

Offered: 5/10/84
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR SENATE BILL NO. 494 (L&C)

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."

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) A

15

person may not 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) A person may not 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. The provisions of AS 08.88 apply to the sale of a
23 time share.

24

Sec. 45.50.635. DISCLOSURE STATEMENT. A person may not make any

25

offer of a time share, including an offer made by telephone or mail,
26 to a resident of the state regardless of where the time share project
27 is located unless the offeror discloses to the potential purchaser in
28 writing, before the purchaser signs any time share instrument,

29

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

- 1 (2) the address and location of the time share units;
- 2 (3) a description of the time share units, including the
3 developer's schedule for completion of all buildings, units, and
4 amenities and dates of availability;
- 5 (4) if the time share program or project is located in part
6 or in whole in a horizontal property regime, a description of the
7 project and any pertinent provisions of the project instruments;
- 8 (5) any restraints on the transfer of the purchaser's time
9 share interest in the time share;
- 10 (6) whether the time share is a time share ownership or a
11 use plan, along with a description of the rights and responsibilities
12 under that plan;
- 13 (7) a statement that the purchaser has 15 calendar days to
14 cancel the time share instrument after the executed instrument has
15 been delivered or received by the purchaser;
- 16 (8) a statement that, under AS 45.50.655, every sale or
17 transfer made in violation of AS 45.50.630 - 45.50.660 may be revoked
18 at the election of the purchaser;
- 19 (9) notice of any liens, title defects, or encumbrances on
20 or affecting the offeror's or purchaser's title to the time share
21 project;
- 22 (10) notice of any pending or anticipated suits that are
23 material to the time share of which the time share offeror has or
24 should have knowledge;
- 25 (11) the total financial obligation of the purchaser, in-
26 cluding the initial price and each additional charge that the purchas-
27 er may be subject to;
- 28 (12) a good-faith estimate of the dues, maintenance fees,
29 real property taxes, and similar periodic expenses relating to the

1 time share, and the method or formula by which they are derived and
2 apportioned;

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

8 Sec. 45.50.640. ESCROW AND CANCELLATION. (a) Except as pro-
9 vided in (d) and (e) of this section, a deposit or payment from a
10 purchaser for a time share unit shall be held in escrow for 15 days
11 after the deposit or payment is received by the time share offeror or
12 the real estate broker of the offeror to allow the purchaser time to
13 cancel the time share instrument.

14 (b) Except as provided in (d) of this section, a purchaser who
15 has not made a personal inspection of a completed time share unit may
16 cancel a fully executed time share instrument within 10 days after the
17 executed time share instrument is delivered or mailed to the pur-
18 chaser. A cancellation under this section voids the time share in-
19 strument as of the date the time share instrument was signed by the
20 purchaser.

21 (c) If the purchaser elects to cancel a time share instrument
22 under this section, cancellation is effective when the purchaser,
23 within the period specified in (b) of this section,

24 (1) hand delivers a written notice of the cancellation to
25 the time share offeror or the real estate broker of the offeror; or

26 (2) mails to the time share offeror at the address listed
27 in the disclosure statement of the offeror a certified letter of
28 cancellation, marked "Deliver to Addressee Only, Return Receipt Re-
29 quested."

1 (d) If the purchaser resides in the purchased time share unit
2 during the cancellation period established under (b) of this section,

3 (1) the escrow period ends at the earlier of

4 (A) seven days after the purchaser takes residency in
5 the purchased time share unit; or

6 (B) fifteen days after the escrow or deposit for the
7 time share unit was made; and

8 (2) the cancellation period ends two days after the pur-
9 chaser takes up residency in the purchased time share unit.

10 (e) If the purchaser has no right to cancel a time share instru-
11 ment under this section, the time share offeror or the real estate
12 broker of the offeror need not hold the deposit or payment in escrow
13 under this section.

14 Sec. 45.50.650. ENFORCEMENT AND REMEDIES. A violation of
15 AS 45.50.630 - 45.50.660 is an unlawful act or practice prohibited by
16 the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 -
17 45.50.561. The public enforcement powers and private remedies provid-
18 ed by AS 45.50.471 - 45.50.561 apply to violations of AS 45.50.630 -
19 45.50.660.

20 Sec. 45.50.655. SALES REVOCABLE FOR VIOLATION OF AS 45.50.630 -
21 45.50.660. Each sale or transfer made in violation of AS 45.50.630 -
22 45.50.660 may be revoked by the purchaser. If the time share offeror
23 or a director, officer, or agent of or for the time share offeror has
24 personally participated or aided in any way in making the sale, trans-
25 fer, or solicitation, the offeror and each other person are jointly
26 and severally liable to the purchaser. An action to revoke a sale or
27 transfer made in violation of AS 45.50.630 - 45.50.660 must be filed
28 in the judicial district (1) in which the time share project is lo-
29 cated or was offered or sold, or (2) in which the time share offeror

1 or licensed real estate broker resides or is doing business upon
2 tender of the time share interest sold, or (3) in which the contract
3 was made. On judgment by the court in favor of the purchaser, the
4 purchaser is entitled to the full amount paid by the purchaser, with
5 prejudgment interest, less a portion of the amount paid representing
6 the portion of any benefits the purchaser actually received or had the
7 right to receive during the time preceding the tender. In all cases,
8 the court may provide equitable relief it considers necessary or
9 proper. An action under this section does not limit any other remedy
10 of the purchaser.

11 Sec. 45.50.657. STATUTORY OR COMMON LAW REMEDIES. Nothing in
12 AS 45.50.630 - 45.50.660 limits any other statutory or common law
13 right of a person to bring an action in any court for an act involved
14 in the development, sale, exchange, or purchase of a time share inter-
15 est, or limits the right of a court of the state to penalize a person
16 for a violation of law.

