

AMENDED IN ASSEMBLY APRIL 26, 1995

AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1644

Introduced by Assembly Member Granlund

February 24, 1995

An act to amend Sections 10249.3, 10249.9, 10249.91, 10249.92, 10261, *10264*, *10265*, and 11000 of, to add Sections 10238.45, ~~and 10249.8~~ *10249.8*, and *10263.1* to, to add Article 8.5 (commencing with Section 10250) to Chapter 3 of Part 1 of Division 4 of, to repeal Sections 10249.11, 10249.2, 10249.4, 10249.6, and 10249.7 of, and to repeal and add Section 10249 of, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1644, as amended, Granlund. Land sales: subdivisions.

(1) Under existing law, a person acting as a principal or agent in this state may not sell or lease or offer for sale or lease lots or parcels in a subdivision situated outside of this state but within the United States, except as specified. This limitation does not apply to a time-share project, as defined.

This bill would repeal this provision and would instead provide that a person acting as a principal or agent who intends, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined, located outside of this state but within the United States is required, prior to any sales, leasing, or offering, to register the

subdivision with the Commissioner of Real Estate. This bill would provide that the application for registration is required to be made on a form acceptable to the commissioner, as prescribed, and is required to contain specified information. The bill would establish the fees which accompany various applications in connection with that registration. The bill would make conforming changes.

(2) Existing law defines the terms “improved out-of-state residential subdivision” and “improved out-of-state time-share project.”

This bill would repeal these definitions.

(3) Under existing law, the sale or lease or the offering for sale or lease of lots or parcels in a subdivision situated outside of the state are governed by provisions of law relative to real property securities dealers and subdivided land, as specified.

This bill would repeal that provision.

(4) Under existing law, when an inspection is to be made of subdivided lands situated outside of the State of California which are to be offered for sale or lease in this state, the applicant is required to provide a questionnaire and a filing fee, together with a amount, estimated by the commissioner, for travel from the office of the Department of Real Estate where the filing is made to the location of the project, and an amount estimated to be necessary to cover the actual and necessary subsistence expenses incurred in the inspection.

This bill would repeal this provision.

(5) Under existing law, the Commissioner of Real Estate may issue a preliminary or a conditional permit, as specified, for an improved out-of-state residential subdivision upon receipt of a substantially complete application for the subdivision.

This bill would repeal this provision.

(6) This bill would provide that it is unlawful for a person to sell or lease or offer for sale or lease specified lots, parcels, or interest in a subdivision located entirely outside of this state but within the United States, unless any printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer clearly and conspicuously contains a disclaimer, in 10-point type, as specified. The bill would provide for a separate disclaimer for agreements or contracts



to lease or purchase that property where the offer is made to a California resident in California.

(7) This bill would also enact provisions that regulate the sale, lease, and offer for sale or lease of multistate time-share interests in this state, as specified.

(8) *This bill would provide that on and after the date upon which the total number of owners of interests in a qualified resort vacation club first exceeds 200, the Commissioner of Real Estate may not impose an absolute presale requirement by regulation.*

(9) *Under existing law, the Department of Real Estate is required to submit a final report to the Legislature on or before January 1, 1996, regarding the effectiveness of the regulation of qualified resort vacation clubs.*

This bill would extend that date to January 1, 1999.

(10) *Under existing law, those provisions that regulate qualified resort vacation clubs would remain in effect only until January 1, 1997.*

This bill would extend that date to January 1, 2000.

(12) Under existing law, the terms “subdivided lands” and “subdivision” refer to improved or unimproved land or lands, wherever situated in the United States.

This bill would instead provide that these terms refer to improved or improved land or lands wherever situated within California.

(13) Under existing law, the limitation of specified provisions relative to subdivided land to subdivisions within the United States do not apply to a time-share project, as defined, which consists of, or will consist of, 2 or more distinct geographic locations.

