



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation DIVISION OF BANKS

1000 Washington Street, 10TH Floor, Boston, MA 02118-6400
(617) 956-1500 · Fax (617) 956-1599 · TDD (617) 956-1577
www.Mass.Gov/DOB

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

EDWARD A. PALLESCHI
UNDERSECRETARY

MARY L. GALLAGHER
COMMISSIONER

June 22, 2022

David G. Thomas, Esq.
Greenberg Traurig, LLP
One International Place, Suite 2000
Boston, MA 02110

Dear Mr. Thomas:

This letter is in response to your June 21, 2021 correspondence to the Division of Banks (Division) on behalf of Holiday Inn Club Vacations Incorporated ("HICV") and Wilson Resort Finance, LLC ("WRF"), requesting an opinion as to the licensing requirements of Massachusetts General Laws Chapter 93, § 24A and Chapter 140, § 96 with respect to certain aspects of HICV's and WRF's business operations in Massachusetts.

As noted in your correspondence, HICV owns and operates 28 resorts and 8,018 villas in the United States, including the Oak N' Spruce Resort located in Lee, Massachusetts.¹ In 2016, HICV became the owner of the Oak N' Spruce Resort when HICV acquired Silverleaf Resorts, Inc. ("Silverleaf"). Silverleaf previously sold, and HICV currently sells, what HICV refers to as "vacation ownership," which is more commonly referred to as a "timeshare." When buying a timeshare, a purchaser may either pay the entire purchase price or pay a portion of the price and finance the remainder. Historically, Silverleaf offered direct financing to purchasers through Silverleaf as the seller. Currently, HICV, the seller, offers direct financing through its wholly-owned subsidiary, WRF. The purchase of a timeshare is accomplished through execution of a contract, which includes execution of a promissory note and mortgage if part of the purchase price is financed.² HICV's Purchase Agreement refers to a partially financed transaction as a "credit sale" or "purchase-money financed purchase." Neither HICV nor WRF makes any loan of money that is independent of the purchase. When a buyer purchases a timeshare from HICV, WRF is identified as the "Lender" on the promissory note and is the entity advancing the funds to the borrower for the purchase. Your correspondence highlights the fact that in HICV's Purchase Agreement, if a purchaser wants to finance a portion of the price, but does not qualify for the extension of credit, the purchaser must pay cash for the entire purchase price or rescind the transaction.

¹ HICV's prior legal name was Orange Lake Country Club, Inc. On August 16, 2019, it changed its name to Holiday Inn Club Vacations Incorporated and submitted the appropriate filing to the Massachusetts Secretary of State on September 12, 2019.

² Your submission included a copy of Silverleaf's contract for sale, note, and mortgage, as well as a copy of the current HICV Purchase Agreement, note, and mortgage. The HICV Purchase Agreement submitted utilizes HICV's prior name, Orange Lake Country Club, Inc. Nothing in your correspondence suggests that the Purchase Agreements utilized by HICV under its current name differ in any material respect from the Purchase Agreement submitted with your opinion request and utilized by HICV while operating under its prior name, Orange Lake Country Club.

Your correspondence also provides information related to HICV's activities after consumers have obtained financing from WRF for their timeshare purchases. Your letter notes that HICV's activities related to collecting payments from buyers who obtained financing for the purchase of their timeshare are relatively minimal. You note that the resources devoted to these activities and the revenue derived from these activities represent only a small percentage of HICV's overall business. By way of example, for fiscal years 2019 and 2020, only 2.1% and 1.6%, respectively, of HICV business or resources were devoted to the category of "Owner Services." Notably, the "Owner Services" category includes not only activities associated with collecting payments from owners, but also includes resources devoted to payroll, building occupancy, technology, communication, and other fixed resources. In addition, your correspondence notes that HICV derived only 3.8% and 7.5% of its total revenue in 2019 and 2020, respectively, from Owner Services.³ With respect to the Owner Services category for revenue, this category includes revenue derived from portfolio servicing fees, resort ownership administration fees, and collection fees. Furthermore, HICV's expenses relating to Owner Services represented only 3.7% and 3.2% of HICV's total business expenses for 2019 and 2020, respectively.

Applicability of the Massachusetts Third Party Loan Servicer Statute

Massachusetts General Laws chapter 93, sections 24 through 28 governs the registration and supervision of third party loan servicers. Pursuant to M.G.L. c. 93, § 24, a third party loan servicer is defined as a person who uses an instrumentality of interstate commerce or the mails in any business the "principal purpose" of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another."⁴ Further, M.G.L. c. 93, § 24 defines "servicing" as:

receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

As noted in your correspondence, HICV handles the collection and processing of payments owed from timeshare purchasers to WRF, the lender under the promissory note. Based upon the respective percentages of revenue, expenses, and resources that HICV attributes to its servicing-related activities, it is your position that HICV is not a third party loan servicer within the meaning of the statute because its "principal purpose" is not servicing. The Division has not had occasion to interpret the statutory language providing that an entity need only obtain a third party loan servicer registration if the entity's "principal purpose" is servicing (whether directly or indirectly) loans owed or due, or asserted to be

³ Your correspondence represents that the increased revenue percentage for 2020 is a result of decreased sales due to the COVID-19 pandemic.

