



# LAWS OF ALASKA

1977

Source

SCS CSHB 67

Chapter No.

138

## AN ACT

Relating to land; and providing for an effective date.

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

\* Section 1. AS 34.55 is amended by adding a new section to read:

Sec. 34.55.006. FRAUDULENT AND PROHIBITED PRACTICES. It is unlawful for a person, in connection with the offer, sale or purchase of subdivided land directly or indirectly, to knowingly

(1) employ a device, scheme, or artifice to defraud;

(2) make an untrue statement of a material fact or omit a statement of a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

\* Sec. 2. AS 34.55.008 is amended to read:

Sec. 34.55.008. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN SUBDIVISIONS. Unless the subdivided land or the transaction is exempt by sec. 42 of this chapter

(1) no person may offer or dispose of in this state an interest in subdivided land before the time the subdivided land is registered in accordance with this chapter;

(2) no person may dispose of an interest in subdivided land unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement before the disposition.

\* Sec. 3. AS 34.55.022(b) is amended to read:

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

\* Sec. 4. AS 34.55.028 is repealed and re-enacted to read:

Sec. 34.55.028. PENALTIES. (a) A person who willfully violates sec. 6 or 8 of this chapter is, upon conviction, punishable by a fine of not more than \$50,000, or by imprisonment for not less than one year nor more than five years, or by both fine and imprisonment.

(b) Any violation of this chapter other than as provided in (a) of this section or of a regulation adopted under this chapter is a misdemeanor and is punishable by a fine of not less than \$1,000 or double the amount of gain from the transaction, whichever is larger but not more than \$50,000, or by imprisonment for not more than six months, or by both fine and imprisonment.

\* Sec. 5. AS 34.55.030(a) is amended to read:

(a) A person who disposes of subdivided land in violation of sec. 6 or sec. 8 of this chapter is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission.

\* Sec. 6. AS 34.55.032 is amended to read:

Sec. 34.55.032. JURISDICTION. A disposition of subdivided land is subject to this chapter, and the superior court of this state has jurisdiction in claims or causes of action arising under this chapter if

(1) the subdivider's principal office is located in this state;

(2) an offer or disposition of subdivided land is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates in this state or is directed by the offeror to a

person or place in this state and received by the person or at the place to which it is directed; or

(3) the subdivided land is located in this state.

\* Sec. 7. AS 34.55.042(a) is amended to read:

(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or dispositions of an interest in land

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

(2) if fewer than 10 separate lots, parcels, units or interests in subdivided land located outside this state are offered by a subdivider in a period of 12 months, or if fewer than 50 separate lots, parcels, units or interests in subdivided land located in this state are offered by a subdivider in a period of 12 months;

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

(4) to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided land for the purpose of engaging, and do engage in the business of construction of buildings for resale;

(5) under court order;

(6) by a government or government agency;

(7) as cemetery lots or interest;

(8) if the land is located in this state and is registered or exempt from registration under the provisions of the federal Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.).

\* Sec. 8. AS 34.55.044(6) is amended to read:

(6) "subdivision" and "subdivided land" mean land which is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units or interests and also includes any land whether contiguous or not if two or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale; if the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan;

\* Sec. 9. AS 38.05.085 is repealed and re-enacted to read:

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Sec. 38.05.085. TERM OF LEASE. (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) the fixed base annual rent to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

(3) the readjusted annual rent may not exceed 10 per cent of the value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding 10-year period, whichever is lower.

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the lessee shall appoint an M.A.I. appraiser and the state shall appoint an M.A.I. appraiser. The two appraisers so appointed shall, within a specified period of time agreed upon by the parties, make their appraisals of the property in question. If the two appraisers agree upon the fair market value, the determination is absolutely binding on the parties. In the event the two appraisers are unable to agree, they shall together appoint a third M.A.I. appraiser who shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the matter in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in his cancelled federal lease or grazing permit if he so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year

period of the lease or of each subsequent 10-year period of the lease;

(2) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state.

\* Sec. 10. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60 days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause.

\* Sec. 11. AS 38.05.105 is repealed and re-enacted to read:

Sec. 38.05.105. PERIODIC RENT ADJUSTMENTS. (a) Each lease shall stipulate that at the conclusion of the initial 25-year period of the lease and at intervals of 10 years thereafter the annual rent payment is subject to adjustment. Charges or adjustments shall be based primarily on an adjusted fair market value. However, if the director of the division of lands determines that single-family residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rent adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if single-family residential development actually occurs. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) The provisions of sec. 85(b) of this chapter are applicable to reappraisals of leases required by this section, except that, in determining an adjusted market value,

(1) changes in property value due to governmental actions, including zoning reclassifications, shall be included; and

(2) changes in property value due to private improvements made to the property or other privately owned or leased property since originally entering into the lease shall be excluded.

\* Sec. 12. CONVERSION OF LEASES. The provisions of secs. 9 - 11 of this Act are applicable to state leases which are in existence on or before the effective date of this Act if a lessee under a lease elects, in writing, to be bound by this Act. When a lessee elects to be bound by the provisions of this Act, the state shall enter into a new lease with the lessee for a term equal to the remaining period of the original lease which is being terminated that is consistent with the provisions of this Act. However, for purposes of determining the annual rent by the state, the fair market value of the property which is used to establish the fixed base annual rent for the initial period of the lease may not exceed the fair market value as it was last appraised on or before January 1, 1975, brought forward to January 1, 1976, at the rate of 10 per cent a year, or, if the lease was entered into after January 1, 1975, on the basis of the fair market value at the time the lease was entered into.

\* Sec. 13. The provisions of sec. 12 of this Act expire on January 1, 1979.

\* Sec. 14. AS 38.05.037(b) is amended to read:

(b) The division of lands may exercise its zoning power

(1) within federal lands in the unorganized borough only at the times and in the areas it is requested to do so by the Secretary of the Interior to facilitate sales of federal lands within the unorganized borough under P.L. 88-608, 78 Stat. 988;

(2) within any portion of a third class borough covered by the Alaska coastal management program adopted in accordance with the provisions of AS 46.35 if the municipality has not done so.

\* Sec. 15. Sections 9 - 13 of this Act take effect immediately in accordance with AS 01.10.070(c).