



Fox Rothschild LLP
ATTORNEYS AT LAW

Midtown Building, Suite 400
1301 Atlantic Avenue
Atlantic City, NJ 08401-7212
Tel 609.348.4515 Fax 609.348.6834
www.foxrothschild.com

Daniel S. Ojserkis, Esq.
Office Managing Partner

Marie Jiacopello Jones, Esquire
Direct Dial: (609) 572-2259
Email Address: mjones@foxrothschild.com
File No. 70203-00002

March 30, 2007

Via E-mail & Regular Mail

Thomas A. Decker, Chairman and
Members of the Pennsylvania Gaming Control Board
P. O. Box 69060
303 Walnut Street
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Proposed Definition of Guest Room

Dear Chairman Decker and Members of the Board:

On behalf of Resorts USA, Inc. ("Resorts"), we would like to thank you for the opportunity to present testimony before the Board regarding issues that effect Category 3 applicants.

Resorts would like to provide more detail and clarification as to the proposed definition of a guest room and the consideration of timeshare units as guest rooms. As stated at the March 27th hearing, Resorts' proposes the following definition of guest room:

Any room in a hotel that can be rented for an overnight stay, including timeshare units within a facility that are unsold and that can be rented by the facility to overnight guests.

As required by Section 1305 of the Pennsylvania Race Horse Development and Gaming Act (the "Act") any room must be "under common ownership" to be included in the 275 room count.

With respect to the treatment of timeshare units under the Act, timeshare units deeded to another individual or entity who is not within the ownership chain of the applicant would not meet the threshold requirement of the Act of "under common ownership". Timeshare units that are right to use intervals to which the license applicant may hold deeded title, but the license applicant does not have the ability to utilize same, similarly do not meet the definition of a guest room. Included in this exclusion from the definition of a guest room would be timeshare

A Pennsylvania Limited Liability Partnership

AC1 393566v1 03/30/07
California

Delaware

Florida

Nevada

Tennessee

New York

Pennsylvania



Thomas A. Decker, Chairman and
Members of the Pennsylvania Gaming Control Board
March 30, 2007
Page 2

units that are right to use intervals or deeded timeshare units that are sold, but then the owner asks the facility to place same back in the rental pool. We have determined that the Act requires that these timeshares must be excluded from the guest rooms counted toward the statutory requirement of 275 rooms as the license applicant does not know if the owner of the timeshare will agree to place that unit or interval in the rental pool of the license applicant in the following years. By way of example, if a timeshare interval owner holds and controls the right to use a room and that room is utilized to meet the 275 room threshold and the owner of that interval does not place it in the rental pool, the licensee could have less than 275 rooms at a given point in time and would not be in compliance with the Act.¹

To meet the statutory requirements, timeshares that are deeded clearly do not meet the threshold requirement of "under common ownership". Likewise, timeshare intervals that are right to use and sold are not under the control of the entity and should not be considered under common ownership. Right to use timeshare intervals that are unsold, and therefore, are within the possession and control of the license applicant, meet the definition of a guest room.

This interpretation is consistent with Commonwealth Court decisions. Specifically, in Kalins v. State Real Estate Commission, 92 Pa. Comw. 569, 500 A. 2d 200 (1985), the Court held that Vacation Charters, Inc.'s timeshare interest was similar to a lease interest, since in both instances, the intention of a party is to voluntarily dispossess himself of the premises, for consideration, and the other party to assume the possession for himself. The Court concluded that "the petitioners' timeshare vacation units were leasehold interests and interests in land..." Id. at 578.²

The Pennsylvania State Legislature has since amended the Real Estate Licensing and Registration Act (the "Real Estate Act") to specifically include timeshare interests in the definition of real estate. See 63 P.S. § 455.201. The Real Estate Act defines timeshare as the

¹ If a right to use timeshare interval is placed back in the rental pool and rented by the licensee, the owner either receives a flat fee or a percentage of the rental. Such payment by a licensee to the timeshare owner would result, at a minimum, in the owner being subject to the vendor filing requirements and possibly licensed as a qualifier of the licensee as it has an ownership interest in the licensee and is receiving a share of revenue.

² In this case, the respondent, the State Real Estate Commission, fined the broker for hiring an unlicensed person to sell timeshare intervals. During the events of this case, the Real Estate Licensing and Registration Act did not address timeshare intervals. Therefore, the court needed to make this distinction.



Fox Rothschild LLP
ATTORNEYS AT LAW

Thomas A. Decker, Chairman and
Members of the Pennsylvania Gaming Control Board
March 30, 2007
Page 3

right to use or occupy one or more units on a periodic basis according to an arrangement allocating use and occupancy rights of that unit or those units between other similar users. Id.

Thank you for considering our testimony and this supplemental submission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marie Jiacobello Jones".

Marie Jiacobello Jones

MJJ;db

cc all via email and regular mail:

Anne Lacour Neeb, Executive Director
Frank Donaghue, Chief Counsel
Susan Hensel, Esquire, Director of Licensing
Steven Cook, Assistant Chief Counsel
Paul Resch, Board Secretary
Daniel Stambaugh, Legislative Liaison
George Bedwick, Legislative Counsel, House Majority Whip
Audrey Powell, Policy Director, House Majority Leader
Jason Brehouse, Executive Counsel, Senate Community, Economic & Recreational
Development Committee