

The real estate board shall adopt rules pursuant to chapter 1-26 to implement the provisions of this chapter. (Emphasis added.)

When one analyzes the provisions of the chapter, it becomes clear that the provisions are rather limited. The Chapter 43-15B statutes deal with restrictions on sales, registration of projects, fees for registration, inspection fees, and the sale of unregistered projects. Hence, it follows that the rules and regulations which may be implemented by the real estate board are confined to those areas in which the Legislature has deemed it prudent to pass legislation. Any further restrictions implemented by the board of real estate via rules and regulations must have legislative authority before they may be enforced. Simply put, the delegation of rule-making authority extends only to the enforcement of laws, not to the passage of such laws.

It appears Hart Ranch does fall within the Chapter 43-15B provisions, as well as those rules and regulations the board of real estate is authorized to adopt. The legislative definition of a time-share is broad. The major determination centers around the meaning of a 'living unit.' ARSD 20:56:20:02(16) defines a unit as a physical condominium or campground space. Hence, it appears that a 'living unit' as referred to in SDCL 43-15B-1, encompasses a campground.

Upon that determination, the next issue centers upon what requirements fall into Hart Ranch. As previously mentioned, the rule delegating authority is limited to the provisions of Chapter 43-15B. Those provisions encompass a limited area of the law. Therefore, while there are some reservations to this finding, it appears the only duty of Hart Ranch is that it register. Upon registration, and the payment of registration and inspection fees, its duties are complete. The Legislature has not delegated any more rule-making authority to the real estate board. Until it does so, Hart Ranch is not required to meet those rules and regulations adopted by the board which have no authorization for passage.

The sale of such units must be made by a broker or salesman licensed by the Real Estate Commission or who have obtained restricted licenses (SDCL 43-15B-7). The rules which apply generally also would control the conduct of such brokers as salesmen in the sale of units.

Respectfully submitted,

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