

Understanding

Time shares, fractional ownerships and Sectional Titles



Think of a holiday home open to more than just single ownership. The law now makes it possible for such a property to be enjoyed in different ways. One person may hold rights to occupy it during certain periods, another may join with others to share both the benefits and responsibilities of keeping it, while yet another may opt for a more defined stake in the house itself, separate from the common areas.

Imagine a house nestled in a prime holiday destination, purposefully constructed as a holiday home. At this stage, the ownership structure of such a property is flexible enough to accommodate different types of interests.

A person may opt for a **timeshare**, acquiring the right to occupy and use the house during specific periods of the year.

Alternatively, one may pursue **fractional ownership**, where several individuals pool resources to jointly own the property and share usage rights proportionally.

Yet another option lies backed by law in **sectional title registration**, which allows distinct legal ownership of the unit separate from the common areas giving the owner full proprietary rights recognized under the land registration system.

In Kenya, timeshare and fractional ownership arrangements do not have a statute of their own.

Their legal validity rests on the law of contract, since what the parties essentially create are binding agreements that allocate rights of use, enjoyment, and sometimes income among themselves.

By contrast, sectional ownership is expressly recognized under the Sectional Properties Act, 2020, which provides a statutory framework for dividing buildings into units that can each be separately owned and registered, while common areas are jointly managed.

Unlike timeshares and fractional schemes, which rely on private agreements, sectional ownership carries the certainty of legislation: rights are defined by statute, titles are registrable, and governance is prescribed by law. In this legal update, we will address the position of timeshares and fractional ownership.



• **Timeshares**

A timeshare is essentially an investment in lifestyle. It is a system where several people share rights to use a property, typically a holiday home or resort unit, for specific periods each year.

Instead of one person bearing the full cost of purchase and upkeep, the property is divided into time slots for example one or two months per year, that each buyer or subscriber is entitled to occupy.

As stated earlier, in Kenya, there is no statute regulating timeshares, so the arrangement is created through contract law. This means that the rights of the parties exist because of their agreement, not because the law automatically provides them.

The property itself remains legally owned by the developer, the management company, or sometimes a trustee. Each participant holds a contractual right of use, which can be personal (non-transferable) or, in some cases, the rights transferable to heirs or third parties if the contract permits.

• **Key Terms of a Timeshare Agreement**

Because timeshares rely on contract law, the agreement is the backbone. Typical provisions include:

- **Allocation of Time**– Specifies the period when each member can occupy the property (e.g., Week 12 of every year).
- **Duration of Agreement**– Timeshares may run for a fixed term (10–30 years) or in perpetuity, depending on the contract.
- **Maintenance Obligations**– Sets out who manages the property and how owners contribute to upkeep, repairs, utilities, and staff salaries. Usually, annual service charges are levied.
- **Usage Rights**: Clarifies whether the right is exclusive (sole use during the allotted time) or non-exclusive (shared with others).

- **Transferability**– States whether the rights can be sold, gifted, or inherited.
- **Exchange Programs**– Some agreements allow members to swap their time for equivalent time in another property managed by the same developer or affiliated schemes. This however is not a common practice due to its feasibility.
- **Termination and Default**– Provides conditions under which a party may lose rights (e.g., non-payment of maintenance fees) and how disputes are to be resolved (arbitration, mediation, or litigation).

Advantages of Timeshares

- Affordability.
- Guaranteed Access.
- Reduced Maintenance Burden.
- Flexibility.

Disadvantages of Timeshares

- **Lack of Real Property Ownership**.
- **Rigidity in use**: Owners are locked into specific time slots, which may not always match their schedule.
- **High maintenance fees**.
- **Dependence on management**: The value and enjoyment depend heavily on how well the property is managed. Poor management can reduce the benefit significantly.
- **Legal uncertainty in Kenya**: Since there is no dedicated legislation, enforcement depends on the strength of the contract. This can create uncertainty if disputes arise, especially in inheritance or insolvency contexts.



• Fractional ownership

Fractional ownership is when two or more people pool resources to buy a property and each holds a share in it. Unlike timeshares, this gives them a real ownership interest, either directly on the land title (as tenants in common) or indirectly through a company or trust that owns the property.

The parties sign a co-ownership agreement (or shareholders' agreement if through a company), setting out each owner's share, usage rights, cost-sharing, exit options, and dispute resolution. The ownership shares are either registered on the title or held via shares in a holding entity.

Advantages

- Grants real ownership, not just use rights.
- Makes high-value property affordable by sharing costs.
- Shares can be transferred, sold, or inherited.
- Responsibilities for maintenance and taxes are distributed.

Disadvantages

- Requires cooperation; disputes among co-owners are common.
- Selling a fractional share can be difficult.
- Risk of forced sale if co-owners cannot agree.
- Still lacks a dedicated legal framework in Kenya, relying on contracts and general property law.