

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 845**  
FINAL READING

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