



JUNE 2022, ISSUE 10

# YOUR TRUSTED LEGAL COUNSELOR



Follow me:



## IN THIS ISSUE:

1

### *Timeshare Scams*

Don't Get Scammed on Vacation

3

### *Capital Gains*

Capital Loss, Stepped-up Basis, and Carry-over Basis

6

### *Estate Planning*

Should You Own Your Timeshare in Your Trust?

## TIMESHARE SCAMS

*Written by Francine D. Ward*

The sale of timeshares in hot vacation spots has long been big business. If you have ever visited one of these locations, the chances are high that you have been approached by a salesperson selling timeshares. Their methods can often be deceptive. They offer complimentary dinners or free junkets that usually wind up being high-pressure sales pitches for the purchase of timeshares.

However, if you already own a timeshare and decided to sell, you know how hard it is to sell the property. A prime reason is the enormous amount of timeshares on the market. This makes owners vulnerable to unscrupulous companies that promise they can sell a timeshare for top dollar. But their claims are often too good to be true and the up-front costs you are required to pay can be hard to recover.

Over the years, the Federal Trade Commission (FTC) has taken notice of these fraudulent operations. In 2019, the FTC mailed 8,088 refund checks totaling nearly \$2.7 million to consumers who were defrauded. The average check was for \$332. Between November 2011 and December 2016, Pro Timeshare Resales, LLC falsely claimed to consumers that they had buyers ready to purchase or rent their properties. It never happened. States, and law enforcement agencies in ten other countries have also taken action.

*Continued on page 2*

Fraudulent timeshare resellers lure vulnerable consumers into paying hefty up-front fees, falsely claiming to have interested buyers ready to pay top dollar for the properties. They claim sales are about to happen, but there are no buyers, and consumers lose hundreds or even thousands of dollars. Deceptive travel prize promoters trick consumers into paying for discounted or “free” vacation packages supposedly worth thousands of dollars, but most people get nothing of value or have to attend high-pressure timeshare sales presentations while on vacation.

Former FTC Deputy Director Charles A. Harwood said, “Con artists take advantage of timeshare owners who have been in tough financial straits and are desperate to sell their timeshares. They persuade owners to pay fat up-front fees by saying they have someone ready to buy the property, but that’s a lie.”

My message to timeshare owners is simple – never pay for a promise, get everything in writing first, and pay only after your unit is sold. Know that law enforcement agencies at every level of government are working together to put an end to this problem.”

And, Alan Schlaifer, an attorney based in D.C. who also is a former FTC trial lawyer said, “This is probably one of the largest FTC-attorney general waves of coordinated litigation ever. It demonstrates clearly that the federal and state officials involved are serious about stamping out deceptive and fraudulent practices from bogus timeshare resale firms.”

The FTC has updated its educational materials on travel and timeshare resale frauds in an effort to educate consumers and avoid these and other types of scams. For a number of useful FTC articles and additional tips on travel, international driver’s license scams, home buying tips, as well as an interactive travel fraud game check out this [FTC link on scams](#).



**JOIN MY EXCLUSIVE  
FACEBOOK GROUP**

***Click Here***



**Legal Friday**  
with Francine

FRANCINEWARD.COM | INFO@FRANCINEWARD.COM | 760.636.0066

INTELLECTUAL PROPERTY AND ESTATE PLANNING ATTORNEY





*Written by Francine D. Ward*

I am not a tax lawyer, CPA, or other tax professional. What I offer here is basic information for educational purposes only.

The Internal Revenue Service (IRS) provides several useful resources. For your convenience, I have added links throughout this article to some of those IRS resources. I encourage you to read them. In addition, you are advised to contact a tax accountant or a tax lawyer for specific advice.

- **Did you know that almost everything you own and use for personal or investment purposes is a capital asset?**
- **Do you know how to define cost-basis?**

The Internal Revenue Code (the “IRC”) defines capital gain and loss as generally the gain or loss realized from the sale or disposition of a capital asset. The IRC describes many exceptions to this rule, which is why it is important to consult with a tax professional about your specific case.

*[Continued on page 4](#)*

Almost everything you own and use for personal or investment purposes is a capital asset. Some examples may include land, buildings, jewelry, antiques, household furnishings, automobiles, business equipment, copyrights, trademarks, patents, franchises, stock, and bonds.

The cost basis or basis is the purchase price of the asset in question. This price includes the actual price you paid plus any expenses you paid to acquire, produce, or settle the capital asset.

**Some examples of expenses are the following:**

- Sales tax.
- Real estate taxes, if the buyer is required to pay.
- Freight costs.
- Installation and testing.
- Interest on loans to purchase assets.
- Excise taxes.
- Legal and accounting fees.
- Recording fees.
- Commissions owed to an agent.
- Certain settlement and closing costs.
- Other costs related to buying or producing property.

