

Introduced: 1/28/85
Referred: Labor & Commerce,
Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 138

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST 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; clarifying 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 08.88.111 is amended to read:

13 Sec. 08.88.111. COMMISSION REGULATIONS. (a) The commission
14 shall adopt procedural regulations describing

15 (1) how it conducts an examination;

16 (2) how a person applies to take an examination, applies
17 for a license, and registers that person's office;

18 (3) the procedure for registration of time-shares, as
19 defined in AS 45.50.660, to be offered in the state.

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

23 (1) a reasonable fee for the registration, that may include
24 either the supplemental payment by the time-share offeror through its
25 licensed broker or salesperson to the real estate surety fund or
26 bonding in the name of the surety fund; the supplemental payment or
27 bond must be adequate to protect both the public and the real estate
28 surety fund;

29 (2) a requirement that the written disclosure statement

1 described in AS 45.50.635 be part of the registration;

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

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

6 (5) other regulations necessary to carry out the provisions
7 of AS 45.50.630.

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

11 * Sec. 2. AS 08.88.455 is amended to read:

12 Sec. 08.88.455. PAYMENTS BY REAL ESTATE BROKERS AND SALESPERSONS
13 [SALESMEN]. (a) A licensed real estate broker, associate broker, or
14 salesperson, [SALESMAN] when obtaining or renewing a real estate
15 license, instead [IN LIEU] of obtaining a corporate surety bond, shall
16 pay to the commission in addition to the license fee, a surety fund
17 fee not to exceed \$125. After the fund reaches \$250,000 the commis-
18 sion shall by regulation adjust the surety fund fees so that, taking
19 into account anticipated expenditures for claims against the fund and
20 real estate educational purposes, the fund is maintained at a level
21 not less than \$250,000.

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

28 (c) All fees collected under this section must [SHALL] be paid
29 at least once a month by the commission into the general fund. These

1 payments must [SHALL] be credited to the real estate surety fund.

2 * Sec. 3. AS 08.88.475 is amended to read:

3 Sec. 08.88.475. MAXIMUM LIABILITY. (a) The maximum liability
4 of the real estate surety fund does not exceed \$50,000 for any one
5 broker or salesperson, except that when the broker or salesperson has
6 paid supplemental fees to the surety fund under AS 08.88.455(b), the
7 maximum liability is as determined under regulations adopted under
8 AS 08.88.111 [SALESMAN].

9 (b) If the maximum [\$50,000] liability of the fund as provided
10 in (a) of this section is insufficient to pay in full the valid claims
11 of all persons who have filed claims against one broker or salesperson
12 [SALESMAN], the maximum liability amount must [\$50,000 SHALL] be
13 distributed among the claimants in the ratio that their individual
14 claims bear to the aggregate of valid claims, or in another manner
15 that the commission considers equitable. Distribution must [SHALL] be
16 among the persons entitled to share in the recovery, without regard to
17 the order of priority in which their claims were filed.

18 * Sec. 4. AS 45.50 is amended by adding new sections to read:

19 ARTICLE 7. TIME SHARE PROGRAMS FOR RESIDENTIAL PROPERTY.

20 Sec. 45.50.630. REAL ESTATE BROKER AND REGISTRATION. (a) A
21 person may not offer a time-share in the state, regardless of where
22 the time-share project is located, unless the offer is made through a
23 real estate broker or associate broker, or real estate salesperson,
24 licensed in the state under AS 08.88.161.

25 (b) A person may not offer a time-share in the state unless the
26 offeror has registered the offering with the Real Estate Commission
27 and paid the registration fee in accordance with regulations adopted
28 under AS 08.88.111. The provisions of AS 08.88 apply to the sale of a
29 time-share.

1 Sec. 45.50.635. DISCLOSURE STATEMENT. A person may not make any
2 offer of a time-share, including an offer made by telephone or mail,
3 to a resident of the state, regardless of where the time-share project
4 is located, unless the offeror discloses to the potential purchaser in
5 writing, before the purchaser signs any time-share instrument,

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

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

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

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

14 (5) any restraints on the transfer of the purchaser's
15 time-share interest in the time-share;

16 (6) whether the time-share is a time-share ownership or a
17 use plan, along with a description of the rights and responsibilities
18 under that plan;

19 (7) a statement that the purchaser has either 3 or 10
20 calendar days, as determined under AS 45.50.640(b), to cancel the
21 time-share instrument after the executed instrument has been delivered
22 or received by the purchaser;

23 (8) a statement that, under AS 45.50.655, a sale or trans-
24 fer made in violation of AS 45.50.630 -- 45.50.660 may be revoked at
25 the election of the purchaser;

26 (9) notice of any liens, title defects, or encumbrances on
27 or affecting the offeror's or purchaser's title to the time-share
28 project;

29 (10) notice of any pending or anticipated suits that are

1 material to the time-share of which the time-share offeror has or
2 should have knowledge;

3 (11) the total financial obligation of the purchaser, in-
4 cluding the initial price and each additional charge that the purchas-
5 er may be subject to;

6 (12) a good-faith estimate of the dues, maintenance fees,
7 real property taxes, and similar periodic expenses relating to the
8 time-share, and the method or formula by which they are derived and
9 apportioned;

10 (13) a statement as to whether the time-share project is
11 included in an exchange program, the present cost, and a good-faith
12 estimate of the future cost to the purchaser of the exchange program,
13 and whether the purchaser will or will not be required to become a
14 member of the exchange program.

