

Perspective's ALIST

An interview with Robert J. Webb, RRP



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If you've spent any time at ARDA events, you probably have seen Rob Webb. And, chances are, you've seen him smiling. That's for two reasons: (a) he is genuinely friendly, and (b) he loves what he does.

Orlando-based Webb is a partner at Baker Hostetler, one of America's largest law firms, where Webb maintains a diverse real estate, business, and hospitality law practice with a strong emphasis on resort development, timeshares, fractionals, hotels, condominium hotels, second homes, cruise ship and residence vessel programs, and the growing national travel and leisure industry.

Webb is the senior member and was the founding leader of the Baker Hostetler Hospitality Industry Team. He has practiced in virtually all aspects of the international resort and leisure industry over the past 30 years, and was instrumental in the creation, design, and development of many of today's leading multisite timeshare plans, including the Disney Vacation Club, the Hilton Grand

Vacations Club, the Hyatt Vacation Club, the Allegro Vacation Club, Club Navigo, and the Four Seasons Residence Club.

Rob has participated in the drafting and adoption of every Florida statutory amendment and administrative rule affecting the timeshare industry since 1983, including the lock-out law, the timeshare solicitor and owner referral laws, the timeshare resale broker law, the vacation club law, Florida's streamlined timeshare foreclosure law, and the personal property timeshare amendments of 2003.

Rob has been active in the American Resort Development Association (ARDA), the national timeshare trade association, since 1981. He currently serves as Treasurer of ARDA, as a member of the ARDA Board of Directors and its Executive Committee, as a board member of the ARDA International Foundation, as an ARDA Trustee, as Chair of the ARDA Legislative Council, and as counsel to ARDA-Florida.

Are you a native Floridian?

No, I was born in Tehran. My father was career military – he had sort of a quasi-political position and had a lot of political postings. One of them was in Tehran after the Shah overthrew his father.

When did you move to Florida?

We moved to Florida, for the first time in 1965, and then back in 1971, six months before Disney opened – and I've been here ever since. That's a long time, and so you can imagine all the changes I've seen.

You've seen it all, I guess!

Well every time I think that, something else happens! But I've seen a lot of it.

Today you're a partner with Baker Hostetler. When did you join the firm and what did you do before?

I started at a small firm in Orlando called DeWolf, Ward & Morris. My mentor there, Max Morris, had one of the early timeshare practices, and we represented Kemmons Wilson when he did Orange Lake Country Club in 1981, Deb Linden at Island One in 1983, and Marriott in 1984 when they bought

American Resorts and got into the business. We came to Baker Hostetler in December of 1988, and except for my year off at Island One, I have been here ever since.

You said "we" came to Baker Hostetler?

Max Morris; Brian Lower, who is now executive vice president at Orange Lake; and I – as well as a law clerk named Andy Marcus, who is now chief legal officer and COO for Tempus Resorts.

One of the great joys of my life and my practice is that I have had a number of protégés over the years who continue to make me very proud. Brian and Andy are certainly two of the major ones.

How much of what you do is involved with shared ownership in one way or another?

I'm a board-certified real estate lawyer and I

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would say I have a fairly broad commercial real estate practice. At the height of shared ownership it was probably 75% of my business; right now, shared ownership is probably 35%. A lot of that has to do with the fact that there isn't a whole lot of new stuff going on in the industry – we continue to represent existing clients, and I'm doing some new things and trying to stay on the curve of what's happening next. I'm certainly looking forward to the volume picking up again, and when I'll be doing more transactions and less litigation and bankruptcy work.

With all the shared-ownership legislation you've been involved in creating, what's the most meaningful or had the most impact? That's an interesting question. Understand, there are a lot of people involved in any legislation that gets done around the country – no one person can take credit for it. But I'd probably suggest two or three things. One piece of legislation I had a disproportionately large amount of involvement in, simply because it arose out of two of the timeshare resorts that I was representing at the time, is Florida's lock-out rule. It doesn't sound like a big deal – it's a law that allows timeshare HOAs to deny

state regulators had the right to review it and accept it, and they refused to accept it; in essence they said, that while the law doesn't say you can't do it, it doesn't say you can. We appealed their denial of the bylaws to two different appellate courts and while both courts agreed with us that it was

of legislation at the state level would be California's timeshare law that we got adopted in 2004. California had very repressive subdivision-based policies that they aggressively used to the detriment of the timeshare industry. California regulators didn't really think much of the timeshare

