

LEGISLATIVE BILL 845

Approved by the Governor April 9, 2004

Introduced by Byars, 30

AN ACT relating to real estate; to amend sections 76-1708, 76-1711, 76-1734, and 81-885.55, Reissue Revised Statutes of Nebraska; to change time-share instrument provisions and association duties as prescribed; to change fee provisions; to change provisions relating to errors and omissions insurance; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-1708, Reissue Revised Statutes of Nebraska, is amended to read:

76-1708. The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units, which shall include, but not be limited to, provisions for the following:

(1) Creation of an association of time-share estate owners;
 (2) Adoption of bylaws for organizing and operating the association;
 (3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Employment and termination of employment of the managing agent for the association;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;

(7) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units;

(8) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by owners, their guests, and other users;

(9) Methods for providing compensating-use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation except for unavailability as a result of acts of nature;

(10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units. An owner shall be given notice and the opportunity to refute or explain the charges against him or her in person or in writing to the governing body of the association before a decision to impose discipline is rendered except in the case of delinquent payment of assessments, in which case an owner's rights and privileges for use of the accommodations and facilities of the time-share program, including the owner's guests, lessees, and third parties receiving use rights through a nonaffiliated exchange program, may be suspended by no less than thirty days' written notice after the date the assessment is due to the owner, stating the total amount of any delinquency which then exists, including any accrued interest or late charges permitted to be imposed under the terms of the time-share program. The notice shall clearly state that the owner and those claiming under the owner will not be permitted to use the owner's time-share period or to make a reservation in the time-share program's reservation system, or that any confirmed reservation may be canceled as applicable, until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist. Suspension of a third party receiving use rights through an affiliated exchange program shall only be suspended upon additional notice to the affiliated exchange program within a reasonable time that protects the third party's rights to make alternate reservations;

(11) Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units; and

(12) Maintenance of a list of the names and mailing addresses of all current time-share estate owners in the time-share program, ~~procedures to make the list available for inspection by time-share estate owners, and procedures to provide a copy of the list to time-share estate owners upon request if the~~

~~request is reasonably related to such owner's voting or membership rights. The list may be maintained and disseminated in electronic format, but must be made available in paper format upon request and procedures to have the association promptly mail materials to all persons on such list upon a written request by a time-share estate owner if the purpose of the request is to advance legitimate association business, including proxy solicitation. The association may require the actual costs of performing the mailing to be paid in advance by the person requesting the mailing.~~

Sec. 2. Section 76-1711, Reissue Revised Statutes of Nebraska, is amended to read:

76-1711. The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units which shall include, but not be limited to, provisions for the following:

(1) Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of maid, cleaning, linen, and similar services to the units during use periods;

(2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;

(3) Payment of the costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Selection of a managing agent to act on behalf of the developer;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved, first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;

(9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users;

(10) Methods for providing compensating-use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation except for unavailability as a result of acts of nature;

(11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered except in the case of delinquent payment of assessments, in which case an owner's rights and privileges for use of the accommodations and facilities of the time-share program, including the owner's guests, lessees, and third parties receiving use rights through a nonaffiliated exchange program, may be suspended by no less than thirty days' written notice after the date the assessment is due to the owner, stating the total amount of any delinquency which then exists, including any accrued interest or late charges permitted to be imposed under the terms of the time-share program. The notice shall clearly state that the owner and those claiming under the owner will not be permitted to use the owner's time-share period or to make a reservation in the time-share program's reservation system, or that any confirmed reservation may be canceled as applicable, until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist. Suspension of a third party receiving use rights through an affiliated exchange program shall only be suspended upon additional notice to the affiliated exchange program within a reasonable time that protects the third party's rights to make alternate reservations; and

(12) Maintenance of a list of the names and mailing addresses of all current time-share use owners in the time-share program, ~~procedures to make the list available for inspection by time-share use owners, and procedures to provide a copy of the list to time-share use owners upon request if the request is reasonably related to such owner's voting or membership rights. The list may be maintained and disseminated in electronic format, but must be made available in paper format upon request and procedures to have a prompt~~

mailing of materials to all persons on such list upon a written request by a time-share use owner if the purpose of the request is to advance legitimate business affecting such time-share use owners, including proxy solicitation. The managing agent may require the actual costs of performing the mailing to be paid in advance by the person requesting the mailing.

Sec. 3. Section 76-1734, Reissue Revised Statutes of Nebraska, is amended to read:

76-1734. (1) An application for registration shall contain the public-offering statement, a brief description of the property, copies of time-share instruments, a certified, audited financial statement fully and fairly disclosing the current financial condition of the developer, and any documents referred to therein and such other information as may be required by the commission. In lieu of a certified, audited financial statement of the developer, the commission may accept a current audited consolidated financial statement which includes the financial condition of the developer and is accompanied by a statement from the developer's parent organization, in a form approved by the commission, that guarantees the developer's performance on any obligation under the Nebraska Time-Share Act or as contracted by the developer.

(2) Such application shall be accompanied by a filing fee of two hundred dollars plus five dollars for each twenty-five time-share intervals or portions thereof. If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of fifty dollars plus five dollars for each twenty-five time-share intervals or fraction thereof computed on the number of time-share intervals in the original application shall be due and payable on or before January 1 of each year. The annual fee for each time-share program shall not exceed one thousand five hundred dollars. Failure to remit annual fees when due shall automatically cancel the certificate, but otherwise such certificate shall remain in full force and effect if the commission determines from satisfactory investigation that such certificate should be renewed.

(3) Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission, on or before January 1 of each year, an annual report of all purchases and reservations made by the developer or its agents to any person with a residence, primary place of business, or mailing address in this state and any other information requested by the commission. The annual report shall (a) include the amount of any deposit required to be made in connection with the purchase or reservation of a time-share interval from the developer and (b) cover the twelve-month period ending October 31 immediately preceding the annual report.

(4) The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating such real estate and the proposed sale thereof in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses prior to incurring such expenses.

Sec. 4. Section 81-885.55, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.55. (1) ~~Commencing January 1, 1993, every~~ Every licensee under the Nebraska Real Estate License Act, except an inactive broker or salesperson, shall have errors and omissions insurance to cover all activities contemplated under the act. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(2) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual license renewal date. A certificate of coverage showing compliance with the required terms and conditions shall be filed with the commission by the annual license renewal date by each licensee who does not participate in the group program administered by the commission.

(3) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed ~~two~~ five hundred dollars, the errors and omissions insurance requirement of this section shall not apply during the year for which coverage cannot be obtained.

Sec. 5. Original sections 76-1708, 76-1711, 76-1734, and 81-885.55,

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Reissue Revised Statutes of Nebraska, are repealed.