17 Sec. 45.50.658. TIME SHARE PROGRAMS REAL PROPERTY. A time share
18 estate in this state may be organized under AS 34.07 and may be con-
19 veyed under AS 34.15.

20 Sec. 45.50.659. PARTITION. (a) Except as provided in a de-
21 clarator filed under AS 34.07.020 or as provided in bylaws, an action
22 for partition of a time share unit may not be maintained in a time
23 share program organized under AS 34.07.

24 (b) Notwithstanding (a) of this section, two or more persons who
25 own a time share unit may voluntarily or by judgment of a court parti-
26 tion the time share of the time share unit.

27 Sec. 45.50.660. DEFINITIONS. In AS 45.50.630 - 45.50.660

28 (1) "offer" includes an inducement, solicitation, or at-
29 tempt by a time share offeror or an agent of the time share offeror to

1 encourage a person to acquire an interest in a time share;
2 (2) "purchaser" means a person who acquires or attempts to
3 acquire or succeeds to an interest in a time share, or who is soli-
4 cited to acquire such an interest;
5 (3) "time share" means a time share estate or a time share
6 use;
7 (4) "time share estate" means an ownership interest in real
8 property devoted to a time share program;
9 (5) "time share instrument" means a document, by whatever
10 name, creating a purchaser's interest in a time share and includes a
11 purchase contract, deed, lease, club membership agreement, vacation
12 license, right-to-use contract, or similar instrument;
13 (6) "time share offeror" or "offeror" means a person, a
14 joint venture, or other entity that creates a time sharing plan or is
15 in the business of selling time share units;
16 (7) "time share program" means an arrangement for time
17 shares in a time share project by which the use, occupancy, or posses-
18 sion of real property has been made subject to a time share under
19 which use, occupancy, or possession circulates among purchasers of the
20 time shares according to a fixed or floating time schedule occurring
21 periodically over any period of time;
22 (8) "time share project" means any real property containing
23 one or more units that is the subject of a time share program;
24 (9) "time share use" means an arrangement, whether called a
25 leasehold, contractual right, or other right, for exclusive occupancy
26 of a specific or unspecified unit in a time share program, other than
27 a time share estate.

28 * Sec. 2. AS 08.88.111 is amended to read:

29 Sec. 08.88.111. COMMISSION REGULATIONS. (a) The commission

1 shall adopt procedural regulations describing
2 (1) how it conducts an examination;
3 (2) how a person applies to take an examination, applies
4 for a license, and registers that person's office;
5 (3) the procedure for registration of time shares, as
6 defined in AS 45.50.660, to be offered in the state.

7 (b) The commission shall adopt regulations regarding registra-
8 tion of time shares to be offered in the state, as required under
9 AS 45.50.630, including

10 (1) a reasonable fee for the registration that may include
11 either the supplemental payment by the time share offeror through its
12 licensed broker or salesperson to the real estate surety fund or
13 bonding in the name of the surety fund; the supplemental payment or
14 bond must be adequate to protect both the public and the real estate
15 surety fund;

16 (2) a requirement that the written disclosure statement
17 described in AS 45.50.635 be part of the registration;

18 (3) a requirement that the name of the real estate broker
19 licensed in the state through whom the time share will be offered be
20 part of the registration;

21 (4) forms necessary for administering AS 45.50.630; and

22 (5) other regulations necessary to carry out the provisions
23 of AS 45.50.630.

24 (c) In addition to regulations adopted under (a) or (b) of this
25 section, the commission may adopt regulations necessary to carry out
26 the purposes of AS 08.88.

27 * Sec. 3. AS 08.88.455 is amended to read:

28 Sec. 08.88.455. PAYMENTS BY REAL ESTATE BROKERS AND SALESPERSON
29 [SALESMEN]. (a) A licensed real estate broker or associate broker,

1 when obtaining or renewing a real estate license, in lieu of obtaining
2 a corporate surety bond, shall pay to the commission in addition to
3 the license fee, a bond fee not to exceed \$125, and a licensed sales-
4 person [SALESMAN], when obtaining or renewing a license, in lieu of
5 obtaining a corporate surety bond, shall pay to the commission in
6 addition to the license fee, a bond fee not to exceed \$40. After the
7 fund reaches \$250,000 the commission shall by regulation adjust the
8 bond fees so that, taking into account anticipated expenditures for
9 claims against the fund and real estate educational purposes, the fund
10 is maintained at a level not less than \$250,000.

11 (b) A licensed real estate broker, associate broker, or sales-
12 person who markets a time share offering for a time share offeror
13 under AS 45.50.630, may be required annually to pay to the commission
14 a supplemental bond fee or post a supplemental bond payable to the
15 real estate surety fund, in accordance with regulations adopted by the
16 commission under AS 08.88.111(b).

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

20 * Sec. 4. AS 08.88.475 is amended to read:

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

27 (b) If the maximum [\$50,000] liability of the fund as provided
28 in (a) of this section is insufficient to pay in full the valid claims
29 of all persons who have filed claims against one broker or salesperson

1 [SALESMAN], the maximum liability amount [\$50,000] shall be distribut-
2 ed among the claimants in the ratio that their individual claims bear
3 to the aggregate of valid claims, or in another manner that the com-
4 mission considers equitable. Distribution shall be among the persons
5 entitled to share in the recovery, without regard to the order of
6 priority in which their claims were filed.

7 * Sec. 5. This Act takes effect January 1, 1985.