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an important remedy, they also agreed with the state that this kind of remedy would need to be authorized by the legislature. And so the following year, ARDA-Florida went to the legislature and got it adopted. It's not flashy, sexy legislation – but it has a provided a means for so many timeshare HOAs to recover unpaid assessments, which not only allows people to lock out

industry – and they had some good cause to feel that way, but as the industry changed, their viewpoint by and large did not. My partner at the time, Dave Sampson, was the drafter of the legislation; he and I worked very hard on that for ARDA-California, along with other members of the legislative committee – that really was people working together.

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access to the unit to a delinquent owner. In most cases that's difficult to do because the owner has the deed, and unless you actually foreclosed the lien and taken their timeshare away from them, in many states it's very difficult to deny them use because they're delinquent. I pioneered that particular piece of legislation after having amended a couple of my clients' bylaws to provide for it, because my theory was the law didn't say you couldn't do it. But the Florida

delinquent owners, it also allows the HOA to rent their timeshare interest for them and apply the net proceeds to what they owe. So it's fairly comprehensive, and without it, particularly in these economic times, there would be a whole lot of Florida timeshare HOAs that would already be in bankruptcy. It's one of the most important collection tools they have.

Another one of the most important pieces

At the federal level, I drafted the amendment to the Internal Revenue Code that we got Congress to adopt in 1997, exempting timeshare association reserves and excess revenues for the most part from federal income taxation – that's a little bit of an overstatement, but I think for purposes of trying to describe the legislation it's accurate. ARDA members had been threatened with audit by the Jacksonville, Florida district of the Internal Revenue Service, and the IRS held the position that timeshare associations were different than condominium associations or neighborhood associations who really have a limited role of mostly maintenance and repair and operation – they felt that timeshare associations were involved in all sorts of little businesses and making all kinds

of profits that should be taxed. The IRS wouldn't negotiate with us, and so ARDA national went to Congress and I wrote the amendment to the Internal Revenue Code – again, with a lot of oversight; I'm not a tax lawyer! But we got it adopted and it survived a line-item veto from President Clinton. That was extremely meaningful because, again, if you start taxing reserves and taxing excess revenues it would have an enormously detrimental effect on our business.

Those are the three big ones. Also, last year in Florida we got an exemption from Florida sales tax for all timeshare exchanges – which had been a sword hanging over our necks for 25 years. We had really been afraid; we solved it in other states, but we'd never been able to address it in Florida, and then we had a three- or four-year period that the Florida Department of Revenue focused on it, and they told the legislature they thought it should be taxable, and that forced our hand. We had to try and do something because if you apply Florida sales tax to each side of a timeshare exchange, by our calculation applying the fair-market rental value of a week of timeshare as the tax base, it would have added about \$160 to each side of a Florida timeshare exchange and that would have had an tremendously negative effect on our business as well.

It seems a lot of what you do is fight against municipalities and states that seek to draw revenue from timeshare because their constituents aren't necessarily the timeshare owners.

I think that's very insightful. As Howard Nusbaum, ARDA's CEO, likes to say, their attitude is "Tax the tourist, not the voter." But the reality is that many of their constituents do own timeshare. One of the most effective things that we do as ARDA is Jason Gamel – vice president of state affairs for ARDA, our lead state lobbyist,

and a former Baker lawyer who also is a protégé – spending time with legislators or council members to make them understand just how many of their constituents own timeshare. This isn't just about taxing the non-resident, non-voting tourist. And that's

an employer the industry is and the fact that while, yes, most timeshare users are tourists, you should welcome us, local government, because we don't use your schools, thank God we don't use your hospitals very often, and we're paying taxes to support your local

We already pay more than our fair share of tax. We pay very high property taxes in most states because we get taxed in many cases on more than just the bricks and mortar – the value of property – and we pay sales and use taxes, and transient occupancy taxes when we rent timeshares.

a very big part of our revenue-protection strategy, if you will, because every state is trying to get more revenue and they look at a luxury product like timeshare and say it's ripe for taxation. We say, you're not just taxing the tourist, you're also taxing your constituents – but it isn't even that. We already pay more than our fair share of tax. We pay very high property taxes in most states because we get taxed in many cases on more than just the bricks and mortar – the value of property – and we pay sales and use taxes, and transient occupancy taxes when we rent timeshares. We pay state income taxes as developers, employment taxes and workman's comp, and just about everything else you can think of. So, ARDA does financial impact studies that show states and municipalities how much they got from timeshare over the past few years through all these different taxes. And when you combine that with how big of

infrastructures – so instead of overtaxing us, you really should encourage us.

