



# LAWS OF ALASKA

1968

Source

HB 627 am

Chapter No.

179

## AN ACT

Adopting the Uniform Land Sales Practices Act; and providing for an effective date.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 34 is amended by adding a new chapter to read:

#### CHAPTER 55. UNIFORM LAND SALES PRACTICES ACT.

Sec. 34.55.004. ADMINISTRATION. This chapter shall be administered by the department.

Sec. 34.55.008. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN SUBDIVISIONS. Unless the subdivided lands or the transaction is exempt by sec. 42 of this chapter

(1) no person may offer or dispose in this state of an interest in subdivided lands located outside this state before the time the subdivided lands are registered in accordance with this chapter;

(2) no person may dispose of an interest in subdivided lands located outside this state unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement before the disposition.

Sec. 34.55.010. APPLICATION FOR REGISTRATION. (a) The application for registration of subdivided lands shall be filed as prescribed by the department's regulations and shall contain the following documents and information

(1) an irrevocable appointment of the department to receive service of lawful process in a noncriminal proceeding arising under this chapter against the applicant

or his personal representative;

(2) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, and the dimensions of the lots, parcels, units or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(3) the states or jurisdictions in which an application for registration or similar document has been filed, and an adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by a court;

(4) the applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(5) the name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application;

(6) a statement, in a form acceptable to the department, of the condition of the title to the subdivided lands including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the department;

(7) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(8) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(9) if there is a lien or encumbrance affecting more than one lot, parcel, unit or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(10) copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

(11) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(12) a statement of the existing provisions for access, sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance;

(13) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(14) the proposed public offering statement;

(15) other information, including any current financial statement, which the department by its regulations requires for the protection of purchasers.

(b) If the subdivider registers additional subdivided land to be offered for disposition, he may consolidate the subsequent registration with an earlier registration offering subdivided land for disposition under the same promotional plan.

(c) The subdivider shall immediately report a material change in the information contained in an application for registration.

Sec. 34.55.012. PUBLIC OFFERING STATEMENT. (a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided land offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided land. The proposed public offering statement submitted to the department shall be in a form prescribed by its regulations and shall include

(1) the name and principal address of the subdivider;

(2) a general description of the subdivided land stating the total number of lots, parcels, units, or interests in the offering;

(3) the significant terms of encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided land and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided land;

(4) a statement of the use for which the property is offered;

(5) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided land;

(6) additional information required by the department to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement may not be used for promotional purposes before registration of the subdivided land and afterwards only if it is used in its entirety. No person may advertise or represent that the department approves or recommends the subdivided land or its disposition. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the department requires it.

(c) The department may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

Sec. 34.55.014. INQUIRY AND EXAMINATION. Upon receipt of an application for registration in proper form, the department shall immediately initiate an examination to determine that

(1) the subdivider can convey or cause to be conveyed the interest in subdivided land offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the department in its regulations and afford full and fair disclosure;

(4) the subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and has not been subject to an injunction or administrative order within the past 10 years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this chapter have been satisfied.

Sec. 34.55.016. NOTICE OF FILING AND REGISTRATION. (a) Upon receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within 90 days from the date of the notice of filing, the department shall enter

an order registering the subdivided land or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(b) If the department affirmatively determines, upon inquiry and examination, that the requirements of sec. 14 of this chapter have been met, it shall enter an order registering the subdivided land and shall designate the form of the public offering statement.

(c) If the department determines upon inquiry and examination that any of the requirements of sec. 14 of this chapter has not been met, the department shall notify the applicant that the application for registration must be corrected in the particulars specified within 10 days. If the requirements are not met within the time allowed the department shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration may not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

Sec. 34.55.018. ANNUAL REPORT. (a) Within 30 days after each annual anniversary date of an order registering subdivided land, the subdivider shall file a report in the form prescribed by the regulations of the department. The report shall reflect material changes in information contained in the original application for registration.

(b) The department at its option may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

Sec. 34.55.020. GENERAL POWERS AND DUTIES. (a) The department shall prescribe regulations which shall be adopted, amended, or repealed in compliance with the Administrative Procedure Act (AS 44.62). The regulations shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for, provisions for operating procedures; and other regulations as are necessary and proper to accomplish the purpose of this chapter.

(b) The department by regulation or by an order, after notice and hearing, may require the filing of advertising material relating to subdivided land before its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or a regulation or order under this chapter, the department, with or without prior administrative proceedings may bring an action in the superior court to enjoin the acts or practices and to

enforce compliance with this chapter or a regulation or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The department is not required to post a bond in court proceedings.

(d) The department may intervene in a suit involving subdivided land. In a suit by or against a subdivider involving subdivided land, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

(e) The department may

(1) accept registrations filed in other states or with the federal government;

(2) contract with agencies in this state or other jurisdictions to perform investigative functions;

(3) accept grants in aid from any source.

(f) The department shall cooperate with similar departments in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

Sec. 34.55.022. INVESTIGATIONS AND PROCEEDINGS. (a) The department may

(1) make necessary public or private investigations inside or outside this state to determine whether a person has violated or is about to violate this chapter or a regulation or order under this chapter or to aid in the enforcement of this chapter or in the prescribing of regulations and forms under this chapter;

(2) require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of an investigation or proceeding under this chapter, the department or an officer designated by regulation may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected, the department may apply to the superior court for an order compelling compliance.

