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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

20494

February 13, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the sale of time share programs for use, occupancy, or possession of residential property. The bill also amends the Real Estate Commission's authority to adopt regulations necessary for administration of the entire real estate chapter.

The most common time share offer is to sell for a one- to two-week period the use of a vacation "home" in a popular vacation spot to individuals. For example, a person would "own" periods of two weeks of time in an apartment on the beach in Hawaii.

The bill has several main components: a time share offered for sale in Alaska must be registered with the Real Estate Commission and sold through a real estate agent licensed in the state; certain disclosures must be made to potential purchasers by a time share offeror; unfair methods of competition and deceptive acts or practices in the sale of time shares are prohibited; a time share purchaser has 15 days to cancel a time share purchase contract; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

In addition, the commission is empowered to set by regulation additional fees for registration of these time shares, including supplemental bond payments to the real estate surety fund to allow adequate compensation to victims of time share sales fraud. Supplemental payments to the surety fund were considered necessary to ensure that these large projects did not deplete the rest of the surety fund.

Governor's letter

Finally, the last major component of the bill is an expansion of the Real Estate Commission's regulatory promulgation authority. Presently, the commission may only promulgate procedural regulations. Under this bill, the commission will be able to issue both procedural and substantive regulations about time shares and about the rest of the real estate chapter. On numerous occasions, the commission has found a need to adopt regulations codifying its interpretation of the law regarding real estate matters. This bill is an appropriate vehicle to rectify this weakness in the commission's ability to protect the public while adequately informing the industry of the conduct legally expected of it.

A detailed discussion follows:

The first section of the bill requires the Real Estate Commission to set up registration requirements for all time shares offered in the state regardless of whether the property is located in the state. Specific registration requirements would be adopted by the Real Estate Commission under the authority granted in sec. 2 of this bill, amending AS 08.88.111. In addition, a time share offer made in this state must be made through a real estate broker, licensed in Alaska. The effect of this requirement would be to give purchasers of time shares recourse to the real estate surety fund (AS 08.88.450 -- 08.88.500) for misrepresentation by a real estate broker, associate real estate broker, or real estate salesperson.

These provisions would offer the people of Alaska protection against an outside outfit that opens an office in this state or holds sales presentations in a hotel suite to sell time shares located outside the state. Requiring time share sales to be made by an agent licensed in the state would discourage "fly-by-night" or fraudulent operations since the local brokers would be cautious about risking their licenses or exposure to claims by dissatisfied purchasers. Thus, licensed agents would have an incentive to screen and refuse to serve as agents for risky time share concerns. The definition of "offeror" in new AS 45.50.660(6) exempts from the requirements of AS 45.50.630 -- 45.50.660 an individual who is re-selling his interest in a time share program.

The bill requires registration with the Real Estate Commission. Some time shares actually are interests in real property, others are just agreements to use a time share unit. The bill would require registration of all time share offers to be made in the state, whether the offeror sells an interest in real property or merely a contractual right to use residential property. This registration requirement should not be burdensome to the commission as it is not anticipated that numerous time shares will be marketed in the state. Fees charged should offset any cost of the registration. Under new AS 08.88.111(b)(1), in sec. 2 of the bill, the commission will set the registration fee. In other legislation, I propose that the Department of Commerce and Economic Development, by regulation, set the licensing and other professional fees for the businesses and professions regulated under AS 08, rather than the current system of establishing the fees by statute. If that bill passes, AS 08.88.111(b)(1) should be changed accordingly.

The bill requires persons selling time shares to disclose in writing significant facts about the offer to potential purchasers. The written disclosure statement must be filed with the Real Estate Commission as part of the registration. In other states, disclosure requirements have helped to prevent sales pitches that suggest that the time share is an "investment" and cure other abuses such as the failure to inform the purchaser of the total cost of the time share over the full term of the time share. Adequate written disclosure enables a consumer to make an informed purchase decision. While there is some evidence that purchasers in high-pressure sales situations do not fully read disclosure statements, the provision of written disclosures coupled with the 15-day cancellation period allows a purchaser the opportunity to carefully consider a time share purchase.

Another significant portion of the bill prohibits deceptive acts or practices in the sale of time shares. Experience in other states (e.g., Hawaii, Florida, Colorado, Arizona) where time shares have been marketed aggressively for some years shows that many purchasers are induced to attend sales presentations through promises of prizes or awards and are unable to resist the fast sales pitch. The time share industry itself criticizes this type of sales approach and suggests that sales should be geared to persons who want to purchase time shares for the features of the units themselves and as a hedge against future inflation in vacation costs. The consumer protection section of the Department of Law has received inquiries and complaints from persons induced to believe that they would win a car or color television if they attended a sales

presentation only to actually receive a cheap set of luggage as their "prize." This bill prohibits any contest or giving of a prize to induce someone to attend a sales presentation. Food served at a time share presentation, tours or visits to facilities and projects, and transportation to a project or presentation would not be prohibited. Specifically prohibited, however, is the serving of any alcoholic beverage at a time share presentation. A \$7,000 to \$35,000 purchase should not be made while under the influence of alcohol.

Perhaps the most important provision in the bill is the one for a 15-day "cooling-off" period for a purchaser to cancel the time share purchase. Other states have enacted cooling-off periods ranging from 5 to 15 days. Fifteen days will allow a purchaser time to fully review written materials, consult an attorney, accountant, or other professional and investigate representations made during the time share presentation. Escrow of purchaser deposits until after the cancellation period has expired assures that the purchaser will receive a refund of any payments made if the purchaser decides to cancel.

