

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 845

Introduced by Byars, 30

Read first time January 7, 2004

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real estate; to amend sections 76-1708,
2 76-1711, 76-1734, and 81-885.55, Reissue Revised Statutes
3 of Nebraska; to change time-share instrument provisions
4 and association duties as prescribed; to change fee
5 provisions; to change provisions relating to errors and
6 omissions insurance; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

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

3 76-1708. The time-share instruments for a time-share
4 estate program shall prescribe reasonable arrangements for
5 management and operation of the time-share program and for the
6 maintenance, repair, and furnishing of units, which shall include,
7 but not be limited to, provisions for the following:

8 (1) Creation of an association of time-share estate
9 owners;

10 (2) Adoption of bylaws for organizing and operating the
11 association;

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

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

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

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

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

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

27 (9) Methods for providing compensating-use periods or
28 monetary compensation to an owner if a unit cannot be made

1 available for the period to which the owner is entitled by schedule
2 or by confirmed reservation except for unavailability as a result
3 of acts of nature;

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

1 suspended upon additional notice to the affiliated exchange program
2 within a reasonable time that protects the third party's rights to
3 make alternate reservations;

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

7 (12) Maintenance of a list of the names and mailing
8 addresses of all current time-share estate owners in the time-share
9 program, ~~procedures to make the list available for inspection by~~
10 ~~time-share estate owners, and procedures to provide a copy of the~~
11 ~~list to time-share estate owners upon request if the request is~~
12 ~~reasonably related to such owner's voting or membership rights.~~
13 ~~The list may be maintained and disseminated in electronic format,~~
14 ~~but must be made available in paper format upon request and~~
15 procedures to have the association promptly mail materials to all
16 persons on such list upon a written request by a time-share estate
17 owner if the purpose of the request is to advance legitimate
18 association business, including proxy solicitation. The
19 association may require the actual costs of performing the mailing
20 to be paid in advance by the person requesting the mailing.

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

23 76-1711. The time-share instruments for a time-share use
24 program shall prescribe reasonable arrangements for management and
25 operation of the time-share program and for the maintenance,
26 repair, and furnishing of units which shall include, but not be
27 limited to, provisions for the following:

28 (1) Standards and procedures for upkeep, repair, and

1 interior furnishing of units and for providing of maid, cleaning,
2 linen, and similar services to the units during use periods;

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

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

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

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

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

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

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

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

26 (10) Methods for providing compensating-use periods or
27 monetary compensation to an owner if a unit cannot be made
28 available for the period to which the owner is entitled by schedule

1 or by a confirmed reservation except for unavailability as a result
2 of acts of nature;

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

1 that protects the third party's rights to make alternate
2 reservations; and

3 (12) Maintenance of a list of the names and mailing
4 addresses of all current time-share use owners in the time-share
5 program, ~~procedures to make the list available for inspection by~~
6 ~~time-share use owners, and procedures to provide a copy of the list~~
7 ~~to time-share use owners upon request if the request is reasonably~~
8 ~~related to such owner's voting or membership rights. The list may~~
9 ~~be maintained and disseminated in electronic format, but must be~~
10 ~~made available in paper format upon request and procedures to have~~
11 the association promptly mail materials to all persons on such list
12 upon a written request by a time-share use owner if the purpose of
13 the request is to advance legitimate association business,
14 including proxy solicitation. The association may require the
15 actual costs of performing the mailing to be paid in advance by the
16 person requesting the mailing.

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

19 76-1734. (1) An application for registration shall
20 contain the public-offering statement, a brief description of the
21 property, copies of time-share instruments, a certified, audited
22 financial statement fully and fairly disclosing the current
23 financial condition of the developer, and any documents referred to
24 therein and such other information as may be required by the
25 commission. In lieu of a certified, audited financial statement of
26 the developer, the commission may accept a current audited
27 consolidated financial statement which includes the financial
28 condition of the developer and is accompanied by a statement from

1 the developer's parent organization, in a form approved by the
2 commission, that guarantees the developer's performance on any
3 obligation under the Nebraska Time-Share Act or as contracted by
4 the developer.

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

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

1 annual report.

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

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

11 81-885.55. (1) ~~Commencing January 1, 1993, every~~ Every
12 licensee under the Nebraska Real Estate License Act, except an
13 inactive broker or salesperson, shall have errors and omissions
14 insurance to cover all activities contemplated under the act. The
15 commission shall make the errors and omissions insurance available
16 to all licensees by contracting with an insurer for a group policy
17 after competitive bidding. Any group policy obtained by the
18 commission shall be available to all licensees with no right on the
19 part of the insurer to cancel any licensee. Licensees may obtain
20 errors and omissions insurance independently if the coverage
21 complies with the minimum requirements established by the
22 commission.

23 (2) The commission shall determine the terms and
24 conditions of coverage required under this section, including the
25 minimum limits of coverage, the permissible deductible, and
26 permissible exemptions. Each licensee shall be notified of the
27 required terms and conditions at least thirty days prior to the
28 annual license renewal date. A certificate of coverage showing

1 compliance with the required terms and conditions shall be filed
2 with the commission by the annual license renewal date by each
3 licensee who does not participate in the group program administered
4 by the commission.

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

11 Sec. 5. Original sections 76-1708, 76-1711, 76-1734, and
12 81-885.55, Reissue Revised Statutes of Nebraska, are repealed.