It's a very, very powerful and effective message.

Switching gears, let's talk about your year with Island One in 2000. Why did you do that, and why did you go back?

Deb Linden, who is like a sister to me – I like to tell people she's my oldest client – is a beautiful woman and a very capable and tough CEO, I believe the only female CEO of a major timeshare developer (I hope I'm not insulting anybody by forgetting someone). Deb came to me in the last quarter of 1999 – I knew she was raising equity to really grow her company – and she said she needed somebody like me. I'd been practicing for 20 years at the time and had been her lawyer for most of that

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time and knew her company very well. Deb told me she could really use my help in house, and told her I wasn't going to be a general counsel, but I sort of half-kiddingly said I might do it if I became president of Island One. And she said she'd be willing to do that. So I sadly said goodbye to Baker Hostetler, but I was moving on to a new phase in my career and I was going to put my money where my mouth was.

Within 30 days after I started, Island One had a licensing arrangement with Carlson Company to use the Radisson Vacation Villas brand for a new project. We made a deal with Ron Jon Resorts in Cocoa Beach to put the Ron Jon brand on our existing product that we couldn't put a Radisson brand on. I was deep into talks with two different developers to acquire them. It was all so exciting.

And then I learned the meaning of business risk when two bankruptcies happened within 30 days of each other and suddenly

I had given away my practice and walked away from one of the most exciting law practices in the country. I'm glad I did it, make no mistake. But lawyers are notoriously risk-averse and suddenly I realized exactly how far I had moved outside that safe little cocoon that lawyers almost by definition tend to practice in.

of Play-Dough together and unfortunately it came apart early in my term as president of Island One.

But the even greater blow was 30 days after that our lender, Finova, went bankrupt. We were trying to raise equity and the primary source of the debt we had lined up was from Finova. Their timeshare portfolio performed beautifully, but it was only 15% of their overall lending portfolio and they wrote off an \$800+ million health care loan and they couldn't survive. So we couldn't raise equity because these bankruptcies

hard lesson; it cost me a lot of money and it took me a long time to rebuild my practice. But the lessons that I learned, both at Island One and coming back to Baker and re-establishing myself, made me a much better lawyer than I was before, simply because I understood business risk better, and now my advice means more to my clients as a result of that experience, being able to leaven an academic lawyer's view of risk with somebody who went out there and did it and took it in the shorts.

But you know what? Honestly, I would do it again. I have every confidence in Deb Linden and Island One is a great company. Sulyn Stumbras, the president of Island One's management company, is one of the best managers in the timeshare business.

I'm glad I had the guts to try it. I'm sorry it didn't work out, but I have no regrets.

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the people that were getting ready to write us big checks – many millions of dollars – weren't willing to do it anymore. They didn't understand these bankruptcies, they didn't understand what they said about the stability or lack thereof of the timeshare industry. One of the bankruptcies was Sunterra, which as you remember was a venture-capital rollup of several different timeshare companies. It was a good company, but they had systems and people that didn't really talk to each other – it was like putting different pieces

had shaken the capital market's confidence in timeshare, our committed debt was no longer available and we were scrambling to get new debt. Suddenly the harsh light of business-risk reality hit me right in the face. I had walked away from one of the most exciting law practices in the country. I'm glad I did it, make no mistake. But lawyers are notoriously risk-averse and suddenly I realized exactly how far I had moved outside that safe little cocoon that lawyers almost by definition tend to practice in. Frankly it was a

And you were able to go back to Baker Hostetler – so you could go home again, so to speak?

It's funny you say that – Thomas Wolfe was right: You really can never go home. However, I was welcomed back at Baker Hostetler and encouraged to go out and create new business and get back into my mentoring mode. That made sense to me; it just took me a while to rebuild my practice.

So here I am, 10 years later, older and wiser: boy, did I learn a lot. 