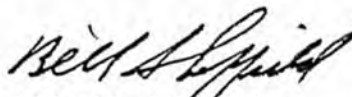
Enforcement powers identical to the enforcement powers in the Consumer Protection Act (AS 45.50.495 -- 45.50.521) are granted to the attorney general by this bill.

A private cause of action is specifically set out in the bill, providing that for violations of this bill the purchaser may void the sale. If the purchaser, however, has received some value such as using the time share unit for a period of time, the value of that use would be deducted from any amount the purchaser could recover. The customer's cause of action under this bill would be in addition to all other remedies presently available.

Sections 2, 3, and 4 of the bill contain provisions allowing the Real Estate Commission to set, by regulation, special fees for the registration of time share offerings, which fees may include supplemental payments by the time share offeror, through its real estate broker or licensed salesperson, to the real estate surety fund. Section 4 amends the statute that sets the maximum liability of the surety fund for any one broker at \$50,000 so that if a supplemental bond fee for higher liability has been filed by a time share offeror, the consuming public could file claims up to the higher maximum liability amount of the bond fees. The commission will be authorized to establish, by regulation, a schedule of adequate supplemental payments to the surety fund to protect both the public and the integrity of the fund from depletion.

In preparing this bill, the consumer protection section consulted with other state agencies -- the division of banking, securities and corporations and the Real Estate Commission. Legislation from many states, as well as the National Timesharing Council's Model Timeshare Act and Exchange Program Act, was reviewed. Discussions were held with industry representatives, Federal Trade Commission attorneys, and with assistant attorneys general from other states. The timesharing industry has recognized the need for reasonable regulation of the industry and it is not anticipated that there will be any significant industry opposition to this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: 494
Title: Sale of time share for use of residential property
Sponsor: Rules by Governor
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES	-0-	31.7	33.3	34.9	36.5	38.0
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	1.0	1.0	1.1	1.2	1.2
400 SUPPLIES	-0-	.5	.5	.6	.6	.6
500 EQUIPMENT	-0-	4.7	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	37.9	34.8	36.6	38.3	39.8
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	50.0	50.0	60.0	40.0	60.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	37.9	34.8	36.6	38.3	39.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	37.9	34.8	36.6	38.3	39.8

POSITIONS:

FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Revenues will offset the expenditures if it is assumed that the commission can charge fees. The fiscal note assumes 100 registrations at \$500.00 each.

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magorian Phone: 272-5508
Division: Real Estate Commission Date: 1/25/84
Approved by Commissioner: Richard A. Lyon Date: 1/25/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note

1.	POSITION TITLE License Examiner I			RANGE/STEP 12	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION Perm	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY 1	LOCATION EBA	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1			2		3			
	PERSONAL SERVICES								
5.	Salary	1,973/month		23,676					
6.	Benefits			3,866					
7.	Supplemental Benefits			1,451					
8.	Fixed Benefits			2,728					
9.	TOTAL PERSONAL SERVICES		01	31,721					
10.	Travel		02						
11.	Contractual		03	1,000					
12.	Commodities		04	500					
13.	Equipment		05	4,700					
14.	Other								
15.	TOTAL COST			37,921					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		37,921					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

This position will be necessary to handle the additional workload of registering time share sales, examining disclosure statements, and enforcing the Registration Act. It is estimated that there will be 100 registrations, each requiring ten hours of processing. The position will also provide public information to developers, licensees and consumers regarding the registration and sales of time shares. The position will require desk, chair, filing cabinet and computer terminal.

13 REQUEST FOR
NEW POSITION

AGENCY Commerce & Economic Development
PROGRAM Consumer Protection
BRU Real Estate Commission
COMPONENT _____

Page 1 of 1
Revised Date _____

FY 85

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: Jan. 9, 1984
(Revised for 1984 Session)

REQUEST
Bill/Resolution No.: 496
Title: "An Act relating to...
time share programs..."
Sponsor: Sen. Rules/Governor
Requestor: Off. of Gov. - OMB
Date of Request: _____

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pagano Phone: 465-3672
Division: Administrative Services Division Date: 1-9-84
Approved by Commissioner: Norman C. Gorsuch Date: 1-9-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

This bill attempts to regulate the sale or offer of "time share" programs in the state. Typically, time share projects are located in areas outside Alaska, such as Hawaii or Mexico. The department has experienced a growing number of complaints involving misrepresentations in either the promise of promotional incentives or in the value actually offered by the time share. The bill provides that a time share offered in Alaska must be registered with the Real Estate Commission and sold through a real estate agent licensed in the state; certain disclosures must be made to potential purchasers by a time share offerer; unfair methods of competition and deceptive acts or practices in the sale of time shares are prohibited; a time share purchaser has 15 days to cancel a time share purchase contract; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

Because of the screening process that would be caused by the requirement for registration of time share sales, and because of the requirement that time shares be sold only by state licensed real estate agents, and the provision to authorize private action for individuals, the department does not foresee any significant increase in enforcement activity. Consequently, there will not be a fiscal impact on the department's operations.

The Real Estate Commission will experience some fiscal impact in implementing and administering the registration requirements under this bill. The commission is empowered, however, to adopt regulations requiring payment of registration fees for time share sales to offset the cost of registration.

Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

April 11, 1984

279-0428

NORMAN C. GORSUCH
ATTORNEY GENERAL

Senate Bill 494
(timeshares)

By: Linda M. O'Bannon
Assistant Attorney General
Consumer Protection Section
AGO/Anchorage

What I intended to do today was to give an overview of timeshares and some of the problems and background in the area. Then to discuss some of the specific types of complaints that led to our section of the Attorney General's Office determination that we should draft legislation specifically addressing timeshares. Finally, to discuss the specific provisions of Senate Bill 494.