⁴ The statutory language of M.G.L. c. 93, § 24 contains a typographical error. As written, it states:

"Third party loan servicer", a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

The Division's regulation, 209 CMR 18.02, corrects this typographical error in the definition of "third party loan servicer" and states:

Third party loan servicer means a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

owed or due, to another. The Division recognizes that the statutory language does not create a clear standard. Analysis of this issue necessarily requires a case-by-case fact specific review. Nevertheless, it is not necessary for the Division to make a determination on this issue with respect to HICV, as it has concluded that HICV is not engaged in the servicing of loans due to “another,” as discussed more fully below.

As noted, HICV’s servicing-relating activities occur solely for its wholly-owned subsidiary, WRF. As part of your inquiry, the Division has considered what it means to be a “third party” servicing loans due to “another” under the statute in the specific context of parent-subsidary relationships. As presented in your letter, the entity to whom the payments are owed is the wholly-owned subsidiary of the entity conducting the servicing-related activity. In such circumstances, it is the position of the Division that the servicing activities are not being conducted for “another” within the meaning of the law. This is consistent with an important purpose behind third party loan servicing and debt collector regulation in Massachusetts; specifically, true third parties who are servicing or collecting for other entities have no relationship to the consumer outside of the servicing or debt collection, and as such, no incentive to maintain the good will of the original creditor when collecting or servicing accounts.⁵ Unlike a more traditional arrangement where the servicer is a third party servicing an account on behalf of an unaffiliated creditor, HICV is in fact the seller of the timeshare and maintains the brand name associated with the timeshare program. Under these circumstances, HICV has a notable incentive to maintain goodwill with the consumer in its limited servicing activities, thereby ensuring its reputation is not tarnished and that it may continue to successfully market and sell its timeshares to consumers and offer financing for those purchases through WRF. Based upon all of these facts, it is the position of the Division that HICV is not a third party loan servicer acting for “another” and as such, is not required to register as a third party loan servicer.

Accordingly, based upon the facts as presented in your correspondence, the Division concludes that HICV is not required to register as a third party loan servicer.

Applicability of the Massachusetts Small Loan Law

Massachusetts General Laws chapter 140, section 96 provides, in part, that no person shall, directly or indirectly, engage in the business of making loans of \$6,000 or less, if the amount to be paid for interest and expenses exceed in the aggregate an amount equivalent to 12% per year without first obtaining a small loan company license in Massachusetts.⁶

⁵ Both third party loan servicing and debt collection are governed by M.G.L. c. 93, §§ 24 – 28 *et seq.* While separate license and registration requirements, the two regimes were incorporated into M.G.L. c. 93 together by the Massachusetts legislature in 2003 and reflected an intent to provide comprehensive regulation not only for debt collection (modeled after the federal Fair Debt Collection Practices Act), but also for third party loan servicing activity. According to the legislative history of the federal FDCPA, on which the Massachusetts debt collection statute is modeled, Congress did not intend for the FDCPA to apply to creditors such as banks and other consumer lenders. Specifically, unlike debt collectors, these institutions have a “desire to protect their good will when collecting past due accounts,” which acts as an intrinsic restraint against abusive behavior. S. Rep. No. 95-382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696.

⁶ Massachusetts General Laws c. 140, § 6 states, in pertinent part:

The buying or endorsing of notes or the furnishing of guarantee or security for compensation shall be considered to be engaging in the business of making small loans within said sections, but the foregoing provisions of this sentence shall not apply in the case of any transaction which involves

David G. Thomas, Esq.

June 22, 2022

Page 4

In considering the inquiry posed by your correspondence, the Division has considered the threshold circumstance that the request relates solely to the sale and financing of timeshares, as governed by M.G.L. c. 183B, the Massachusetts Real-Estate Time Share Act (Act). The Act became law in 1987 and is a comprehensive statutory scheme creating and governing all aspects of timeshares. Indeed, M.G.L. c. 183B, § 10 provides that the chapter is “intended as a unified coverage of its subject matter.” The Act provides the specific requirements for establishment of the timeshare, advertising and communications with purchasers, offering statements, voting, and timeshare service providers, among others. Notably, the Act also contains a specific requirement that those engaged in timeshare sales be licensed as real estate brokers. *See* M.G.L. c. 183B, § 55. The Division has considered this comprehensive statutory scheme and the unique nature of timeshares. These considerations, coupled with the specific facts as described in your correspondence relating to the corporate relationship between HICV and WRF and the terms of the timeshare agreements, lead the Division to conclude that the activities of WRF and HICV are not encompassed by the small loan law.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from those stated above may result in a different position statement by the Division.

Sincerely,

Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

O21006

any note or other instrument evidencing the indebtedness of a buyer to the seller of goods, services or insurance for a part or all of the purchase price; provided, however, that any advance of money by such seller or, by a person acting on his behalf for the purpose of paying an existing indebtedness of such buyer or for any other purpose shall constitute a loan of money subject to the provisions of this section.

Your correspondence notes that WRF is not currently entering into any transactions that meet the criteria of a small loan.