(d) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act (AS 44.62).

Sec. 34.55.024. CEASE AND DESIST ORDERS. (a) The department may issue an order requiring the person to cease and desist from the unlawful practice and to take affirmative action which in the judgment of the department will carry out the purposes of this chapter, if it determines after notice and hearing that a person has

- (1) violated a provision of this chapter;
- (2) directly or through an agent or employee knowingly engaged in a false, deceptive, or misleading advertising, promotional or sales method to offer or dispose of an interest in subdivided land;
- (3) made a substantial change in the plan of disposition and development of the subdivided land subsequent to the order of registration without obtaining prior written approval from the department;
- (4) disposed of subdivided land which has not been registered with the department; or
- (5) violated a lawful order or regulation of the department.

(b) If the department makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, the department whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 10 days to determine whether or not it becomes permanent.

Sec. 34.55.026. REVOCATION. (a) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has

- (1) failed to comply with the terms of a cease and desist order;
- (2) been convicted in a court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3) disposed of, concealed, or diverted funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (4) failed faithfully to perform a stipulation or agreement made with the department as an inducement to grant a registration, to reinstate a registration, or to approve a promotional plan or public offering statement;

(5) made intentional misrepresentations or concealed material facts in an application for registration.

(b) The findings of fact, if set out in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) If the department finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

Sec. 34.55.028. PENALTIES. A person who violates a provision of this chapter or of a regulation adopted under it or a person who, in an application for registration makes an untrue statement of a material fact or omits to state a material fact is guilty of a misdemeanor and is punishable by a fine of not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or by imprisonment for not more than six months; or by both.

Sec. 34.55.030. CIVIL REMEDY. (a) A person who disposes of subdivided land in violation of sec. 8 of this chapter or who in disposing of subdivided land makes an untrue statement of a material fact, or who in disposing of subdivided land omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission.

(b) In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit or interest in subdivided land together with interest at the rate of six per cent a year from the date of payment, property taxes paid, costs, and reasonable attorney fees less the amount of income received from the subdivided land upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit or interest in subdivided land, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six per cent a year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under (a) of this section, every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise

of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) A person may not recover under this section in actions commenced more than four years after his first payment of money to the subdivider in the contested transaction.

(g) A stipulation or provision purporting to bind a person acquiring subdivided land to waive compliance with this chapter or a regulation or order under it is void.

Sec. 34.55.032. JURISDICTION. A disposition of subdivided land is subject to this chapter and the superior court of this state has jurisdiction in claims or causes of action arising under this chapter if

(1) the subdivider's principal office is located in this state; or

(2) an offer or disposition of subdivided land is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates in this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

Sec. 34.55.034. INTERSTATE RENDITION. In the proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

Sec. 34.55.036. SERVICE OF PROCESS. (a) In addition to the methods of service provided for in the Rules of Civil Procedure service may be made by delivering a copy of the process to the department, but it is not effective unless

(1) the plaintiff (which may be the department in a proceeding instituted by it) immediately sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his last known address; and

(2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) If a person, including a nonresident of this state, engages in conduct prohibited by this chapter or a regulation or order under this chapter, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, the department is authorized to receive service of process in any noncriminal proceeding against him or his successor which grows out of that conduct and which is brought under this chapter or a regulation or order under this chapter, with the same force and validity as if served on him personally. Notice shall be given as provided in (a) of this section.

Sec. 34.55.038. UNIFORMITY OF INTERPRETATION. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 34.55.042. EXEMPTIONS. (a) Unless the method of disposition is adopted for the purpose of evasion of this chapter the provisions of this chapter do not apply to offers or dispositions of an interest in land

(1) by a purchaser of subdivided land for his own account in a single or isolated transaction;

(2) if fewer than 10 separate lots, parcels, units or interests in subdivided land are offered by a person in a period of 12 months;

(3) on which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within one year from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided land for the purpose of engaging, and do engage in the business of construction of buildings for resale;

(5) under court order;

(6) by a government or government agency;

(7) as cemetery lots or interests.

(b) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter do not apply to

(1) offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under a state or federal statute;

(3) a subdivision as to which the department has granted an exemption as provided in sec. 20 of this chapter;

(4) offers or dispositions of securities currently registered with the department; and

(5) offers or dispositions of an interest in oil, gas or other minerals or a royalty interest therein if the offers or dispositions of the interests are regulated as securities by the department or by the United States.

Sec. 34.55.044. DEFINITIONS. In this chapter, unless the context otherwise requires

(1) "disposition" includes sale, lease, assignment award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit;

(2) "offer" includes every inducement, solicitation or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of them having a joint or common interest, or any other legal or commercial entity;

(4) "purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "subdivider" means an owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(6) "subdivision" and "subdivided land" mean land located outside this state which is divided or is proposed to be divided for the purpose of disposition into 10 or more lots, parcels, units or interests and also includes any land whether contiguous or not if 10 or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale;

(7) "department" means Department of Commerce.

Sec. 34.55.046. SHORT TITLE. This chapter may be cited as the Uniform Land Sales Practices Act.

\* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.