

Introduced: 2/14/84  
Referred: Labor and Commerce

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 494

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the sale of time share programs  
7 for use, occupancy, or possession of residential  
8 property; amending the Real Estate Commission's  
9 authority to adopt regulations; and providing for an  
10 effective date."

10

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

12

\* Section 1. AS 45.50 is amended by adding new sections to read:

13

ARTICLE 7. TIME SHARE PROGRAMS FOR RESIDENTIAL PROPERTY.

14

Sec. 45.50.630. REAL ESTATE BROKER AND REGISTRATION. (a) It is  
15 unlawful to offer a time share in the state regardless of where the  
16 time share project is located unless the offer is made through a real  
17 estate broker or associate broker, or real estate salesperson, li-  
18 censed in the state under AS 08.88.161.

19

(b) It is unlawful to offer a time share in the state unless the  
20 offeror has registered the offering with the Real Estate Commission,  
21 and paid the registration fee, in accordance with regulations adopted  
22 under AS 08.88.111. AS 08.88 applies to the sale of a time share.

23

Sec. 45.50.640. DISCLOSURE STATEMENT. It is unlawful to make  
24 any offer of a time share including an offer made by telephone or mail  
25 to a resident of the state regardless of where the time share project  
26 is located unless the offeror discloses to the potential purchaser in  
27 writing, before the purchaser signs any time share instrument,

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(1) the current name and address of the time share offeror;

29

(2) the address and location of the time share units;

1           (3) a description of the time share units, including the  
2 developer's schedule for completion of all buildings, units, and  
3 amenities and dates of availability;

4           (4) if the time share program or project is located in part  
5 or in whole in a horizontal property regime, a description of the  
6 project and any pertinent provisions of the project instruments;

7           (5) any restraints on the transfer of the purchaser's time  
8 share interest in the time share;

9           (6) whether the time share is a time share ownership or a  
10 use plan, along with a description of the rights and responsibilities  
11 under that plan;

12           (7) a statement that the purchaser has 15 calendar days to  
13 cancel the time share instrument once the executed instrument has been  
14 delivered or received by the purchaser;

15           (8) a statement that, under AS 45.50.653, every sale or  
16 transfer made in violation of AS 45.50.630 -- 45.50.660 may be revoked  
17 at the election of the purchaser;

18           (9) notice of any liens, title defects, or encumbrances on  
19 or affecting the offeror's or purchaser's title to the time share  
20 project;

21           (10) notice of any pending or anticipated suits that are  
22 material to the time share, of which the time share offeror has, or  
23 should have, knowledge;

24           (11) the total financial obligation of the purchaser, which  
25 shall include the initial price and any additional charges to which  
26 the purchaser may be subject;

27           (12) a good-faith estimate of the dues, maintenance fees,  
28 real property taxes, and similar periodic expenses relating to the  
29 time share, and the method or formula by which they are derived and

1       apportioned;

2               (13) a statement as to whether the time share project is  
3 included in an exchange program, the present cost and a good faith  
4 estimate of the future cost to the purchaser of the exchange program,  
5 and whether the purchaser will or will not be required to become a  
6 member of the exchange program.

7               Sec. 45.50.642. UNLAWFUL ACTS AND PRACTICES. (a) Unfair meth-  
8 ods of competition, and deceptive or unfair acts or practices, in the  
9 offer or sale of a time share are declared to be unlawful.

10              (b) The terms "unfair methods of competition" and "deceptive or  
11 unfair acts or practices" include, but are not limited to, the follow-  
12 ing unlawful acts:

13              (1) misrepresenting or failing to disclose any material  
14 fact concerning a time share;

15              (2) failing to honor and comply with all provisions of a  
16 time share instrument entered into with a purchaser;

17              (3) including in any time share instrument provisions  
18 purporting to waive any right or benefit provided for purchasers under  
19 AS 45.50.630 -- 45.50.660;

20              (4) receiving from a prospective purchaser any money or  
21 other valuable consideration before the purchaser signs a time share  
22 instrument;

23              (5) misrepresenting the amount of time or period of time  
24 the time share unit will be available to a purchaser;

25              (6) misrepresenting the location or locations of the of-  
26 fered time share unit;

27              (7) misrepresenting the size, nature, extent, qualities, or  
28 characteristics of the offered time share unit;

29              (8) misrepresenting the nature or extent of any services

1 incident to the time share unit;

2 (9) misrepresenting the conditions under which a purchaser  
3 may exchange occupancy rights to a time share unit in one location for  
4 occupancy rights to a time share unit in another location;

5 (10) failing to disclose during the initial contact with a  
6 prospective purchaser that any promised entertainment, food, or other  
7 inducements not prohibited by AS 45.50.630 -- 45.50.660 are being  
8 offered for the purpose of soliciting sales of a time share;

9 (11) conducting or participating in any type of lottery or  
10 contest, or offering prizes or gifts for the purpose of inducing or  
11 encouraging a person to visit a time share project, attend a meeting  
12 at which a time share will be discussed, attend a time share presenta-  
13 tion, or purchase an interest in a time share;

14 (12) serving or giving alcoholic beverages, as defined in  
15 AS 04.21.080(b)(1), in connection with the offer or disposition of a  
16 time share at a meeting or presentation in which a time share will be  
17 discussed;

18 (13) any act or practice considered an unfair method of  
19 competition or an unfair or deceptive act or practice under AS 45.50.-  
20 471.

