

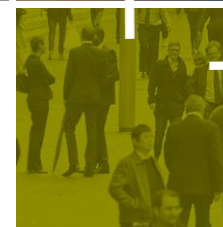
High end look at winding up your resort

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■ Process will depend on the structure of the scheme

- company - where the club company both owns and manages the resort and members own shares or hold memberships in the company
- unit trust - where the trust owns the resort property and members own units in the trust
- title-based scheme - where the members collectively own the resort property as tenants in common and own shares or holds memberships in the club company which usually has a lease over and operates the resort

■ Unit trust

- process and resolutions required will depend on terms of trust deed
- amend trust deed by resolution to remove restrictions on sale of resort (if necessary and if such amendment is possible) and pass resolution to sell the resort (if applicable)
- terminate the trust in accordance with the trust deed (for example, if trust deed provides that members can resolve to terminate the trust by special resolution)
- trustee sells resort and then distributes net proceeds to members

■ Company structure

- members voluntary winding up
 - special resolution of members to wind up the club company
 - appointment of liquidator to sell the resort and distribute proceeds to members
- club company could sell resort and then proceed with members voluntary winding up
 - company constitution generally prohibits or restricts sale of property
 - likely require member approval to sell property and, once sold, further member approval to wind up club company
- scheme of arrangement/takeover
 - purchaser could acquire company rather than resort (where members hold shares)

■ Title-based schemes: process is more difficult

- requires sale of resort (owned by members) and realisation of club company assets (including lease)
- members can approve voluntary winding up of the club
- BUT, unless all members agree (which is unlikely), generally no power of attorney to sell the resort property
- involves making applications to Court seeking various orders for the sale of the resort property

■ Is a complex, time consuming and costly process

- Process will depend on state or territory in which resort is located and provisions of the club company constitution but process will broadly involve the following

- Step 1 – members’ meeting
 - (if required) special resolution to vary the constitution to remove any restriction on members (as co-owners of the resort) from applying to Court seeking orders for the sale of the resort property
 - special resolution to apply to the Court for orders for the appointment of trustees to sell the resort property, to wind up the club company upon sale of the resort and other orders
 - ordinary resolutions to approve nominated members to act as applicants in the Court application, to offer the resort for sale, to terminate, surrender or transfer the lease, and to apply sinking and/or refurbishment fund towards cost of winding up
 - each resolution should be conditional upon all other resolutions being passed (other than resolution to apply sinking and/or refurbishment fund to meet costs)

■ Step 2 – Court application

- application by the nominated members seeking orders to appoint statutory trustees for the sale of the resort
- application to serve the application to appoint trustees on the club's members by alternate means (such as by post and advertising) rather than personal service
- process involves reconciliation of member register with title records for resort

■ Step 3 – serve Court application for appointment of trustees on owners in accordance with Court order

■ Step 4 – Court appoint trustees for the sale of the resort

■ Step 5 – Apply to titles office to vest resort in name of trustees

- may also require club company to attempt to obtain title certificates from members for lodgment with titles office along with application to dispense with production of titles

■ Step 6 – Sale of resort

- the resort is sold by the trustees
- club company may also sell assets to same purchaser or other party
- club company may transfer lease to purchaser or surrender/terminate lease
- other material contracts to be terminated
- net resort sale proceeds to be distributed to members, based on their tenant-in-common interests

■ Step 7 – Apply for garnishee order (if desired)

- club company apply to Court for garnishee order to direct trustees to pay net sale proceeds attributable to defaulting members to the company to cover unpaid levies

■ Step 8 – Winding up of club company

- apply to Court for order to wind up the company and appoint liquidator (application can be made at same time as step 7)
- liquidator realises remaining assets, pay liabilities and distributes net proceeds to members

■ Step 9 – Discharge of trustees

- apply to Court for order to discharge trustees from their appointment

■ Step 10 – payment of unclaimed monies to Court

- any unclaimed funds from the distribution of resort sale proceeds to tenant-in-common owners are paid into Court

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