Overview of timeshares

Timesharing is the use of a vacation home or condominium for a limited period of time, generally one - two weeks per year for a period of years. Timesharing is often promoted as a hedge against inflationary vacation costs.

There are two types of timeshare ownership. One is fee ownership or an interest in real property, under which the purchaser owns a fee simple or leasehold interest in a particular housing unit for a specific period of time over a number of years. This is considered generally an actual interest in real estate, and very often the timeshare owner receives a recorded deed. The other type of ownership is the right to use a vacation

license agreement, under which the purchaser owns a contractual right to use a particular kind of unit in a resort development for a given period of time each year over a number of years.

Often, timeshares are affiliated with an exchange program. Currently the two major exchange programs are Interval International of Miami, Florida, and Resort Condominiums International of Indianapolis, Indiana. If these companies accept a timeshare resort in their exchange program, then the members of these timeshares, for a fee, can apply for an exchange of their period of use in a timeshare project for a period of use in a different timeshare project in another location. Membership in these two exchange programs is no guarantee that a timeshare owner will ever be able to swap a vacation in their timeshare project for a vacation in another one.

The three major problems that have arisen with timeshares nationwide are: (1) the solicitation and marketing techniques, (2) the high-pressure sales fraught with misrepresentations, and (3) the financial problems of the backers and developers.

Solicitations and marketing practices

Typically, timeshares are promoted by the use of direct mail solicitations or phone solicitations offering free "prizes" or gifts to consumers who will listen to sales presentations. In order to claim the "prize," or gift, the consumer generally has to attend a lengthy sales presentation at the timeshare developer's offices, or in a hotel room. These sales presentations are generally quite slick, and include brochures,

slides, films, artists' renditions, and other materials. Often a salesperson is assigned to each person or couple attending the timeshare presentation.

There are many areas of deceptive and unfair practices in the solicitations. Many times the consumers are led to believe that they will receive a very expensive prize, such as a car or television if they attend a sales presentation, but the reward turns out to be a flimsy piece of cheap luggage.

Sometimes prospective buyers are not told that they will actually have to attend a sales presentation, but merely that they have to go to a certain location to pick up a "prize." Sometimes the gifts aren't given at the conclusion of the presentation, and consumers are told that they will have to attend another presentation in order to receive the gift, or that they will be later mailed or delivered.

High Pressure Sales

The high-pressure sales techniques include, after a general presentation using audio-visual aids, potential buyers being secluded in a room alone with a salesperson. Often other sales personnel are brought in in order to attempt to secure the sale if the potential buyer indicates a lack of interest. Often prospective buyers are made to feel foolish and ridiculed for being too stupid to take advantage of a "fantastic investment opportunity" if they are reluctant to purchase. Sometimes prospects are told that if they do not buy that day, they will lose a substantial discount that is being offered on the purchase price. Sometimes buyers are falsely told that if they don't purchase that day that the timeshare company will not be able to provide them with financing.

Misrepresentations

Unfortunately, many misrepresentations have been made in the sale of timeshares. These include the representation that the purchase of a timeshare is a good investment. That is, that the consumer can turn around and sell his interval ownership in a year or more and make a profit. Unfortunately, this is seldom the case. Many times people purchase timeshares without ever actually seeing the property. The artists' renditions or brochures show the property not as it actually is, but as the developers wish it were. Many times it is represented that amenities, such as swimming pools, tennis courts, golf courses, etc. will be added to the development, but unfortunately there is often not an actual requirement that the developer do this. Many times there are misrepresentations about the title or ownership

the buyer will actually receive, when in fact title cannot be given free and clear because of underlying encumbrances on the property. Sometimes the sales personnel create false impressions that timeshare units are scarce at prices offered.

Financial problems of timeshare developers

The most tragic problem in the timeshare industry has been the financial collapse of many developments which have resulted in near total losses for consumers. Typically, timeshares are sold with financing provided by the developer. Thus, the buyer would pay several thousand dollars down and sign a note for the remaining cost of the unit. Then the developer generally sells the note or commercial paper at a discount. Of the total purchase price of a timeshare unit, 50% of that

purchase price goes to marketing, solicitation, and the discount for the commercial paper. Thus, within a day or two of the sale, the developer is left with only 50% of the total purchase price of a unit. That 50% is generally gone forever and the developer or seller is seldom in a position to return a full refund to a consumer if it is found that serious misrepresentations were made, or other problems developed with the unit.

The most shocking aspect of the financial collapse of these timeshare developments is that very often the properties are mortgaged, and after any financial failure the financial institutions foreclose on the property, leaving the timeshare owners without any property or interest in the timeshare development. A federal bankruptcy judge in Sombrero Reef Club, Inc. v. Allman, 18 B.R. 612 (Bkrcty. S.D. Fla. 1982), held that

the right-to-use timeshare contracts were executory, and allowed the debtor-in-possession to reject them. The purpose of the bankruptcy action was to clear the way for a sale of the property free and clear of the timeshare purchasers' contracts and for the benefit of the financial creditors. Unfortunately, many swindles have occurred in the timeshare industry because the developer or timeshare seller gets the money upfront and skims off 50%. The early operations are lucrative to the seller and look successful to the unsuspecting onlooker, but ultimately there is a collapse with a foreclosure of the property, and the consumers lose all. In some criminal prosecutions of timeshare hustlers there has been evidence that the ultimate folding of the timeshare corporation was intended from the inception of the timeshare project.

