



Office of the City Attorney
Heather L. Stroud

VIA EMAIL

July 12, 2021

Patrick Abell
Senior Counsel, Real Estate, Pacaso
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NOTICE TO CEASE AND DESIST

Dear Mr. Abell:

Thank you for acknowledging the Courtesy Notice of Zoning Regulations Restricting Time Share Use sent to Pacaso on May 14, 2021. I received your email dated May 20, 2021 which asserts that Pacaso is not subject to the City of South Lake Tahoe's time share regulations. I have reviewed your assertions and disagree that Pacaso is not advertising, selling, and operating time shares as defined in the South Lake Tahoe City Code. Section 6.60.020 of the South Lake Tahoe City Code broadly defines "time-share" as "the right to use and occupy a unit on a periodic basis in any manner which under the laws of the state of California constitutes a time-share arrangement or estate." Under California law, a "time-share plan" is similarly broadly defined to mean "any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, received ownership rights in or the right to use accommodations for period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years." Bus. & Prof. Code §11212(z).

You attempt to distinguish Pacaso from a time share by stating that "Pacaso sells ownership interests in real estate." However, under the definition above, a "sale" or "deed" resulting in "ownership rights in or the right to use accommodations for a period of time less than a full year during any given year . . ." is a "time-share plan." You also note that time-share plans of 10 or fewer units are not subject to the Vacation Ownership and Time-Share Act of 2004, citing Business & Professions Code section 11211.5(b)(1). This does not mean that time-share plans of 8 units (like Pacaso's) are not time-share plans, just that they are not regulated by the state under this statute. The Vacation Ownership and Time-Share Act of 2004 includes a savings clause that expressly preserves the authority of local jurisdictions to regulate time shares through "zoning, subdivision, or building code or other real estate use law, ordinance, or regulation." Bus. & Prof. Code § 11280(b).

The City's zoning ordinance includes time share regulations that expressly prohibit conversion of residential structures to a time share use irrespective of the number of units. South Lake Tahoe City Code §6.60.040(B)(2). This provision was added in 2006, as the City Council found that "there is a

critical shortage of affordable housing” and “the conversion of residential property within the city to vacation time-sharing projects eliminates residential property otherwise available for rental in the city.” South Lake Tahoe City Council Ord. No. 966. The City Council further found that “vacation time-sharing projects have the character of a commercial use due to the multiple occupancy of such projects by those participating in time-sharing projects” and “such commercial or quasi-commercial use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods.” *Id.* This provision broadened a 1987 prohibition on converting multi-family housing to time shares to include all residential dwellings.

Information from Pacaso’s website, downloaded on April 27, 2021, indicates that Pacaso is advertising properties for sale of 1/8 fractional ownership, with the ability to have exclusive use of the property for 1/8 of each year, or 44 days split into non-consecutive short-term stays of between 2 and 14 days. Since property usage is allocated based on time, this type of commercially managed co-ownership falls within the broad definition of “time-share” under the City Code. This type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are prohibited in residentially zoned areas in South Lake Tahoe following the passage of a citizens initiative in November 2018 (Measure T), and will be completely phased out of residential areas by the end of 2021.

In continuing to monitor the issue since sending the Courtesy Notice, I found three properties within the City of South Lake Tahoe on July 2 continuing to be advertised on Pacaso’s website for sale of 1/8 fractional ownerships (3914 Saddle Rd., 1325 Wildwood Ave., and 783 Michael Dr. (with a note of “1 share left”). While the City is unaware of any Pacaso properties in operation as a time share use to date, we are concerned that potential buyers of fractional ownerships are not familiar with the City’s time share regulations and Pacaso’s advertising is misleading buyers whose use will be in violation of the South Lake Tahoe City Code from day one. Pacaso’s continued solicitation and offering to sell illegal time shares is also a violation of South Lake Tahoe City Code. §§6.60.020(B), (D), (G); 6.60.040(B)(2); 6.60.070.

The City respectfully requests that Pacaso cease and desist all advertising and sale of fractional ownership of residential properties within the City of South Lake Tahoe. **Failure to comply with this request within 30 days (by August 11, 2021), may result in enforcement** including issuance of administrative citations under South Lake Tahoe City Code chapter 2.35. Further, any violation of the time share regulations in Chapter 6.60 is a misdemeanor and a public nuisance which may be enjoined in any court of competent jurisdiction under South Lake Tahoe City Code §6.60.080. Please note that there is also a private right of action for any person who has suffered damage as a result of a violation of the time share regulations under South Lake Tahoe City Code §6.60.090. I appreciate your prompt attention to this matter. Please feel free to contact me with any questions.

Respectfully,



Heather L. Stroud
City Attorney

cc: Joseph Irvin, City Manager
David Willbrand, Chief Legal Officer, Pacaso
Ellen Haberle, Director, Government & Community Relations, Pacaso