21 Sec. 45.50.645. CANCELLATION RIGHTS. (a) A time share instru-  
22 ment may be cancelled by the purchaser within 15 days after a fully  
23 executed time share instrument is delivered or mailed to the purchas-  
24 er. Cancellation under this section voids the instrument as of the  
25 date the instrument was signed by the purchaser.

26 (b) If the purchaser elects to cancel a time share instrument  
27 under this section, cancellation is effective when the purchaser  
28 hand-delivers written notice of the cancellation to the time share  
29 offeror or the offeror's real estate broker, or mails a certified

1 letter, marked "Deliver to Addressee Only, Return Receipt," of cancel-  
2 lation to the time share offeror at the address listed in the offer-  
3 or's disclosure statement within the time period specified in (a) of  
4 this section.

5 Sec. 45.50.647. ESCROW OF DEPOSITS. A deposit or payment made  
6 by a purchaser of a time share shall be held in escrow for 25 days to  
7 allow time for the purchaser to cancel the time share instrument. The  
8 25-day period begins to run on the day after a fully executed time  
9 share instrument is mailed or delivered to the purchaser. All pur-  
10 chaser escrow funds shall be deposited in a licensed real estate  
11 broker's trust account within the state.

12 Sec. 45.50.650. ENFORCEMENT. A violation of AS 45.50.630 --  
13 45.50.660 is an unlawful act or practice prohibited by the Unfair  
14 Trade Practices and Consumer Protection Act, AS 45.50.471 -- 45.50.-  
15 561. The enforcement powers granted the attorney general in AS 45.-  
16 50.495 -- 45.50.561 apply to enforcement of AS 45.50.630 -- 45.50.660.

17 Sec. 45.50.653. SALES REVOCABLE FOR VIOLATION OF AS 45.50.630 --  
18 45.50.660; PRIVATE AND CLASS ACTIONS. (a) Every sale or transfer  
19 made in violation of AS 45.50.630 -- 45.50.660 may be revoked by the  
20 purchaser. If the time share offeror or a director, officer, or agent  
21 of or for the time share offeror has personally participated or aided  
22 in any way in making the sale, transfer, or solicitation, the offeror  
23 and other person are jointly and severally liable to the purchaser.  
24 An action must be filed in the judicial district (1) in which the time  
25 share project is located or was offered or sold, or (2) in which the  
26 time share offeror or licensed real estate broker resides or is doing  
27 business upon tender of the time share interest sold, or (3) in which  
28 the contract was made. The purchaser is entitled to the full amount  
29 paid by the purchaser, with prejudgment interest, less a portion of

1 the amount paid representing the portion of any benefits the purchaser  
2 actually received or had the right to receive during the time preced-  
3 ing the tender. In all cases, the court may provide equitable relief  
4 it considers necessary or proper. This action does not limit any  
5 other remedy of the purchaser.

6 (b) A person entitled to bring an action under this section may  
7 bring an action on behalf of all similarly injured and situated per-  
8 sons to recover damages and injunctive or other equitable relief in  
9 addition to damages.

10 (c) In an action brought by a person under this section, the  
11 court may award, in addition to the relief provided in this section,  
12 reasonable attorney fees and costs.

13 (d) A permanent injunction or final judgment against a person in  
14 an action initiated by the attorney general under AS 45.50.501 is  
15 prima facie evidence in an action brought under this section that the  
16 person used or employed an act or practice declared unlawful.

17 Sec. 45.50.655. STATUTORY OR COMMON LAW REMEDIES. Nothing in  
18 AS 45.50.630 -- 45.50.660 limits any statutory or common law right of  
19 a person to bring an action in any court for an act involved in the  
20 development, sale, exchange, or purchase of a time share interest, or  
21 limits the right of the state to punish a person for a violation of  
22 law.

