



De Cotta Law

## **Timeshare Fractionals**

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Spain and the Canary Islands are home to the majority of Europe's timeshare resorts. The industry was developed in the 1980's and the majority of resorts had a legal structure based on a Club trust system where the real estate was owned by trust companies. Many of these companies were based outside of Spain. The timeshare purchaser bought a week in a private contract which gave them the right to stay at a resort for a particular week. The obligation on the timeshare owner was to pay annual maintenance fees which go towards the upkeep and management of the resort. The legal concept is similar to that of a Community of owners charge for the communal areas, gardens, pools and cleaning.

Industry studies always show that the majority of timeshare owners are happy with their resort and purchase and yet many people believe it is a legal minefield. The timeshare world has changed considerably over the years and the vast majority of resorts in Spain and the Canary islands now have an established legal framework and local and regional regulations cover the sale, use and licensing of resorts. From a legal perspective the resort developers and owners are now very aware of their legal duties. In particular there is a need to disclose to a purchaser all of the elements of their purchase and all of the resorts we deal with offer a cooling off period which is required by law.

For the lawyers involved in the industry no two cases ever seem to be the same and drafting of documents for resort documentation can be very challenging. Since 1998 when Spain published its own timeshare law – *Ley sobre derecho de aprovechamiento por turno de bienes inmuebles de uso turístico* – there has been a right to request a public deed of purchase in the Spanish deed based resorts. Club trustee schemes still thrive however as many of these resorts were adapted in the 2 year period after 1998 when the Spanish registries recognized the *anglosajón* structures created in the 1980's. Fractional ownership is now becoming common as well in Spain and yet again lawyers are having to advise people on the many different forms of ownership that can be described as fractional. Property rights must always be carefully studied to avoid future problems and Spanish, European and American lawyers are now studying the ramifications of the new European directives for their existing clients whether they are developers or consumers.

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