This bill would instead exempt subdivisions located entirely outside California from the operation of the subdivided land provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10238.45 is added to the Business
2 and Professions Code, to read:



1 10238.45. If the commissioner finds that the proposed
 2 offering of a subdivision as defined in Section 10250.1
 3 meets the applicable requirements of this article, the
 4 commissioner shall issue to the applicant a permit
 5 authorizing him or her to sell the offering upon those
 6 terms and conditions as the commissioner may provide in
 7 the permit. Otherwise, the commissioner shall deny the
 8 application and refuse the permit, and notify the
 9 applicant in writing of his or her decision.

10 SEC. 2. Section 10249 of the Business and Professions
 11 Code is repealed.

12 SEC. 3. Section 10249 is added to the Business and
 13 Professions Code, to read:

14 10249. (a) A person acting as a principal or agent who
 15 intends to sell or lease or offer for sale or lease lots, parcels,
 16 or interests in a subdivision, as defined in Section 10249.1,
 17 situated outside of this state within the United States,
 18 shall, prior to a sale, lease, or offer, register the subdivision
 19 with the commissioner. An application for registration
 20 shall be made on a form acceptable to the commissioner
 21 and include, together with a fee, a description of the
 22 offering, certification by the applicant that the
 23 subdivision is in compliance with all applicable
 24 requirements of the state or states wherein the project is
 25 located, evidence of this compliance, if applicable, and a
 26 consent to service as described in Section 10249.92.

27 (b) The commissioner, within 10 days of receipt of an
 28 application of registration, shall provide the applicant
 29 with notice of the completion of the registration or a
 30 notice of deficiency. If the department does not provide
 31 a notice within 10 days, the registration shall be deemed
 32 complete.

33 (c) The provisions of this section do not apply to
 34 subdivisions that include interests located both within
 35 California and outside California.

36 SEC. 4. Section 10249.11 of the Business and
 37 Professions Code is repealed.

38 SEC. 5. Section 10249.2 of the Business and
 39 Professions Code is repealed.



1 SEC. 6. Section 10249.3 of the Business and
2 Professions Code is amended to read:

3 10249.3. (a) The commissioner may by regulation
4 prescribe filing fees in connection with registrations with
5 the department pursuant to the provisions of this article
6 that are lower than the maximum fees specified in
7 subdivision (b) if the commissioner determines that the
8 lower fees are sufficient to offset the costs and expenses
9 incurred in the administration of this article. The
10 commissioner shall hold at least one hearing each
11 calendar year to determine if lower fees than those
12 specified in subdivision (b) should be prescribed.

13 (b) The filing fee for an application for a registration
14 with the department pursuant to the provisions of this
15 article shall not exceed the following for each subdivision
16 or phase of the subdivision in which interests are to be
17 offered for sale or lease:

18 (1) An application for an original registration: One
19 hundred dollars (\$100).

20 (2) An application for a renewal registration: One
21 hundred dollars (\$100).

22 (3) An application for an amended registration: One
23 hundred dollars (\$100).

24 (c) All fees collected by the Department of Real Estate
25 under authority of this article shall be deposited into the
26 Real Estate Fund under Chapter 6 (commencing with
27 Section 10450) of Part 1. All fees received by the
28 department pursuant to the provisions of this article shall
29 be deemed earned upon receipt. No part of any fee is
30 refundable unless the commissioner determines that it
31 was paid as a result of mistake or inadvertence.

32 SEC. 7. Section 10249.4 of the Business and
33 Professions Code is repealed.

34 SEC. 8. Section 10249.6 of the Business and
35 Professions Code is repealed.

36 SEC. 9. Section 10249.7 of the Business and
37 Professions Code is repealed.

38 SEC. 10. Section 10249.8 is added to the Business and
39 Professions Code, to read:



1 10249.8. (a) Notwithstanding any provision to the
 2 contrary in Section 10249 or 11000, it is unlawful for a
 3 person to sell or lease or offer for sale or lease lots, parcels,
 4 or interests in a subdivision, entirely located outside of
 5 this state but within the United States, unless any printed
 6 material, literature, advertising, or invitation in this state
 7 relating to that sale, lease, or offer clearly and
 8 conspicuously contains the following disclaimer in at least
 9 10-point type:

