

# ARDA 2010 CONVENTION & EXPOSITION

## SURVIVAL GUIDE FOR TIMESHARE DEVELOPERS AND LENDERS

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### Case Study Facts

1. Sunshine Development Company, LLC (“Sunshine”), is an Orlando, Florida, based independent (i.e. non-branded) timeshare developer, the sole member of which is Jack Bentley (“Bentley”). Bentley has no previous timeshare development experience but has developed various hotel, commercial, and retail projects around the country, many of which are now performing poorly in light of the overall state of the economy.

2. Sunshine’s only timeshare project, Sunshine Gardens Condominium (the “Project”), located in Orlando, Florida, is planned to include three (3) phases of condominium units. The construction of mid-rise buildings containing the first 50 units (“Phase 1”) has already been 100% completed, and the corresponding deeded timeshare interests are approximately 70% sold out. Construction of the Project’s next phase (“Phase 2”), which will contain another 50 units, is approximately 30% completed, and sales of timeshare interests in Phase 2 have recently begun. Finally, Sunshine contemplates that Phase 3, to be constructed on what is now vacant, unimproved land (the “Phase 3 Land”), will eventually include the last 50 units for which the Project is zoned.

3. Sunshine is essentially a shell entity, the sole assets of which consist of its interest in the Project as well as 100% ownership of Manager (as defined below). Bentley has invested \$10 million of equity into the Project.

4. Timeshare marketing expenses from the Project's inception have ranged between 50 and 55% of gross sales.

5. Sunshine Management Company (“Manager”), wholly-owned by Sunshine, has entered into a management agreement with Sunshine Gardens Condominium Association, Inc. (the “Association”) to manage the Project (the “Management Agreement”). Under applicable Florida law and the Project’s condominium documents, Sunshine still has the right to appoint a majority of the Association's directors.

6. Holiday Federal Bank, an FDIC-regulated bank (“Holiday”), is Sunshine's construction/inventory lender. It holds a first mortgage on all unsold timeshare interests in Phase 1 and receives a partial release fee at the time of each closing, pursuant to the provisions of such mortgage and the related industry-standard construction loan agree-

ment (the "Construction Loan Agreement"). Holiday is currently disbursing draws in connection with the construction of the Phase 2 units and has formally committed to finance the construction of the Phase 3 units upon the satisfaction of the stipulated Phase 2 presale requirement. As additional collateral for its construction/inventory loan, Sunshine has made or caused various collateral assignments to be made to Holiday, including but not limited to a collateral assignment of (a) the Management Agreement; (b) Sunshine's construction contract with its general contractor; and (c) Sunshine's "declarant's rights" under the Project's condominium documents. Holiday's mortgage also encumbers the land upon which the units in Phase 2 are currently being constructed as well as the Phase 3 Land.

7. Holiday has numerous other construction loans outstanding to timeshare and condominium developers throughout the U.S. and is under tremendous pressure, both internally and from the FDIC, to reduce its exposure to losses related to such construction loan portfolio.

8. Because of much slower than expected sales, Sunshine has informed Holiday that its construction/inventory loan will not be paid off at maturity, which will occur within the next 120 days. Furthermore, because of prevailing market conditions, Sunshine has no realistic prospects of refinancing Holiday's construction/inventory loan in the foreseeable future.

9. Until recently, Sunshine has had sufficient funds to make monthly interest only payments to Holiday. However, Sunshine is now experiencing serious cash flow problems and is unlikely to be in a position to continue making such monthly interest payments. Holiday suspects that Sunshine might be siphoning off funds from the Project to meet certain unrelated financial obligations that Bentley has incurred.

10. Sunshine has considered selling the Phase 3 Land in order to generate needed cash. However, its value is virtually impossible to determine, and the only offers that Sunshine has received for the Phase 3 Land are well below any partial release amount that Holiday has indicated it would be willing to accept.

11. Sunshine hypothecates all purchase money receivables generated from its sale of timeshare interests in the Project to Timeshare Finance, Inc. ("TFI"), an unregulated non-bank lender, pursuant to an industry-standard receivables loan agreement (the "Receivables Loan Agreement"). That document provides, among other things, that TFI will advance 85% of the principal balance of all "Eligible Receivables" that satisfy TFI's underwriting criteria, including a minimum FICO score of 600, a minimum down payment and interest rate, a maximum term, the completion of construction of the applicable unit, etc. All consumer principal and interest payments are paid into a lockbox account maintained by a bank. TFI's sole collateral is a first priority security interest in the subject timeshare receivables, although Sunshine is obligated to replace all receivables that are more than 90 days' contractually past due.

12. The delinquency rate on Sunshine's receivables portfolio has increased dramatically over the course of the past 12 – 18 months. Nevertheless, Sunshine believes that TFI is significantly overcollateralized.

13. Many timeshare owners are also delinquent in their assessment obligations to the Association. Sunshine has contractually agreed to subsidize the Association's operating and reserve shortfalls.

14. Sunshine has been and remains in breach of various non-payment affirmative and negative covenants under both the Construction Loan Agreement and the Receivables Loan Agreement. For example, it has violated its net worth requirement and failed to satisfy all of its periodic reporting requirements to its lenders. Also, the Project has been downgraded by the exchange company with which it is affiliated.

15. While Bentley has executed a completion guaranty with respect to Holiday's construction loan and a full payment guaranty with respect to TFI's receivables loan, Bentley has informed both lenders that due to the horrible state of the real estate economy in general, he has no realistic ability to satisfy his guarantee obligations to either lender. In fact, if sued on one or both guarantees, he will likely file for personal bankruptcy.

16. Even though the Project is only several years old, substantial construction-related defects have already been discovered, including but not limited to roof and mildew problems. Sunshine has threatened to sue the general contractor which, in turn, has threatened to sue Sunshine for withholding various payments to which it claims it and various sub-contractors are entitled. Various mechanic's and materialman's liens have been recorded against the Project.

17. Sunshine is considering various ways in which to stimulate timeshare sales, including lower purchase prices, better financing terms, etc. It is also considering ways in which to reduce marketing and other costs, including employee layoffs. In the meantime, it has requested various concessions from Holiday, including an extension of the maturity date of Holiday's construction/inventory loan, the funding of an interest reserve, etc. Sunshine has informed Holiday that without such concessions, it will likely have no choice but to place Sunshine into bankruptcy.

18. Rumors concerning Sunshine's precarious financial condition have been spreading. In particular, TFI is very concerned about the impact on its receivables collateral if timeshare sales are suspended, regulatory problems occur, Sunshine defaults on its construction loan to Holiday, etc. It is considering declaring a technical default under the Receivables Loan Agreement and suspending future funding against timeshare receivables pledged by Sunshine.

19. Communications between Bentley and his lenders have deteriorated significantly lately, particularly since none of the parties is able to identify any perfect solution to the challenges confronted. In a last ditch effort to avoid tremendous uncertainty and legal chaos, a meeting has been scheduled for March 17, 2010, in Las Vegas. Bentley, representatives of Holiday and TFI, their respective attorneys, and an independent consultant have been invited to attend.