

# Pacaso™

August 22, 2022

Kelly L. Donlon  
Office of the County Counsel  
Monterey County  
168 West Aisal Street, 3rd Floor  
Salinas, CA 93901-2439

Dear Ms. Donlon:

We are in receipt of your letters dated June 24, 2022 and August 12, 2022 on behalf of your client, Monterey County ("County").

As you know, when we received your first letter, we reached out to County officials to set up meetings so that we could discuss the Pacaso co-ownership model and why the homes that Pacaso manages in the County are not timeshares under the County Code. This outreach has led to the scheduling of a meeting with Supervisor Adams, members of her staff, Director of Housing & Community Development Erik Lundquist, and you on August 31st. We are hoping that we can have a productive meeting on August 31st and, to this end, this letter provides some background on the Pacaso model and why Pacaso homes are not timeshares under the County Code.

## **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 and Monterey County.

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, unlike participants in a timeshare arrangement, co-owners of homes managed by Pacaso, have all of the rights and optionality of any other single-family residence owners.

# Pacaso™

## Pacaso Homes Are Not Timeshares

Turning to the application of the County's timeshare ordinance, it is clear that the County's ordinance does not apply to a Pacaso home as the homes are neither a "timeshare estate" nor a "timeshare project" as defined in County Code Chapter 20.06 and 21.06 (emphasis added):

"Timeshare estate" means a right of occupancy in a **timeshare project** which is coupled with an estate in the real property.

"Timeshare Project" is defined as "a development in which a purchaser receives the right in perpetuity, for life, or for term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis, **for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided.** The definition of time share project includes a timeshare estate and a timeshare use."

As you can see above, the definition of timeshare estate incorporates the definition of timeshare project. Importantly, the definition of timeshare project only applies 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 of time, but rather are purchasing a co-ownership interest, agreeing to equitably use the home with their co-owners, and merely retaining Pacaso to manage the home.

The co-owners of Pacaso homes in Monterey County use their home for residential purposes, which is a permitted use of the property and the same use that was in place prior to the homes becoming Pacaso homes. The Pacaso homes are being used in a similar manner to the way in which other second home owners own and use homes in the County. We presume it is not the intention of the County or the aim of the County's zoning code to regulate who may or may not co-own real estate together, or dictate the vehicle through which they elect to co-own real estate. The co-owners of the Pacaso homes in Monterey County have elected to co-own their homes in multi-member LLCs, which is an ordinary practice in real estate. As such, the co-owners of the home in question are owning the home in a way that is permissible under the County code and is similar to the manner in which other owners of second homes own and use homes in the County.

In addition, any attempt by the County to enforce its current ordinance against the Pacaso homes would run counter to the Coastal Act, in that it purports to restrict access to the

# Pacaso™

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

Lastly, as to your request regarding Pacaso documents, Pacaso considers those documents to be proprietary trade secrets and we have concerns regarding potential disclosure under the California Public Records Act if we share them with the County. As a result, we will not be sharing the documents at this time, but will be ready to discuss the documents at our August 31st meeting.

We look forward to meeting you on August 31st. If you have any questions or need any additional information, please do not hesitate to contact me. (Please note that Patrick Abell and Ellen Haberle have left Pacaso.)

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Heneghan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin Heneghan

cc: Monterey County Board of Supervisors  
Charles J. McKee, County Administrative Officer  
Leslie J. Girard, County Counsel  
Erik Lundquist, Director of Housing Community & Development