L.N. 269 of 2000

MALTA TRAVEL AND TOURISM SERVICES ACT (CAP. 409)

Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations, 2000

IN exercise of the powers conferred by article 47 of the Malta Travel and Tourism Services Act, the Minister for Tourism acting on the recommendation of the Malta Tourism Authority has made the following regulations:–

Citation and commencement.

1.1. The title of these regulations is the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations, 2000 and shall come into force on such day as the Minister may by notice in the Gazette prescribe, provided that different dates may be prescribed for different provisions of these regulations.

Interpretation.

2.1. In these regulations, unless the context otherwise requires –

"the Act" means the Malta Travel and Tourism Services Act;

"authorised officer" means any officer appointed and authorised in writing by the Authority to exercise the functions conferred by these regulations on such officers;

"the Authority" means the Malta Tourism Authority;

"buyer" means any natural person who, acting in transactions covered by these regulations, for purposes which may be regarded as outside his professional capacity, has the right which is the subject of a contract transferred to him or for whom the right which is the subject of the contract is established;

"contract" means any contract or group of contracts concluded for at least three years under which, directly or indirectly, on payment of a certain global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, of not less than one week, is established or is the subject of a transfer or an undertaking to transfer;

"the Director" means the Director of the Enforcement Directorate of the Malta Tourism Authority;

"immovable property" means any building or part of a building for use as accommodation to which the right which is the subject of the contract relates;

"Minister" means the Minister responsible for tourism;

"Schedule" means a Schedule to these regulations;

"seller" means any natural or legal person who, acting in transactions covered by these regulations and in the person's professional capacity, establishes, transfers or undertakes the right which is the subject of a contract.

Functions of the Director.

3.1. The Director shall have the following functions:

3.1.1. to keep under general review, practices or proposed practices in relation to any of the obligations imposed on any persons by these regulations;

3.1.2. to carry out investigations of any such practices or proposed practices where the Director considers that, in the public interest, such investigations are proper, or where the Authority requests the Director to carry out such investigations; and

3.1.3. to request persons engaged in or proposing to engage in such practices as are, or are likely to be, contrary to the obligations imposed on them by these regulations, to discontinue or refrain from such practices.

3.2. The Director may delegate the exercise of these or any other functions under these regulations to any authorised officer.

Seller to supply certain information and to ensure proper maintenance of property.

4.1. A seller shall provide to any person requesting information on an immovable property, a document which shall give:

4.1.1. a general description of the property;

4.1.2. at least, brief and accurate information on the matters referred to in items (a) to (g), (i) and (l) in the First Schedule; and

4.1.3. information on how further information about the property may be obtained.

4.2. Subject to regulation 5 hereof, the information given in a document referred to in subregulation 4.1 shall be contractually binding on the parties to any contract entered into in respect of any immovable property to which it relates.

4.3. Upon the request of the person requesting information on an immovable property, the document referred to in subregulation 4.1 shall be written in the language or one of the languages of the country in which the person requesting the information contained in the document resides, or in the language or one of the languages of the country of which the person is a national, or in a language which that person understands.

4.4. Any advertising referring to the immovable property shall indicate the possibility of obtaining the document referred to in subregulation 4.1 and from where it may be obtained.

4.5. The seller shall ensure that a period of at least seven consecutive days in any calendar year is reserved for repairs, maintenance, cleaning, and other purposes related to the upkeep of the immovable property. A person who contravenes this regulation shall be guilty of an offence.

Only changes due to circumstances beyond the seller's control may be made.

5.1. Unless the parties expressly agree otherwise, only changes resulting from circumstances beyond the control of the seller may be made to the information provided in the document referred to in subregulation 4.1.

5.2. In order to be included in the terms of the contract, any changes to that information shall be communicated to the buyer before the contract is concluded and shall be expressly mentioned in the contract.

Information to be contained in contract and language of contract.

