

Introduced: 2/23/68
Referred: Resources and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST

2 HOUSE BILL NO. 627

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act adopting the 'Uniform Land Sales Practices
7 Act'; and providing for an effective date."

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

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

10 CHAPTER 55. UNIFORM LAND SALES PRACTICES ACT.

11 Sec. 34.55.002. DEFINITIONS. When used in this chapter, unless
12 the context otherwise requires

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

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

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

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

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

28 (6) "subdivision" and "subdivided lands" mean any land
29 located outside this state which is divided or is proposed to be

1 divided for the purpose of disposition into 10 or more lots, parcels,
2 units or interests and also includes any land whether contiguous or not
3 if 10 or more lots, parcels, units or interests are offered as a part of
4 a common promotional plan of advertising and sale;

5 (7) "department" means Department of Commerce.

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

8 Sec. 34.55.006. EXEMPTIONS. (a) Unless the method of dis-
9 position is adopted for the purpose of evasion of this chapter the
10 provisions of this chapter do not apply to offers or dispositions of
11 an interest in land

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

14 (2) if fewer than 10 separate lots, parcels, units or
15 interests in subdivided lands are offered by a person in a period of
16 12 months;

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

21 (4) to persons who are engaged in the business of con-
22 struction of buildings for resale, or to persons who acquire an
23 interest in subdivided lands for the purpose of engaging, and do
24 engage in the business of construction of buildings for resale;

25 (5) pursuant to court order;

26 (6) by any government or government agency;

27 (7) as cemetery lots or interests.

28 (b) Unless the method of disposition is adopted for the pur-
29 pose of evasion of this chapter, the provisions of this chapter do

1 not apply to

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

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

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

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

11 (5) offers or dispositions of any interest in oil, gas or
12 other minerals or any royalty interest therein if the offers or
13 dispositions of such interests are regulated as securities by the
14 department or by the United States.

15 Sec. 34.55.008. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN
16 SUBDIVISIONS. Unless the subdivided lands or the transaction is
17 exempt by sec. 6 of this chapter

18 (1) no person may offer or dispose in this state of any
19 interest in subdivided lands located without this state prior to the
20 time the subdivided lands are registered in accordance with this
21 chapter;

22 (2) no person may dispose of any interest in subdivided
23 lands located outside this state unless a current public offering
24 statement is delivered to the purchaser and the purchaser is afforded
25 a reasonable opportunity to examine the public offering statement
26 prior to the disposition.

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

1 following documents and information

2 (1) an irrevocable appointment of the department to receive
3 service of any lawful process in any non-criminal proceeding arising
4 under this chapter against the applicant or his personal representa-
5 tive;

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

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

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

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

25 (6) a statement, in a form acceptable to the department, of
26 the condition of the title to the subdivided lands including encum-
27 brances as of a specified date within 30 days of the date of applica-
28 tion by a title opinion of a licensed attorney, not a salaried
29 employee, officer or director of the applicant or owner, or by other

1 evidence of title acceptable to the department;

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

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

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

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

17 (11) a statement of the zoning and other governmental
18 regulations affecting the use of the subdivided lands and also of
19 any existing tax and existing or proposed special taxes or assess-
20 ments which affect the subdivided lands;

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

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

1 (14) the proposed public offering statement;

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

5 (b) If the subdivider registers additional subdivided lands to
6 be offered for disposition, he may consolidate the subsequent
7 registration with any earlier registration offering subdivided lands
8 for disposition under the same promotional plan.

9 (c) The subdivider shall immediately report any material changes
10 in the information contained in an application for registration.

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

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

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

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

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

28 (5) information concerning improvements, including streets,
29 water supply, levees, drainage control systems, irrigation systems,

1 sewage disposal facilities and customary utilities, and the estimated
2 cost, date of completion and responsibility for construction and
3 maintenance of existing and proposed improvements which are referred
4 to in connection with the offering or disposition of any interest in
5 subdivided lands;

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

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

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

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

27 (1) the subdivider can convey or cause to be conveyed the
28 interest in subdivided lands offered for disposition if the purchaser
29 complies with the terms of the offer, and when appropriate, that

1 release clauses, conveyances in trust or other safeguards have been
2 provided;

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

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

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

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

19 Sec. 34.55.016. NOTICE OF FILING AND REGISTRATION. (a) Upon
20 receipt of the application for registration in proper form, the
21 department shall issue a notice of filing to the applicant. Within
22 90 days from the date of the notice of filing, the department shall
23 enter an order registering the subdivided lands or rejecting the
24 registration. If no order of rejection is entered within 90 days
25 from the date of notice of filing, the land shall be deemed registered
26 unless the applicant has consented in writing to a delay.