23 Sec. 45.50.660. DEFINITIONS. In AS 45.50.630 -- 45.50.660,

24 (1) "offer" includes every inducement, solicitation, or  
25 attempt by a time share offeror or his agent to encourage a person to  
26 acquire an interest in a time share;

27 (2) "purchaser" means a person, as defined in AS 01.10.-  
28 060(7), who acquires or attempts to acquire or succeeds to an interest  
29 in a time share, or who is solicited to acquire such an interest;

1           (3) "time share" means a time share estate or a time share  
2 use;

3           (4) "time share estate" means an ownership interest in real  
4 property devoted to a time share program;

5           (5) "time share instrument" means a document, by whatever  
6 name, creating a purchaser's interest in a time share, and includes  
7 but is not limited to a purchase contract, deed, lease, club member-  
8 ship agreement, vacation license, and right-to-use contract;

9           (6) "time share offeror" or "offeror" means a person, as  
10 defined in AS 01.10.060(7), as well as a joint venture or other enti-  
11 ty, that creates a time sharing plan or is in the business of selling  
12 time share units;

13           (7) "time share program" means an arrangement for time  
14 shares in a time share project by which the use, occupancy, or posses-  
15 sion of real property has been made subject to a time share under  
16 which use, occupancy, or possession circulates among purchasers of the  
17 time shares according to a fixed or floating time schedule occurring  
18 periodically over any period of time;

19           (8) "time share project" means any real property containing  
20 one or more units that is the subject of a time share program;

21           (9) "time share use" means an arrangement, whether called a  
22 leasehold, contractual right, or other right, for exclusive occupancy  
23 of a specific or unspecified unit in a time share program, other than  
24 a time share estate.

25 \* Sec. 2. AS 08.88.111 is amended to read:

26           Sec. 08.88.111. COMMISSION REGULATIONS. (a) The commission  
27 shall adopt procedural regulations describing

28           (1) how it conducts an examination;

29           (2) how a person applies to take an examination, applies

1 for a license, and registers that person's office;  
2 (3) the procedure for registration of time shares, as  
3 defined in AS 45.50.660, to be offered in the state.  
4 (b) The commission shall adopt regulations regarding registra-  
5 tion of time shares to be offered in the state, as required under  
6 AS 45.50.630, including  
7 (1) a reasonable fee for the registration, which may in-  
8 clude either the supplemental payment by the time share offeror  
9 through its licensed broker or salesperson to the real estate surety  
10 fund or bonding in the name of the surety fund, which supplemental  
11 payment or bond must be adequate to protect both the public and the  
12 real estate surety fund;  
13 (2) a requirement that a written disclosure statement, as  
14 described in AS 45.50.640, be part of the registration;  
15 (3) a requirement that the name of the real estate broker  
16 licensed in this state through whom the time share will be offered be  
17 part of the registration;  
18 (4) forms necessary for administering AS 45.50.630; and  
19 (5) other regulations necessary to carry out the provisions  
20 of AS 45.50.630.  
21 (c) In addition to regulations adopted under (a) or (b) of this  
22 section, the commission may adopt regulations necessary to carry out  
23 the purposes of AS 08.88.

24 \* Sec. 3. AS 08.88.455 is amended to read:

25 (a) A licensed real estate broker or associate broker, when  
26 obtaining or renewing a real estate license, in lieu of obtaining a  
27 corporate surety bond, shall pay to the commission in addition to the  
28 license fee, a bond fee not to exceed \$125, and a licensed salesman,  
29 when obtaining or renewing a license, in lieu of obtaining a corporate

1 surety bond, shall pay to the commission in addition to the license  
2 fee, a bond fee not to exceed \$40. After the fund reaches \$250,000  
3 the commission shall by regulation adjust the bond fees so that,  
4 taking into account anticipated expenditures for claims against the  
5 fund and real estate educational purposes, the fund is maintained at a  
6 level not less than \$250,000.

7 (b) A licensed real estate broker, associate broker, or sales-  
8 person who markets a time share offering for a time share offeror  
9 under AS 45.50.630, shall annually pay to the commission a supplemen-  
10 tal bond fee or post a supplemental bond payable to the real estate  
11 surety fund, in accordance with regulations adopted by the commission  
12 under AS 08.88.111(b).

13 (c) All fees collected under this section shall be paid at least  
14 once a month by the commission into the general fund. These payments  
15 shall be credited to the real estate surety fund.

16 \* Sec. 4. AS 08.88.475 is amended to read:

17 Sec. 08.88.475. MAXIMUM LIABILITY. (a) The maximum lia-  
18 bility of the real estate surety fund does not exceed \$50,000 for any  
19 one broker or salesperson, except when the broker or salesperson has  
20 paid supplemental fees to the surety fund under AS 08.88.455(b), in  
21 which case the maximum liability is as determined under regulations  
22 adopted under AS 08.88.111(b) [SALESMAN].

23 (b) If the maximum [\$50,000] liability of the fund as provided  
24 in (a) of this section is insufficient to pay in full the valid claims  
25 of all persons who have filed claims against one broker or salesperson  
26 [SALESMAN], the maximum liability amount [\$50,000] shall be distribut-  
27 ed among the claimants in the ratio that their individual claims bear  
28 to the aggregate of valid claims, or in another manner that the com-  
29 mission considers equitable. Distribution shall be among the persons

1        entitled to share in the recovery, without regard to the order of  
2        priority in which their claims were filed.

3        \* Sec. 5. This Act takes effect immediately in accordance with AS 01.-

4        10.070(c).