

Desert Mountain Club Refund Obligations -- Section 4.6.3 of the 2010, 2012 and 2013 Bylaws

Section 4.6.1 of the 2010, 2012, 2013 and 2014 Club bylaws explains how the Club has to calculate the refund owed to a member on reissuance of a membership. The Club is allowed to deduct from the refund the greater of either 20% of the re-sale price or \$65,000.

4.6.1 Refund for Equity Golf Members. *Upon the reissuance of an Equity Membership, the Equity Member will receive, when reached on the Membership Reissuance List, one hundred percent (100%) of the Membership Contribution received by the Club from the new Equity Member, less the Equity Golf Transfer Fee, established by the Board, and all amounts owed to the Club. As of the Effective Date, the current transfer fee for Equity Golf Members is an amount equal to the greater of (i) twenty percent (20%) of the Membership Contribution received by the Club from the new Equity Golf Member, or (ii) Sixty Five Thousand Dollars (\$65,000.00) (the "Equity Golf Transfer Fee").*

But if there is a conflict between Section 4.6.1 and refund rights granted in a member's Membership Agreement, Section 4.6.3 of the 2010, 2012, and 2013 Club bylaws resolves that conflict. Terms in the Membership Agreement control.

4.6.3 Conflict. *In the event of a conflict between the above provisions and an individual Member's Membership Agreement with the Club regarding the refund amount to be paid; the refund to such Member, upon the reissuance of the Membership, shall be paid in accordance with the terms and conditions set forth in such Member's individual Membership Agreement with the Club.*

Before Club turnover on December 31, 2010, Section 6(d) in many deferred equity membership agreements set the refund amount at 80% of the sale price and didn't mention a \$65,000 transfer fee.

6(d) The Surrender Payment shall be an amount equal to eighty percent (80%) of the then-current Membership Contribution when the Membership is reissued by the Club. Payment of the Surrender Payment shall be due within 30 days from the date on which the Membership is reissued by the Club.

If there's conflict between refund provisions in a Membership Agreement and Section 4.6.1 of the 2010, 2012 or 2013 Club bylaws, Section 4.6.3 resolves that conflict. The member gets an 80-20 split of sale proceeds and is not liable for a \$65,000 transfer fee.

Only members who resigned before August 1, 2014 have the benefit of Section 4.6.3. Section 4.7.3 in Club bylaws adopted August 1, 2014 eliminated this member benefit.

4.7.3 Conflict. *In the event of a conflict between the above provisions and an individual Member's Membership Agreement with the Club regarding the refund amount to be paid; the refund to such Member, upon the reissuance of the Membership, shall be paid in accordance with the terms and conditions set forth in the Bylaws, except for Prior Equity Club Memberships for which the Member's individual Membership Agreement with the Club shall control.*

Conversions agreements signed by deferred equity members and the December 31, 2010 bylaws superceded all prior agreements and bylaws. But the paragraph Resignation/Transferability/Refunds in conversion agreements makes refunds "subject to the terms and conditions set forth in the Club Bylaws . . ." That reference to club bylaws includes Section 4.6.3 of the 2010, 2012 and 2013 bylaws.

Resignation/Transferability/Refunds *A Membership Contribution was previously paid (or deemed paid) by the Member to obtain the Deferred Equity Golf Membership in the Club pursuant to the Prior Plan. The Member hereby acknowledges that any transfer of the Equity Golf Membership and refund of the Membership Contribution shall be subject to the terms and conditions set forth in the Club Bylaws, including, but not limited to the Transfer Fee to be paid by to the Club. Equity Golf Memberships may be transferred only through the Club, subject to the terms, conditions and restrictions set forth in the Club Bylaws.*

A member may be liable for dues between the time of resignation and when the membership is sold. But Section 4.6.3 of the 2010, 2012 and 2013 bylaws requires that the Club honor refund provisions in the Member Agreement of any member who resigned before August 1, 2014. Resigning members who paid the Club more than Section 4.6.3 allows may be entitled to a refund of any transfer fee paid plus attorney fees.

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