27 (b) If the department affirmatively determines, upon inquiry
28 and examination, that the requirements of section 14 of this chapter
29 have been met, it shall enter an order registering the subdivided

1 lands and shall designate the form of the public offering statement.

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

12 Sec. 34.55.018. ANNUAL REPORT. (a) Within 30 days after each
13 annual anniversary date of an order registering subdivided lands, the
14 subdivider shall file a report in the form prescribed by the regula-
15 tions of the department. The report shall reflect any material
16 changes in information contained in the original application for
17 registration.

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

22 Sec. 34.55.020. GENERAL POWERS AND DUTIES. (a) The department
23 shall prescribe regulations which shall be adopted, amended, or
24 repealed in compliance with the Administrative Procedure Act. The
25 regulations shall include but not be limited to provisions for
26 advertising standards to assure full and fair disclosure; provisions
27 for escrow or trust agreements or other means reasonably to assure
28 that all improvements referred to in the application for registration
29 and advertising will be completed and that purchasers will receive

1 the interest in land contracted for; provisions for operating pro-
2 cedures; and other regulations as are necessary and proper to accom-
3 plish the purpose of this chapter.

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

7 (c) If it appears that a person has engaged or is about to
8 engage in an act or practice constituting a violation of a provision
9 of this chapter, or a regulation or order hereunder, the department,
10 with or without prior administrative proceedings may bring an action
11 in the superior court to enjoin the acts or practices and to enforce
12 compliance with this chapter or any regulation or order hereunder.
13 Upon proper showing, injunctive relief or temporary restraining orders
14 shall be granted, and a receiver or conservator may be appointed. The
15 department is not required to post a bond in any court proceedings.

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

20 (e) The department may:

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

23 (2) contract with agencies in this state or other juris-
24 dictions to perform investigative functions;

25 (3) accept grants in aid from any source.

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

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

3 (1) make necessary public or private investigations within
4 or outside of this state to determine whether any person has violated
5 or is about to violate this chapter or any regulation or order here-
6 under, or to aid in the enforcement of this chapter or in the
7 prescribing of regulations and forms hereunder;

8 (2) require or permit any person to file a statement in
9 writing, under oath or otherwise as the department determines, as to
10 all the facts and circumstances concerning the matter to be investi-
11 gated.

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

22 (c) Upon failure to obey a subpoena or to answer questions pro-
23 pounded by the investigating officer and upon reasonable notice to all
24 persons affected thereby, the department may apply to the superior
25 court for an order compelling compliance.

26 (d) Except as otherwise provided in this chapter, all proceed-
27 ings under this chapter shall be in accordance with the Administrative
28 Procedure Act.

29 Sec. 34.55.024. CEASE AND DESIST ORDERS. (a) If the department

1 determines after notice and hearing that a person has

2 (1) violated any provisions of this chapter;

3 (2) directly or through an agent or employee knowingly
4 engaged in any false, deceptive, or misleading advertising, promotional,
5 or sales methods to offer or dispose of an interest in subdivided lands;

6 (3) made any substantial change in the plan of disposition
7 and development of the subdivided lands subsequent to the order of
8 registration without obtaining prior written approval from the
9 department;

10 (4) disposed of any subdivided lands which have not been
11 registered with the department;

12 (5) violated any lawful order or regulation of the depart-
13 ment it may issue an order requiring the person to cease and desist
14 from the unlawful practice and to take such affirmative action as in
15 the judgment of the department will carry out the purposes of this
16 chapter.