TESTIMONY by Linda O'Bannon
Consumer Protection

Types of complaints we have received in Alaska

We have received complaints that solicitations were made for timeshare presentations by out-of-state concerns that opened up temporary sales offices or operated out of motel or hotel rooms in the ^{Anchorage} city. Typically, there were mail or telephone solicitations which were deceptive in that people were told that they had "won a prize." Sometimes they were not told that they would have to attend a timeshare presentation in order to claim the "prize." Our citizens are particularly ripe to a "burn" by out-of-state fly-by-night operations who claim to offer a "tan in the sun," but really offer a "burn." Because these presentations are made through the use of photographs or drawings or other

audio-visual aids, but do not include an actual visit to a site, there is really no opportunity for a consumer to inspect what they are buying.

Generally, very high-pressure sales tactics have been used. Quoting from one of our consumer complaints:

"None of the pictures were available long enough to really study the area, condo, or surroundings."

Some of the complaints we have heard concern the deceptiveness of the prizes allegedly won. In one instance, there was a mass mailing in which people received sealed envelopes which indicated that the envelopes would have to be brought into the sales office to be opened to claim the prize. The consumer, however, could see through the envelope the words

"1983 Cadillac," which suggested to the consumer, of course, that he or she had won a very significant prize. In fact, the brochure inside the sealed envelope was folded in such a way so that the words "1983 Cadillac" were visible, but to our knowledge no one actually won the Cadillac.

Quoting from a consumer complaint about the awarding of prizes:

"We then came to prize time. He took a sealed envelope to reception, . . . and gradually opened it with great expectations. Announced the number, checked it on the chart, and then told us we had won a telephone -- he disappeared into a storage room to get our prize, so I followed him, and guess what - telephones was all it contained. I asked him where the microwave, color tv, computer, VHS, and moped were, and he smirked and

remarked 'maybe in another location,' as he handed us a cheap telephone, and showed us to an exit outside the area involving other possible clients."

We have had complaints from consumers who received solicitations, arrived at the sales offices, and then were told that they were not qualified and could not receive a prize. They were turned down because they were too old, did not have a major credit card, were without a spouse, or were too young. These consumers were not told ahead of time that they would not qualify.

We have received reports, inquiries and complaints about timeshares located within this state but not sold by on-site visits. These areas of concern include complaints about

being kept waiting, not actually receiving any prize that was promised, and misrepresentations made about exchange programs.

Again quoting from affidavits of consumers.

"I realize that I was attending a sales promotion for timeshare condominiums. I sat around for at least an hour waiting for my 'orientation.' They had screwed up their schedule, and tried to get everybody to schedule for later, or to wait, but everyone wanted to have their orientation then. I was picked last because I was single.

At that time I sold the salesperson that I wanted my 'vacation' [within the State of Alaska] because it was close, and I would not have to pay large transportation

costs. The salesperson told me that I had a very low chance of getting my free vacation [within the State of Alaska]. I asked him how low my chance was, and he said that it was zero.

At that time I left the location of the sales promotion. I did not receive a free vacation."

Another consumer who completed an affidavit describes the misrepresentations that were made concerning an exchange program. The major exchange programs' brochures and contracts clearly disclose that consumers should never buy timeshares with the expectation that they will be able to exchange them for timeshares located elsewhere. Persons with top quality timeshares in favorite resorts at a favorite time of the year, such as a beach front Hawaii resort with all amenities from

January 1 thru January 15, may well be able to use exchange programs to take a vacation in another timeshare in another location. Those persons who purchase a week at a timeshare located within Alaska during the wintertime, or at a lake in South Dakota in January, are unlikely to ever be able to exchange their timeshares for a desirable Hawaii or Mexico or another popular resort area vacation.

One consumer describes the representations that were made in the sale of a timeshare.

"She also explained that I could 'trade' my week purchased at the resort near [Alaska location] for vacation time in another resort in a location like Hawaii. I explained that I was not interested in a timeshare in [Alaska], but that I was interested in

something that I could trade for vacations in other locations. . . . The second time she came over to our home, [salesperson] was very insistent. She exhibited a great deal of high-pressure in her sales tactics . . .

I asked if she was sure that I would be able to trade my [Alaska location] unit for vacations in other locations in the country, and she said there would be no problem. Later, when I asked for reassurances that I would be guaranteed the possibility of trading my vacation unit for a vacation unit someplace else, she said that I would be put on a list. Prior to her leaving our home, the salesperson loaned a book describing different timeshare locations throughout the country and exchange privileges to my wife. When my wife started to read the book, she found a statement in the book that said that one should not buy a timeshare

unit for exchanging purposes. My wife then called [the salesperson] and explained to her that I had told her that I was interested in buying a timeshare for exchange purposes, but that the booklet that she gave to us to look at explained that timeshares should not be purchased for exchanging purposes. The [salesperson] then explained to my wife over the telephone that that particular clause in the literature didn't apply to the timeshare that they were selling; that it applied to other timeshares. . . . About 20 minutes later the manager called us back. At that time my wife explained to him that she had placed a 'stop payment' order on the downpayment check which we had given [the salesperson] during our second visit with us. The manager was upset when my wife told him this, and the manager said that [the salesperson] should

never have given us the book to read regarding
timeshare locations and exchanges."

From other consumers concerning their promise of a free
vacation:

"But he never received a free vacation."

"I never did receive a free trip from them."

