

Pacaso™

April 19, 2022

Brian A. Pierik
Burke, Williams & Sorensen, LLP
2310 East Ponderosa Drive - Suite 25
Camarillo, California 93010-4747

Dear Mr. Pierik:

We are in receipt of your letter dated April 7, 2022 on behalf of your client, the City of Carmel-by-the-Sea ("City").

As an initial matter, we were very disappointed to receive your letter. Pacaso has had numerous conversations with City officials. We thought these conversations were productive and that City officials understood our co-ownership model and that we wanted to be a good partner in the community. It is even more disappointing that you have demanded a draconian solution, i.e., that Pacaso cease its current operations in the City. This is especially egregious when one considers that Pacaso is only managing a single home in the City and, to our knowledge, there has not been a single complaint regarding the home.

Background

Pacaso is a real estate service company that supports buyers who wish to co-own residential property together through a property-specific LLC. Co-ownership, whereby a small group of family members or friends co-own a second home together, is a common practice throughout California, the Monterey Peninsula, and in Carmel. According to our analysis, about 60% of the housing units in the City are not occupied on a full-time basis by their owners and over 2,500 of these are owned in an LLC or trust, which enable co-ownership arrangements.

While your correspondence characterizes our business as "timeshare," there are several key differences between the Pacaso co-ownership model and traditional timesharing plans. Pacaso sells ownership interests in residential real estate, unlike traditional timesharing plans, which often give purchasers a contractual right to use a resort property. Just like family members who own property together, Pacaso co-owners together own 100% of the property and employ Pacaso as a service provider to assist them with scheduling, property management and expense management. If Pacaso co-owners no longer desire Pacaso's services, they have the option to terminate Pacaso as a service provider; traditional timeshare owners typically do not enjoy that option. Furthermore, the co-owners can sell the home, dissolve the LLC and distribute the sale proceeds of the real estate asset to each co-owner on a pro rata basis. That is, they have all of the rights and optionality of any other single-family residence owners.

Pacaso Homes Are Not Timeshares

Turning to the application of the City's timeshare ordinance, it is clear that the City's ordinance does not apply to a Pacaso home. Section 17.28.010 provides that: "[t]imeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City."

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Times-hare project, program, and occupancy are defined in CMC Section 17.70.020 (emphasis added):

Time-Share Occupancy. An occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity...**for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided.**”

Time-Share Project. A project in which a purchaser receives the right...to the recurrent, exclusive use or occupancy...**for a period of time that has been or will be allotted for the use or occupancy periods into which the project has been divided.**”

Time-Share Program. Any arrangement for a project whereby the use, occupancy, or possession of real property has been made subject to a time-share estate, use, or occupancy, whereby such use, occupancy, or possession circulates among **purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year**, but not necessarily for consecutive years.

As you can see above, the definitions of timeshare occupancy, project, and program only apply when usage rights in a property have been divided into increments of time. A Pacaso home is not divided into increments of time. Rather, the home is owned in its entirety, in fee simple, by the LLC and the property has not been divided into increments by a timeshare plan or by a timeshare instrument. It is analogous to when friends or family members co-own a second home today and the friends or family members decide how to share ownership and use of the property. The negotiation and cooperation by co-owners regarding how they want to use their second home does not create a timeshare because the property is owned in its entirety and not divided into time increments. In short, Pacaso owners are not purchasing a use right for a specific period time, but rather are purchasing a co-ownership interest and agreeing to equitably use the home with their co-owners.

The co-owners of the Carmel home use their home for residential purposes, which is a permitted use of the property and is similar to the manner in which other second home owners own and use homes in the City. We presume it is not the intention of the City or the aim of the City’s zoning code to regulate who may or may not co-own a real estate together, or dictate the vehicle through which they elect to co-own real estate. As the City has acknowledged in its Housing Element of its General Plan, “Cities have limited ability to influence second home ownership and use.” The co-owners of the Carmel home have elected to co-own their home in a multi-member LLCs, which is an ordinary practice in real estate. The co-owners have agreed to engage Pacaso as a service provider to assist them with the management of the home. As such, the co-owners of the home in question are owning the home in a way that is permissible under the City code and is similar to the manner in which other owners of second homes own and use homes in the City.

In addition, any attempt by the City to enforce its current ordinance against the Carmel home would run counter to the Coastal Act, in that it purports to restrict access to the City’s coastal

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zone in a way that has historically not been restricted for similarly situated co-owners of residential properties in the City.

Pacaso Homes Help the City Achieve Housing Goals

We also note that the Pacaso model will help the City achieve two goals set out in the City' Housing Element - "Preserve the existing housing stock" (Goal G3-1) and "Protect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement" (Goal G3-4).

The sale of Pacaso homes in Carmel will help "[p]reserve existing housing stock" by giving second home buyers a better option than a whole home. (Goal G3-1.) Just one co-owned Pacaso home can remove up to eight buyers from local housing competition by pooling them into a single luxury home, since Pacaso makes use of one property that would have otherwise been eight separate second-homes. As a result, the City's embrace of the Pacaso model could actually help preserve existing housing stock. In short, by decreasing demand for second homes in Carmel, the Pacaso model will allow the City to preserve existing housing stock, based on the basic laws of supply and demand.

The sale of Pacaso homes will also help "...[p]rotect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement." (Goal G3-4.) Second home ownership can be inefficient, exclusionary and wasteful, as second homes owned by just one family typically sit vacant up to 80% of any given year. Pacaso homes are different - the homes offer a more sustainable way to own and enjoy a second home. In return, Carmel and its neighborhood could benefit from the year-round occupancy that Pacaso homes provide which create a more vibrant community filled with families with a long-term connection to the community, not empty homes with the blinds closed. In addition, local Carmel businesses would benefit from year-end occupancy as Pacaso co-owners will frequent Carmel's shops, restaurants, and coffee shops more frequently than a second home-owner who is only in town sporadically.

We look forward to being a good partner with the City and look forward to continuing our productive conversations with the City's elected officials.

Sincerely,



Kevin Heneghan