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

26 Sec. 34.55.026. REVOCATION. (a) A registration may be revoked
27 after notice and hearing upon a written finding of fact that the sub-
28 divider has

29 (1) failed to comply with the terms of a cease and desist

1 order;

2 (2) been convicted in any court subsequent to the filing of
3 the application for registration for a crime involving fraud, decep-
4 tion, false pretenses, misrepresentation, false advertising, or dis-
5 honest dealing in real estate transactions;

6 (3) disposed of, concealed, or diverted any funds or
7 assets of any person so as to defeat the rights of subdivision pur-
8 chasers;

9 (4) failed faithfully to perform any stipulation or agree-
10 ment made with the department as an inducement to grant any regis-
11 tration, to reinstate any registration, or to approve any promotional
12 plan or public offering statement;

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

15 Findings of fact, if set forth in statutory language, shall be accom-
16 panied by a concise and explicit statement of the underlying facts
17 supporting the findings.

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

21 Sec. 34.55.028. PENALTIES. Any person who violates any pro-
22 vision of this chapter or of a regulation adopted under it or any
23 person who, in an application for registration makes any untrue
24 statement of a material fact or omits to state a material fact is
25 guilty of a misdemeanor and may be fined not less than \$1,000 or
26 double the amount of gain from the transaction, whichever is the
27 larger but not more than \$50,000; or he may be imprisoned for not
28 more than six months; or both.

29 Sec. 34.55.030. CIVIL REMEDY. (a) Any person who disposes of

1 subdivided lands in violation of section 8 of this chapter or who in
2 disposing of subdivided lands makes an untrue statement of a material
3 fact, or who in disposing of subdivided lands omits a material fact
4 required to be stated in a registration statement or public offering
5 statement or necessary to make the statements made not misleading, is
6 liable as provided in this section to the purchaser unless in the case
7 of an untruth or omission it is proved that the purchaser knew of the
8 untruth or omission or that the person offering or disposing of sub-
9 divided lands did not know and in the exercise of reasonable care
10 could not have known of the untruth or omission.

11 (b) In addition to any other remedies, the purchaser, under the
12 preceding subsection, may recover the consideration paid for the lot,
13 parcel, unit or interest in subdivided lands together with interest at
14 the rate of six per cent per year from the date of payment, property
15 taxes paid, costs, and reasonable attorneys fees less the amount of
16 any income received from the subdivided lands upon tender of appro-
17 priate instruments of reconveyance. If the purchaser no longer owns
18 the lot, parcel, unit or interest in subdivided lands, he may recover
19 the amount that would be recoverable upon a tender of a reconveyance
20 less the value of the land when disposed of and less interest at the
21 rate of six per cent per year on that amount from the date of dis-
22 position.

23 (c) Every person who directly or indirectly controls a sub-
24 divider liable under subsection (a), every general partner, officer,
25 or director of a subdivider, every person occupying a similar status
26 or performing a similar function, every employee of the subdivider
27 who materially aids in the disposition, and every agent who materially
28 aids in the disposition is also liable jointly and severally with and
29 to the same extent as the subdivider, unless the person otherwise

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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) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any regulation or order under it is void.

Sec. 34.55.032. JURISDICTION. Dispositions of subdivided lands are 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) any offer or disposition of subdivided lands is

1 made in this state, whether or not the offeror or offeree is then
2 present in this state, if the offer originates within this state
3 or is directed by the offeror to a person or place in this state
4 and received by the person or at the place to which it is
5 directed.

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

11 Sec. 34.55.036. SERVICE OF PROCESS. (a) In addition to the
12 methods of service provided for in the Rules of Civil Procedure
13 service may be made by delivering a copy of the process to the depart-
14 ment, but it is not effective unless the plaintiff (which may be the
15 department in a proceeding instituted by it)

16 (1) forthwith sends a copy of the process and of the
17 pleading by certified mail to the defendant or respondent at his last
18 known address, and

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

22 (b) If any person, including any nonresident of this state,
23 engages in conduct prohibited by this chapter or any regulation or
24 order hereunder, and has not filed a consent to service of process
25 and personal jurisdiction over him cannot otherwise be obtained in
26 this state, that conduct authorizes the department to receive service
27 of process in any non-criminal proceeding against him or his successor
28 which grows out of that conduct and which is brought under this
29 chapter or any regulation or order hereunder, with the same force and

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validity as if served on him personally. Notice shall be given as provided in subsection (a).

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. 34.55.040. 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.