"When I inquired about my free trip, I was given a
'V.I.P.' brochure. This brochure said that I could be
entitled to lodging at certain locations if I met
certain restrictions, such as paying my own
transportation, paying certain fees, and attending
sales seminars at the city that I travel to. This is

not at all what I had expected the free vacation to
be."

SHORTEST TITLE: CS02 494(L&C)
AN ACT RELATING TO THE SALE OF TIME SHARE PROGRAMS FOR
LEASE, OCCUPANCY, OR POSSESSION OF RESIDENTIAL PROPERTY,
EXTENDING THE REAL ESTATE COMMISSION'S AUTHORITY TO ADOPT
REGULATIONS, AND PROVIDING FOR AN EFFECTIVE DATE
PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:
CURRENT STATUS: 5/28/84 IN (H) LABOR & COM REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
12/14/84	01	2068	FIRST READING -- COMMITTEE REPORTS
12/14/84	02	2068	F/NOTE SEN SUPPL #53
12/14/84	03	2068	F/NOTE W/ANALYSIS EQUALS ZERO
12/14/84	04	2069	GOV TRANSMITTAL LETTER
05/10/84	05	3005	L&C -- CS02, NR01
05/28/84	06	3325	RLS -- L&C CS05, OTHER05 TAKEN UP IMMEDIATELY
05/28/84	07	3328	SECOND READING
05/28/84	08	3328	L&C CS ADOPTED BY UNAN CONSENT
05/28/84	09	3328	ADVANCED TO 3RD READING BY UNAN CONSENT
05/28/84	10	3328	THIRD READING
05/28/84	11	3328	PASSED BY DIV 16-02-02
05/28/84	12	3328	EFFECTIVE DATE VOTE SAME AS PASSAGE
***	***	***	***

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/28/84	13	4118	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE FINANCE RULES
***	***	***	***

COMMITTEE REPORT

SENATE

FURTHER:

5/24/74

Date 5/3/74

Mr. President

The Committee on LABOR AND COMMERCE considered SI 494

sale of time share program for use, occupancy, or possession of residential property; amending the Real Estate Commission's authority to adopt regulations; and.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SI 474
- new title
- same title and recommends to pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

H. J. ...

Chairman

Do pass
Chairman recommendation

MSG B4-00041695 PRTY 1 05/03/84 14:57:25 ORIG: L103 IN= 0005 OUT= 0040
FROM: ANCHORAGE TO: KEN/FINAL STATS
TARGET: LJHV SUBJ: (S) LABOR & COMMERCE T/C, 5/3

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: MAY 3
SITE: ANCHORAGE
SPONSOR/SUBJECT: (S) LABOR & COMMERCE, SB 494, CSSB 316

..9...TESTIFIED *****T/C STARTED: 1:30
..3...OBSERVED *****T/C ENDED: 2:30
.12...TOTAL

TESTIFIED SB 494

1. JOHN HANSEN, ATTORNEY, 330 L STREET, 278-4573
2. CONNIE SIPE, DEPT. OF LAW, 278-1317

TESTIFY CSSB 316

1. MONTE ENGEL/AK LEGAL SERVICES CORP., 550 W. 8TH AVE, SUITE 200
272-9431
2. MAUREEN KENNEDY/AKPIRG, P.O. BOX 1093, 99510 278-3661
3. BENNIE BARKER, 3700 CARLETON, 248-7233
4. GEORGE C. MACKENZIE, 3700 CARLETON, 248-7233
5. TOM BEGICH, 1414 KARLUK, 333-6898
6. MARY RATCLIFF, 835 NELCHINA, 99501, 277-3733
7. MARY MCKINNON/COPE, 2203 W. 46TH AVE., 248-3727

OBSERVE

1. KRISTI BYRD, SEN. JOSEPHSON OFFICE, 276-4377
2. SHIRLEY NELSON, 601 E. NORTHERN LIGHTS, BOX 353, 276-6450
3. ROBIN SMITH, 4128 ROLLINS DRIVE, 338-1424

SIGN-IN SHEET

Proposed Legislation SB 494

Name (please print)	Address	Representing	Testify?? (YES or NO)	Phone Number
CONNIE J. SIPE	1031 W. 4 th Anchorage	Dept of Law	Yes	279-028
Wayne Palmer	301 Danner # 260 Anch.	Network Leisure Skippers	Yes	344-1551
James Scott	1600 E. Tudor Anch.	NETWORK Leisure Skippers	yes.	563-3945
John Hansen	(would like to testify - I think)			

Time Share Legislation

SB 494

CSSB 494 (L & C) REGULATES THE SALE OF TIME SHARES, A RAPIDLY GROWING NEW ADDITION TO THE REAL ESTATE INDUSTRY. THE MOST COMMON TIME SHARE OFFER IS TO SELL FOR A ONE-TO-TWO WEEK PERIOD THE USE OF A VACATION "HOME" IN A POPULAR VACATION SPOT TO INDIVIDUALS. FOR EXAMPLE, A PERSON WOULD "OWN" PERIODS OF TWO WEEKS OF TIME IN AN APARTMENT ON THE BEACH IN HAWAII.

THIS LEGISLATION REQUIRES THE REAL ESTATE COMMISSION TO SET UP REGISTRATION REQUIREMENTS FOR ALL TIME SHARES OFFERED IN THE STATE, REGARDLESS OF WHETHER THE PROPERTY IS LOCATED IN THE STATE. IN ADDITION, A TIME SHARE OFFER MADE IN THIS STATE MUST BE MADE THROUGH A REAL ESTATE BROKER, LICENSED IN ALASKA.