6.1. A contract to which these regulations apply –

6.1.1. shall be in writing,

6.1.2. must include at least the terms referred to in the First Schedule,

6.1.3. at the buyer's option, shall be drawn up in the language or one of the languages of the country where he resides or in the language or one of the languages of the country of which he is a national or in a language he understands.

6.2. The seller shall provide the buyer with a certified translation of the contract in Maltese or in English as the buyer may so request.

Buyer's right to withdraw from or cancel contract.

7.1. The buyer shall have the right –

7.1.1. to withdraw from the contract, without giving any reason, within ten days of both parties signing the contract, or of both parties signing a binding preliminary contract,

7.1.2. subject to subregulation 7.2, to cancel the contract within three months of the date of both parties signing the contract, or of both parties signing a binding preliminary contract, if the contract does not include the information contained in items (a), (b), (c), (d)(1) and (2), (h), (i), (k), (l) and (m) in the First Schedule, and

7.1.3. if by the end of the three month period referred to in subregulation 7.1.2, the buyer has not exercised the right to cancel and the contract does not include the information referred to in subregulation 7.1.2, - to the withdrawal period of ten working days commencing on the day following the end of the three month period.

7.2. Where the information required by subregulation 7.1.2 is provided within the three months stated in that regulation, then the withdrawal period referred to in subregulation 7.1.1 shall commence.

7.3. The exercise of the rights under this regulation shall be without prejudice to any other rights that the buyer may have under any other law.

7.4 Each contract shall include a clause in the form set out in the Second Schedule to these regulations informing the buyer of his right to withdraw or cancel a contrat under these regulations. Such information shall be included with the text of the contract and shall be written in a bold and prominent print. It shall be the duty of the seller to inform the buyer of such a right. If such informaion is not included in the contract and is not brought to the attention of the buyer by the seller, then the buyer may request that the contract be declared null and void.

Notification of intention to exercise right under regulation 7.

8.1. If the purchaser intends to exercise the rights provided for in regulation 7, he shall, before the expiry of the relevant deadline, notify the person whose name and address appear in the contract for that purpose as required under item (l) in the First Schedule. The deadline shall be deemed to have been met if the notification is in writing is sent by registered mail, and is sent before the deadline expires.

9.1. If the buyer exercises the right to cancel the contract as provided for in subregulation 7.1.2, he shall not be required to defray any costs.

Buyer is not required to defray certain expenses if he exercises right under regulation 7.

10.1. The acceptance by a seller or his agent of any advance payment from a buyer before the end of the period during which the buyer may, under subregulation 7.1, withdraw from a contract, shall be prohibited.

Advanced payments not to be made during period when right under regulation 7 exists.

10.2. A person who contravenes subregulation 10.1. shall be guilty of an offence.

11.1. If the price for the purchase of a real property right or any other right in immovable property relating to its use on a time share basis is fully or partly covered by credit granted by –

Credit agreements to be cancelled without penalty if right under regulation 7 is exercised.

11.1.1. the seller, or

11.1.2. a third party on the basis of an agreement between the third party and the seller,

and the buyer exercises the right to cancel or withdraw from the contract under regulation 7, the credit agreement shall be cancelled without penalty.

12.1. Any clause of a contract whereby a buyer renounces to his rights under these regulations or, whereby a seller is freed from his responsibilities under these regulations, shall not be binding on the buyer.

Contracting out of obligation or denial of rights under regulations not binding.

13.1. Any person who contravenes or fails to comply with these regulations, which failure constitutes an offence, shall be liable on conviction to a fine (*multa*) of not less than one hundred liri but not exceeding one thousand liri, and to a fine (*multa*) of not less than twenty five liri and not exceeding fifty liri for every day during which the offence continues.

Offences and penalties.

13.2. Where an offence under these regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other similar officer of such body or of any person who was purporting to act in any such capacity, that person, as well as such body, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first mentioned offence.

Enforcement.