If your capital asset is intellectual property, such as a patent, copyright, or trademark, the basis generally includes the cost to purchase, develop, or create the asset.

**Patents.** The cost basis of a utility, plant or design patent is what it costs to develop it. That may include research and experimental expenditures, drawings, working models, attorneys' fees, and USPTO registration fees.

**Copyrights.** For authors, the cost basis will usually include the cost of securing the copyright, plus copyright fees, attorneys' fees, clerical assistance, and the cost of plates that remain in your possession.

**Franchises, trademarks, and trade names.** If you purchase a franchise, trademark, or trade name, the cost basis is what you paid for the asset, unless you were able to deduct your costs as a business expense.

### Capital Gain or Loss

When you sell your capital asset, the difference between what you paid and the price you sell it for will be a capital gain or a capital loss.



### Example:

Let's suppose you purchase a piece of land for \$100,000 in 2000 and sell that land in 2022 for \$500,000. You have a capital gain of \$400,000. You will likely have to pay a capital gains tax on \$400,000 unless your accountant can come up with some creative tax deductions. On the other hand, suppose you purchase that same piece of land for \$100,000 in 2000 and sell that land in 2022 for \$50,000? Because of a significant downturn in the market, you now have a capital loss of \$50,000. You will likely have no capital gains tax to pay.

### Long-Term vs Short-Term Capital Gains

Capital gains are either long-term or short-term capital gains. Generally, if the asset is held for over a year before you dispose of it, your capital gain or loss is long-term. If the asset is held for a year or less, your capital gain or loss is short-term. As with everything tax and legal related, there are exceptions.

*[Continued on page 5](#)*





## Capital Gains Tax vs Ordinary Income Tax.

Why does this matter? The classification will determine the amount of tax you pay. Generally, capital gains tax treatment is more favorable than ordinary income tax treatment. One reason for this is that the IRS wants to encourage people to purchase capital assets and hold them for longer periods of time. Therefore, assets held for over a year generally enjoy more favorable tax treatment than assets held for a year or less.

## Carry-over Basis and Stepped-up Basis

What is carry-over basis and how does it differ from stepped-up basis? The carry-over basis is applied when the person giving the gift of a capital asset does so during their lifetime. On the other hand, a stepped-up basis is applied when the asset is passed through inheritance after the person giving the asset has passed away.

### Example of Carry-over Basis:

Suppose you purchase one acre of unimproved real estate in 2000 for \$10,000 and in 2019 you gift that piece of land to your son. Generally speaking, your \$10,000 basis is carried over to your son, which means he owns property valued at \$10,000. But suppose 9-months later he sells the property for \$100,000. His profit (or gain) is \$90,000. He will likely have to pay tax on his short-term capital gain of \$90,000.

### Example of Stepped-up basis:

You purchase land in 2000 for \$10,000. You leave that piece of property to your son in your will. At the time of your death, the fair market value of the land is now \$100,000. Your son's new basis is \$100,000. If he then decides to sell the property for \$100,000 cash the day after you die, he would likely have no capital gains tax to pay. But, if he sold the property 2-years after you died for \$400,000, he would likely have to pay long-term capital gains tax on his \$300,000 gain.

# CAPITAL GAINS 101

## FREE PDF DOWNLOAD

CLICK HERE



# Should You Own Your Timeshare in Your Trust?

*Written by Francine D. Ward*

Do you own a timeshare? Over the past few decades owning a timeshare has become a popular investment. Whether you purchased it as a vehicle for a great family vacation, an occasional getaway, or to rent out, you have likely come to understand the benefit your property offers. Flexibility in scheduling timeshare weeks, diverse vacation property locations, and many other perks. Did you also know that timeshares could be highly valuable and desirable property in your estate?

**Before considering whether to put your timeshare in your will or trust, here are a few questions you may have:**

1. Should you transfer ownership of your timeshare to your trust?
2. Is it better to continue to hold it in your individual name, or jointly with another family member?
3. What if you don't use it very often and no one else in the family wants to use it?

**Reasons for Including Your Timeshare in Your Trust.**

The decision to title your timeshare in the name of your trust or in your name as an individual is a personal choice. That choice should be based on



the specific facts of your situation. It's to your advantage to ask questions and carefully read your timeshare contract. Being armed with appropriate information can help you avoid costly mistakes.

If your timeshare provides you with significant value, then it might be beneficial to put it in your revocable living trust. If you purchased the timeshare before your trust was created, you may want to consider retitling the contract. Depending on the terms of the contract and the state where the contract was entered, you be considered an owner of real estate. This is important because if you die owning real property and that property is not in a probate avoidance tool e.g., a living trust, it will need to go through probate when you die. Trusts, joint ownership with rights of survivorship, and payable on death or transfer on death designations are examples of probate avoidance tools. If your real property is not in a probate avoidance vehicle, the cost of probate will be both financial and emotional.