A 10-DAY "COOLING -OFF" PERIOD FOR A PURCHASER TO CANCEL THE TIME SHARE SALE HAS BEEN INCLUDED IN THIS LEGISLATION. THE TEN DAYS WILL ALLOW A PURCHASER TIME TO FULLY REVIEW WRITTEN MATERIALS, CONSULT AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, AND INVESTIGATE REPRESENTATIONS MADE DURING THE TIME SHARE PRESENTATION. DURING THIS PERIOD OF TIME, THE OFFEROR WILL HOLD THE PURCHASER'S DEPOSIT IN ESCROW.

THE SENATE LABOR AND COMMERCE COMMITTEE HELD SEVERAL HEARINGS ON SB 494 AND HEARD TESTIMONY FROM THOSE CONCERNED.

THE MAJOR OBJECTIONS TO THE ORIGINAL BILL HAVE BEEN ADDRESSED AND CSSB 494 (L & C) HAS THE SUPPORT OF THE DEPARTMENT OF LAW, CONSUMER PROTECTION, AND INDIVIDUALS WHO ARE CURRENTLY OFFERING TIME-SHARE SALES. I RECOMMEND PASSAGE OF THIS LEGISLATION.

ADDITIONAL INFORMATION

1) PERSONS SELLING TIME SHARES ARE REQUIRED TO DISCLOSE IN WRITING SIGNIFICANT FACTS ABOUT THE OFFER TO POTENTIAL PURCHASERS.

2) IF AN INDIVIDUAL RESIDES IN THE TIME-SHARE UNIT, THE CANCELLATION PERIOD ENDS TWO DAYS AFTER THE PURCHASER TAKES UP RESIDENCY IN THE PURCHASED TIME SHARE UNIT.

3) ENFORCEMENT POWERS FOR THIS LEGISLATION IS IDENTICAL TO THE ENFORCEMENT POWERS IN THE CONSUMER PROTECTION ACT.

4) THE REAL ESTATE COMMISSION MAY REQUIRE ADDITIONAL SURETY FUND FEES TO COVER INCREASED LIABILITY.

Testimony Provided Via Telephone 4/12/84

Wayne Palmer, 344-1551 (wk) or 243-1912 (hm), telephoned April 12, 1984 to express his opposition to portions of SB 494 - "An Act relating to the sale of time share programs."

Mr. Palmer's main concerns center around the following provisions of this legislation:

1) The purchaser can cancel the time share purchase within 15 days after the sale.

Mr. Palmer - This clause discriminates against agents who sell time share programs. Similar conditions are not placed on the sale of other real property.

2) The offering of prizes, gifts, and other inducements to encourage a person to attend a meeting at which a time share will be discussed is prohibited.

Mr. Palmer - If this prohibition is applied to the sale of time shares, it also should apply to travel agents, airlines, stores, i.e. all business ventures.

3) The purchaser's payment will be kept in an escrow account for 25 days.

Mr. Palmer - This provision of SB 494 places a financial burden on individuals who sell time shares and is unfair.

TESTIMONY TAKEN VIA PHONE ON SB 494

This bill would provide for regulation of those entities whose business purpose is the sale of time share interest in real property within the State of Alaska. It requires that an individual selling such interest be a licensed real estate agent operating through a broker or associated broker. The bill would enact certain consumer protection provisions and impose certain statutory controls on the operations of organizations marketing time share interest.

We applaud the Governor and the Legislature for seeking legislation of this type. We support passage of this legislation. However, we would ask that certain of the provisions as currently drafted be altered in order to improve the legislation.

The bill's purpose is commendable: regulation of an industry which has a significant impact on consumers is valuable. It is valuable both to the consumer and to the legitimate business interest with whom consumers deal.

We are in agreement with the bill's provision to impose a licensing requirement of sales of time shares projects. We concur in the requirement that certain standards of conduct and professional ethics be made of those who would sell time share interests. We support placement of oversight authority with the State Real Estate Commission and the provision of promulgation of regulations to implement the legislation.

We support the requirement that consumers entering into a time share agreement be given full disclosures before consumation of the contract. Not only does this requirement benefit those contemplating purchase of a time share interest, but also benefits the organization marketing those interests. A well informed buyer is a more satisfied buyer and a more credible reference.

There are three elements in the proposed legislation which do cause some concern and which we recommend be amended in order to improve the bill and its effectiveness and fairness.

The first of these recommended changes is to reduce the period during which a purchaser of a time share interest has a right of decision from the 15 days proposed to 3 days. Consumers entering into the purchase of real property under more usual circumstances now have a mandatory 3 day right to revoke the contract. Considering that these purchases involve usually a much more significant amount of money and a vastly greater potential of harm to the consumer, we fail to see the rationale for requiring a 5 fold increase in the recision period. Not only is the purchase of a time share interest a transaction involving a much lower sum of money. it is usually made by a relatively more sophisticated consumer making a purchase with far less pressure than one purchasing a family home, for instance. We recommend that the period be amended to a 3 day "cooling off period".

The second recommendation follows the first. To require such a lengthy escrow period severely handicaps an organization marketing time share interests. There is no need for a 25 day escrow period even if the 15 day cooling off period is retained. If that period is reduced to the 3 day period recommended above, the escrow period should be reduced to a suitable level as well.