15 Sec. 45.50.640. ESCROW AND CANCELLATION. (a) Except as provid-
16 ed in (d) of this section, a deposit or payment from a purchaser for a
17 time-share unit must be held in escrow after the deposit or payment is
18 received by the time-share offeror or the real estate broker of the
19 offeror, until the appropriate cancellation period provided for in (b)
20 of this section has expired, to allow the purchaser time to cancel the
21 time-share instrument.

22 (b) Except as provided in (d) of this section, a purchaser who
23 has not made a personal inspection of a completed time-share unit
24 before executing the time-share instrument may cancel a fully executed
25 time-share instrument within 10 days after the executed time-share
26 instrument is delivered or mailed to the purchaser. If the purchaser
27 has made a personal inspection of a completed time-share unit before
28 executing the time-share instrument, the purchaser may cancel a fully
29 executed time-share instrument within 3 days after the executed time-

1 share instrument is delivered to mailed to the purchaser. A cancella-
2 tion under this section voids the time-share instrument as of the date
3 the time-share instrument was signed by the purchaser.

4 (c) If the purchaser elects to cancel a time-share instrument
5 under this section, cancellation is effective when the purchaser,
6 within the applicable period specified in (b) of this section,

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

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

13 (d) If the purchaser resides in the purchased time-share unit
14 during the applicable cancellation period established under (b) of
15 this section,

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

17 (A) seven days after the purchaser takes up residency
18 in the purchased time-share unit; or

19 (B) 15 days after the escrow or deposit for the time-
20 share unit was made; and

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

23 Sec. 45.50.650. ENFORCEMENT AND REMEDIES. A violation of
24 AS 45.50.630 -- 45.50.660 is an unlawful act or practice prohibited by
25 the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471
26 -- 45.50.561. The public enforcement powers and private remedies
27 provided by AS 45.50.471 -- 45.50.561 apply to violations of AS 45.-
28 50.630 -- 45.50.660.

29 Sec. 45.50.655. SALES REVOCABLE FOR VIOLATION OF AS 45.50.630 --

1 45.50.660. A sale or transfer made in violation of AS 45.50.630 --
2 45.50.660 may be revoked by the purchaser. If the time-share offeror,
3 or a director, officer, or agent of or for the time-share offeror, has
4 personally participated or aided in any way in making the sale, trans-
5 fer, or solicitation, the offeror and the director, officer, or agent
6 are jointly and severally liable to the purchaser. An action to
7 revoke a sale or transfer made in violation of AS 45.50.630 -- 45.50.-
8 660 may be filed in the judicial district (1) in which the time-share
9 project is located or was offered or sold, or (2) in which the time-
10 share offeror or licensed real estate broker resides or is doing
11 business upon tender of the time-share interest sold, or (3) in which
12 the contract was made. On judgment by the court in favor of the
13 purchaser, the purchaser is entitled to the full amount paid by the
14 purchaser, with prejudgment interest, less a portion of the amount
15 paid representing the portion of any benefits the purchaser actually
16 received or had the right to receive during the time preceding the
17 tender. In all cases, the court may provide equitable relief if it
18 considers necessary or proper. An action under this section does not
19 limit any other remedy of the purchaser.

20 Sec. 45.50.657. STATUTORY OR COMMON LAW REMEDIES. Nothing in
21 AS 45.50.630 -- 45.50.660 limits any other statutory or common law
22 right of a person to bring an action in any court for an act involved
23 in the development, sale, exchange, or purchase of a time-share inter-
24 est, or limits the right of a court of the state to penalize a person
25 for a violation of law.

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

29 Sec. 45.50.659. PARTITION. (a) Except as provided in a

1 declaration filed under AS 34.07.020 or as provided in bylaws, an
2 action for partition of a time-share unit may not be maintained in a
3 time-share program organized under AS 34.07.

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

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

8 (1) "offer" includes an inducement, solicitation, or at-
9 tempt by a time-share offeror or an agent of the time-share offeror to
10 encourage a person to acquire an interest in a time-share;

11 (2) "purchaser" means a person who acquires or attempts to
12 acquire or succeeds to an interest in a time-share, or who is solicit-
13 ed to acquire such an interest;

14 (3) "time-share" means a time-share estate or a time-share
15 use;

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

18 (5) "time-share instrument" means a document, by whatever
19 name, creating a purchaser's interest in a time-share and includes a
20 purchase contract, deed, lease, club membership agreement, vacation
21 license, right-to-use contract, or similar instrument;

22 (6) "time-share offeror" or "offeror" means a person, a
23 joint venture, or other entity that creates a time-sharing plan or is
24 in the business of selling time-share units;

25 (7) "time-share program" means an arrangement for time-
26 shares in a time-share project by which the use, occupancy, or pos-
27 session of real property has been made subject to a time-share under
28 which use, occupancy, or possession circulates among purchasers of the
29 time-shares according to a fixed or floating time schedule occurring

1 periodically over any period of time;

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

4 (9) "time-share use" means an arrangement, whether called a
5 leasehold, contractual right, or other right, for exclusive occupancy
6 of a specific or unspecified unit in a time-share program, other than
7 a time-share estate.

8 * Sec. 5. AS 08.88.111(c), enacted in sec. 1 of this Act, takes effect
9 immediately in accordance with AS 01.10.070(c).

10 * Sec. 6. The amendment of AS 08.88.111(a), and the enactment of
11 AS 08.88.111(b), in sec. 1 of this Act, and secs. 2 -- 4 of this Act, take
12 effect January 1, 1986.