**Reasons for Not Including Your Timeshare in Your Trust.**

One of the main reasons timeshare owners choose not to include their timeshare property in a trust is non-use.

*[Continued on page 8](#)*

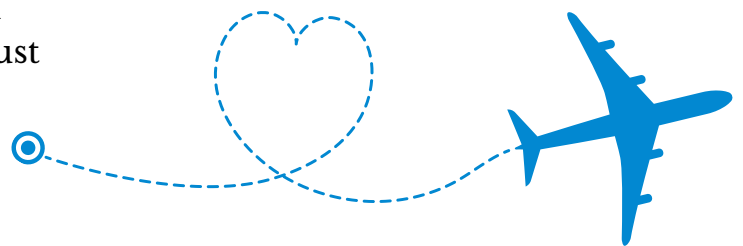
Work commitments, health reasons, and unforeseeable family issues make it disadvantageous to make use of the property. Whatever the reason, if an owner cannot use the timeshare, it might be wise to sell it before they pass away. Selling the property would eliminate the cost of retitling the property into the trust. This would also obviate the need to pay annual maintenance fees and assessment costs. It's estimated that timeshare maintenance fees, insurance, and special assessments can easily run into the thousands annually. When you aren't using the property, such added costs become a burdensome expense, with no benefit.

When your trust owns the timeshare, your beneficiaries inherit the costs. If none of your beneficiaries want the timeshare, the responsibility falls on your trustee to sell it. That becomes problematic in a climate where timeshares are hard to sell. Today's environment offers a limited market for timeshares. Statistics show that very few timeshare owners can recoup anything remotely resembling their original purchase price. In fact, they usually recover a fraction of their investment.

If you own your timeshare in your individual capacity, that might also be a problem for your heirs and the timeshare company. If your heirs do not want the timeshare, the management company would likely be forced to initiate a probate proceeding. That might be the only way the company could receive any unpaid maintenance fees and assessments. Understanding your rights regarding the use, termination, and transfer of your timeshare begins with the terms of the agreement. Now might be a good time to find your timeshare contract and read it. You'll find out whether the contract terminates at the death of the owner. If the trust owns a timeshare, the death provision wouldn't apply upon the owner's death. That is because a trust cannot die until all distributions have been made. Until then, the trust would be obligated to pay all fees and costs.

## Conclusion

There are significant benefits to owning a timeshare, so long as the owner makes regular use. Then it becomes a valuable and useful asset. If there are family members willing to continue enjoying the timeshare, it can enhance the lives of future generations. In that case, it might be wise to title ownership in the name of the trust. It's just when ownership becomes more of a liability than a benefit that it is time to rethink ownership. Review your agreement perhaps with the help of an attorney to decide if ownership in the trust is a smart idea. Each situation is different and timeshare contracts vary in terms and obligations.







A WORD FROM YOUR

## Trusted Legal Counselor



*Written by Francine D. Ward*

What does behavior have to do with self-esteem? Everything. Self-esteem comes from **DOING** Esteemable Acts—one baby step at a time! Many people say, “Behavior does not define the person”. But I ask, if not your actions, then what defines who you are? If a person cannot be judged by how they behave—how they show up in the world—then how else should we judge them?

One of my mentors left a powerful legacy when he said, “We judge ourselves by our intentions, but the world judges us by our actions”. Then recently I found this wonderful piece that says it all for me:

### Your Destiny

“Watch your thoughts; they become your words.  
Watch your words; they become your actions.  
Watch your actions; they become your character.  
Watch your character; it becomes your destiny.”

Self-esteem comes from **DOING** Esteemable Acts, and it’s an Esteemable Act to be conscious of your actions. There is an old saying, “We are what we eat.” Let’s modify it a bit. I say we are what we think. Our thinking doesn’t immediately lead to bad actions. But, over time when we think unhealthy thoughts, we eventually behave in an unhealthy way. It’s a generalization, but one I have seen pan out over time--in my own life.

Pretending that a sinkhole in the street is not there doesn't mean the sinkhole is not there. Likewise, pretending that unhealthy behavior is not harmful is a denial of the truth. Take a look at your actions and ask yourself if you are facing reality. If you’re not – it’s never too late for a new beginning.

Until next time!



COPYRIGHT LAW  
TRADEMARK LAW  
PUBLISHING LAW  
TRUSTS AND ESTATES

[WWW.FRANCINEWARD.COM](http://WWW.FRANCINEWARD.COM)  
[INFO@FRANCINEWARD.COM](mailto:INFO@FRANCINEWARD.COM)  
760.636.0066