We fail to understand why an organization marketing time shares should be precluded from using reasonable marketing tactics in order to place its "products" before the public. The provision in the legislation which forbids the use of raffles, lotteries, or gifts to attract potential buyers appears to be discriminatory. There is a vast array of businesses that use premiums, gifts, or contests to attract consumers. From a free hotdog given at a car dealer's operation to raffles staged by shopping malls, the use of a "gift" or "prize" is a standard marketing tactic. To prevent only those marketing time share interests from using this technique seems to single out one industry, for a purpose we fail to perceive. We agree that the use of such attractions must be in a

forthright and legitimate manner. We agree that no fraudulent techniques or shows should be used. There are, however, significant consumer protections to assure that fraud is not permitted and halted whenever discovered.

The State of Alaska spends considerable amounts of money and resources annually attempting to attract tourists to the state. We fully agree with the purpose of these expenditures. If tourism is to be encouraged, we maintain that those organizations and individuals who would provide services and facilities to tourists should be encouraged as well. Time share projects provide marvelous opportunities for those visiting Alaska to obtain maximum enjoyment for their vacation dollar. Not only is tourism encouraged by the availability of time share projects, but those who chose to purchase a time share interest come back to the state year after year. Severely restricting development of a modern and viable segment of the industry, that is offerors of time share projects, runs counter to the state's purpose in attracting tourism.

The success of one time share project will necessarily encourage others to enter into such projects. These types of development have significant positive impact on both local and state economies. Construction and service industries are enhanced; employment opportunities are created; local business of all kinds enjoy the fruits of success.

Once again, we support legislation of this type. We only ask for reasonable and fair treatment under the bill and ask that you consider the proposal we have made for improvement of the bill.

Thank you for your consideration.

Bill Lange, developer of Brigantine Bay Time Share Project.

4/24/85

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January 19, 1984

John T. Hansen, Esq.
330 "L" Street
Anchorage, Alaska 99501

Dear John:

I apologize for the delay in following up on our telephone conversation last week; however, I have been ill and out of the office. I very much enjoyed the opportunity to speak with you concerning proposed legislation to regulate real estate timesharing in the State of Alaska. I thank you for your January 9, 1984 letter, together with its enclosures of the Alaska Horizontal Regimes Act and the proposed timesharing legislation.

There are several portions of the proposed timesharing legislation to which I would expect developers and marketers to have objection.

1. Rescission Period. Sections 45.50.640(7) and 45.50.645 provides for a 15 calendar day period in which a purchaser may "...cancel the timeshare instrument once the executed instrument has been delivered or received by the purchaser." In the experience of the industry, most rescissions occur within 3 days (72 hours) of purchase. The NTC Model Act (a copy of which I have enclosed) provides for a 5 day rescission period and this period, in the estimation of the industry, strikes a reasonable balance between the consumers right to cancel the transaction and the developer or marketer's certainty as to whether a sale has in fact been made. The five day rescission period proposed by the NTC Model Act is contained in existing timeshare legislation in the following states: Nevada, Tennessee, Virginia, Alabama (unless 5th day falls on a Sunday), Arkansas, Louisiana, North Carolina (effective July 1, 1984). I enclose for your consideration the Nevada legislation



Member—
American Society of Travel Agents
American Hotel & Motel Association
National Timesharing Council of A.L.D.A.

John T. Hansen, Esq.

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January 19, 1984

which is, in my estimation a good first generation statute (unlike the Model Act, which is too extensive and cumbersome).

2. Exchange Programs. Sec. 45.50.640(13) only touches upon the offering of an exchange program in conjunction with the sale of a timesharing interest. Industry sponsored surveys establish that the availability of an exchange program is a material part of an individual's decision to purchase. For this reason, I would suggest that the present draft be expanded to include all of the exchange program information set out in the Nevada legislation. By so doing, the interest of consumers is better protected and consumers are better informed concerning what an exchange program can and cannot provide. By incorporating the exchange provisions of the Nevada Act, both exchange companies and developers/marketers will be better protected, and developers less likely to be found in violation of Sec. 45.50.642(9) (misrepresentation of the exchange program to purchasers). I would also note that the proposed legislation does not define the term "exchange program" in Sec. 45.50.660 "DEFINITIONS".
3. Private and Class Actions. Sec. 45.50.653(a) sweeps very broadly and imposes joint and several liability "[I]f the time share offeror or a director, or agent of or for the time share offeror has personally participated or aided in any way in making the sale, transfer, or solicitation." This language could be construed to bring within its scope any advertising entity (no exclusion is provided for newspapers, magazines and the like which may merely carry ads), any lead generation entity (such activity could certainly be construed as "solicitation"), or any independent entity operating a timeshare exchange program since both the timeshare interest and exchange program are presented at point of sale. This provision would also seem to encompass liability both in contract and in tort, based upon the broad language used.
4. Statutory or Common Law Remedies. It is unclear what meaning is intended for the term "exchange" as used in Sec. 45.50.655; does it seek to encompass the exchange of title, the exchange of a possessory right (such as is accomplished through participation in an exchange program), or both. Again, a definition of "exchange program" would clarify this matter.

John T. Hansen, Esq.

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January 19, 1984

5. Definitions. Section 45.50.660 - Please see my discussion above. I would also suggest, purely for organizational clarity, that the definition section appear at the beginning of the act rather than at the end.

As a final matter, I would note that this proposed legislation does not specifically authorize this form of real property ownership, nor does it define the incidents of fee and right-to-use timeshare interests (e.g. waiver of partition, is right-to-use a real property interest or merely a contractual right?)

After you have had the opportunity to review this letter and its enclosures, please feel free to contact me. As I indicated when we spoke, I am happy to be of whatever additional assistance you may deem appropriate.