14.1. An authorised officer, may, for the purpose of obtaining information to enable the Director to perform his functions under these regulations, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, namely:–

14.1.1. enter any premises at which any business or related activity is carried on and inspect the premises or search for and inspect any books, documents or records or other information however so kept relating to the business or activity on those or any other premises;

14.1.2. require any person who carries on such business or activity and any person employed in connection therewith to produce any such book, document or record or other information however so kept which are in that person's possession or require such a person to produce in a visible and legible documentary form any information so related which is contained in a computer, and take copies of it;

14.1.3. inspect and take copies of or extracts from any such books, documents and records;

14.1.4. seize and detain books, documents and records which may be required as evidence in proceedings for an offence under these regulations. In doing so the officer shall inform the person from whom they are seized;

14.1.5. require any such person to give any other information which the officer may reasonably require in regard to such business or activity;

14.1.6. summon, at any reasonable time, any person employed or engaged with the business, to give to the officer any information which the officer may reasonably require in regard to such business or activity and to produce to the officer any records which are in that person's control.

14.2. A person who obstructs or interferes with an authorised officer in the exercise of the officer's functions under these regulations or gives to an authorised officer information which is false or misleading shall be guilty of an offence.

14.3. A person who refuses to comply with any request of an authorised officer in the exercise of the functions under these regulations shall be guilty of an offence.

15.1 If the contract relates to property which is situated in Malta and has been agreed to in Malta, then the contract shall be registered by Maltese Law and any term or condition to the contrary in the contract shall be null and void. Applicability of Maltese Law.

FIRST SCHEDULE

Minimum list of items to be included in the document or contract referred to in regulations 4, 6, 7 and 8:–

(a) The identities and domiciles of the parties, including specific information on the seller's legal status at the time of the conclusion of the contract and the identity and domicile of the owner.

(b) The exact nature of the right that is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the country or countries in which the property or properties concerned relates is or are situated and,

(1) stating whether those conditions have been fulfilled, or

(2) if those conditions have not been fulfilled, stating what conditions remain to be fulfilled.

(c) When the property has been determined, an accurate description of that property and its location.

(d) Where the immovable property is under construction:

(1) the state of completion,

(2) a reasonable estimate of the deadline for completion of the immovable property,

(3) where it concerns a specific immovable property, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities,

(4) the state of completion of the services rendering the immovable property fully operational (gas, electricity, water and telephone connections),

(5) a guarantee regarding completion of the immovable property or a guarantee regarding reimbursement of any payment made if the property is not completed and, where appropriate, the conditions governing the operation of those guarantees.

(e) The services (lighting, water, maintenance, refuse collection) to which the buyer has or will have access, and on what conditions.

(f) The common facilities such as swimming pool, sauna, etc., to which the buyer has or may have access, and where appropriate, on what conditions.

(g) The principles on the basis of which the maintenance of and repairs to the immovable property and its administration and management will be arranged.

(h) The exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the buyer may start to exercise the contractual right.

(i) The price to be paid by the buyer to exercise the contractual obligation; an estimate of the amount to be paid by the buyer for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs).

(j) A clause stating that acquisition will not result in costs, charges or obligations other than those specified in the contract.

(k) Whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, and any costs involved should an exchange and, or resale scheme be organised by the seller or by a third party designated by him in the contract.

(l) Information on the right to cancel or withdraw from the contract and indication of the person to whom any letter of cancellation, or withdrawal, should be sent, specifying also the arrangements under which such letters may be sent; precise indication of the amount and the nature of the costs which the buyer will be required to defray pursuant to regulation 9 if he exercises his right to withdraw; where appropriate, information on the arrangements for the cancellation of the credit agreement linked to the contract in the event of cancellation of the contract or withdrawal from it.

(m) The date and place of each party's signing of the contract.

SECOND SCHEDULE

Clause required to be included in a contract in terms of subregulation 7.4

"You as the buyer have the right to withdraw or cancel such a contract in accordance with The Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations, 2000. These Regulations provide that a buyer may withdraw, without giving any reason, from such a contract within ten days from when the parties sign the contract."