Sincerely yours,

Rick Choate

M. Rickliffe Choate II
Corporate Counsel

MRC/rjb

Enclosures

Brigantine Bay



March 23, 1984

Senator Richard I. Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

I'm writing this letter over my concern of the upcoming proposed legislation in regards to timesharing. As the developer of the only timeshare project in the State of Alaska, I would like you to consider my views prior to casting your vote on this particular piece of legislation. A vote, I may add, that can very possibly have a tremendous effect on my future, one way or the other.

I have been a resident of Alaska for almost 16 years. I am presently one of the owners of the Burger King franchise, and prior to that, had the franchise for Lindal Cedar Homes. I have a love for Alaska that will burn in my heart forever.

First of all, I am very much for the legislation of timesharing in Alaska. However, I feel there are several articles in the proposed legislation that are not completely fair to the developers. It is my sincere hope this legislation can be drawn, not only protecting the consumer, but also provide needed assistance to the developer. The development of our project to date has been the hardest thing I have ever done, because we have no legislation. But don't kill the developer, he has needs, too.

John Hansen, an attorney in Anchorage, has been working with us for quite some time and I would consider him the most educated individual in Alaska regarding timeshare laws. I hope he will be asked to testify during the legislation here-ings.

Following are a few of my views concerning the legislation. I agree with the fact that the real estate commission should govern. We treat this as a normal real estate transaction, with fee simple title and consequently would expect to be governed by that agency. I want the consumer protected as in any real estate transaction, to insure their purchase. However, as I ask for the respect to the purchaser, I also ask for respect to the developer.

There are three articles that I violently oppose:

1. A 15 day waiting period to close,
2. A 25 day period prior to disbursement of funds; and
3. No contests or free gifts may be used to acquire appointments.

5601 Silverado Way, Suite B, Anchorage, AK 99502 (907) 561-1907

Letters of Opposition

March 22, 1984

#1. Normal real estate law gives the buyer the right to rescind 72 hours after agreeing to purchase a home. This we could live with, but 15 days will kill us. A timeshare purchase is not a needed item, as a house is. If a person was to buy something, but had to wait 15 days before they had to pay for it, the chances are they would forget why they wanted it and cancel the purchase. The typical person would be bankrupt if they had to live with this rule. This rule will destroy us!

#2. This is absurd! This also will destroy us. We live on a cash flow, as with any other business. Even with closed sales in escrow, we could make no plans. If we had \$100,000 in escrow, we wouldn't know if all of it could be counted on or none of it. Could you run a business that way? I can't.

#3. We do offer free gifts. At Christmas, we gave free turkeys to anyone that would come into our office and let one of our agents give them a presentation. Prior to that, we gave a free one day halibut fishing trip for two. These are quality items and are fair for both parties. They receive compensation for letting us expose them to our project. We sell one out of ten on an average. I don't feel you can say we are taking advantage of the consumer, but it is our lifeline. I don't like giving the gifts, but in this business, it is essential for our survival. How does it hurt the consumer? He only buys if he wants to.

It is important you understand my love for Alaska. I definitely support this legislation, as I feel it is needed by both parties. However, please make it fair for both parties.

"Brigantine Bay Resort" is composed of 77 acres of fee simple property on Resurrection Bay, 2 miles south of Seward. In a sense, we are ambassadors for Alaska. From January through the end of May we are in trade shows throughout the lower 48, promoting Alaska and "Brigantine Bay". With tourism a major industry, we will be a very contributing factor. If our plans reach culmination, over 1,000 individuals per week will be visiting Seward because of Brigantine Bay. In addition, many people will hear of Alaska because of our advertising. A 1/2 hour television show just completed filming in Florida on our project and was aired to over 10,000,000 viewers in February. I could go on, but my point is that timesharing can be very good for Alaska and it's tourism market. In addition, contrary to what may be promoted, members generally enjoy their purchase and often end up buying more weeks. Over 86% of the people who have purchased timeshare units, enjoy what they have purchased. Only 4 1/2% feel disappointed with their purchase. I'll bet many industries wish they could quote national figures like that.

In conclusion, we are a viable, professional entity. We care for Alaska. We are good for Alaska. When you vote, protect me, too!

Sincerely,

William C. Lange

William C. Lange, President
Nugget Properties, Inc.

Brigantine Bay



February 28, 1984

Senate Labor & Commerce Committee
Senator Eliason
Pouch V
Juneau, Alaska 99811

RE: SENATE BILL 494

Dear Senator:

I am the developer of Brigantine Bay, Alaska's first timeshare resort, located in Seward, Alaska.

We spoke last week to your Legislative Aide, Sheila Peterson, who advised us she would notify us when a Committee hearing is scheduled to consider the bill. I want to confirm that request for notification.

We oppose the bill as presently structured in the following respects:

1. The nature and length of the recision and escrow periods.
2. The prohibition against gifts and lotteries.
3. The bill singles out timesharing from other real estate transactions and sales promotions. The bill should not single discriminate against timesharing. It's provisions should apply across the board to all real estate transactions and sales promotions, or it should apply to none.

Additionally, we would like the bill changed to expressly acknowledge the legality of timesharing in Alaska.

We have an extensive list of witnesses, approximately 50, who want to testify at the hearings to be held. These include myself, unit purchasers, salespeople, attorneys, and others knowledgeable in the area of timesharing.

Furthermore, I understand that the Real Estate Commission has some reservations about the bill as presently constituted and therefore, desires input into the bill it will be required to administer.

Sincerely,

William C. Lange

William C. Lange, Developer
Brigantine Bay Resort

cc: John Hanson

5601 Silverado Way, Suite B, Anchorage, AK 99502 (907) 561-1907