10 WARNING: THE CALIFORNIA DEPARTMENT OF
 11 REAL ESTATE HAS NOT INSPECTED, EXAMINED,
 12 OR QUALIFIED THIS OFFERING.

13
 14 (b) If an offer on property described in subdivision (a)
 15 is not initially made in writing, the disclaimer set forth in
 16 subdivision (c) shall be received by the offeree in writing
 17 prior to a visit to a location, sales presentation, or contact
 18 with a person representing the offeror, when the visit or
 19 contact was scheduled or arranged by the offeror or its
 20 representative. The deposit of the disclaimer in the
 21 United States mail, addressed to the offeree and with
 22 first-class postage prepaid, at least five days prior to the
 23 scheduled or arranged visit or contact, shall be deemed
 24 to constitute delivery for purposes of this section.

25 (c) If a California resident is presented with an
 26 agreement or contract to lease or purchase any property
 27 described in subdivision (a), where an offer to lease or
 28 purchase that property was made to that resident in
 29 California, a copy of the disclaimer set forth in this
 30 subdivision shall be inserted in at least 10-point type at the
 31 top of the first page of that agreement or contract and
 32 shall be initialed by that California resident.

33
 34 WARNING: THE CALIFORNIA DEPARTMENT OF
 35 REAL ESTATE HAS NOT QUALIFIED, INSPECTED,
 36 OR EXAMINED THIS OFFERING, INCLUDING, BUT
 37 NOT LIMITED TO, THE CONDITION OF TITLE,
 38 THE STATUS OF BLANKET LIENS ON THE
 39 PROJECT (IF ANY), ARRANGEMENTS TO ASSURE
 40 PROJECT COMPLETION, ESCROW PRACTICES,



1 CONTROL OVER PROJECT MANAGEMENT,
2 RACIALLY DISCRIMINATORY PRACTICES (IF
3 ANY), TERMS, CONDITIONS, AND PRICE OF THE
4 OFFER, CONTROL OVER ANNUAL ASSESSMENTS
5 (IF ANY), OR THE AVAILABILITY OF WATER,
6 SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY
7 BE ADVISABLE FOR YOU TO CONSULT AN
8 ATTORNEY OR OTHER KNOWLEDGEABLE
9 PROFESSIONAL WHO IS FAMILIAR WITH REAL
10 ESTATE AND DEVELOPMENT LAW IN THE STATE
11 WHERE THIS SUBDIVISION IS SITUATED.

12

13 SEC. 11. Section 10249.9 of the Business and
14 Professions Code is amended to read:

15 10249.9. (a) Notwithstanding any provision to the
16 contrary in Section 10249 or 11000, it is unlawful for a
17 person to sell or lease or offer for sale or lease a lot, parcel,
18 or interest in a subdivision, located outside the United
19 States, unless the printed material, literature, advertising,
20 or invitation in this state relating to that sale, lease, or
21 offer clearly and conspicuously contains the following
22 disclaimer in at least 10-point capital type:

23

24 WARNING: THE CALIFORNIA DEPARTMENT OF
25 REAL ESTATE HAS NOT EXAMINED THIS
26 OFFERING, INCLUDING, BUT NOT LIMITED TO,
27 THE CONDITION OF TITLE, THE STATUS OF
28 BLANKET LIENS ON THE PROJECT (IF ANY),
29 ARRANGEMENTS TO ASSURE PROJECT
30 COMPLETION, ESCROW PRACTICES, CONTROL
31 OVER PROJECT MANAGEMENT, RACIALLY
32 DISCRIMINATORY PRACTICES (IF ANY), TERMS,
33 CONDITIONS, AND PRICE OF THE OFFER,
34 CONTROL OVER ANNUAL ASSESSMENTS (IF ANY),
35 OR THE AVAILABILITY OF WATER, SERVICES,
36 UTILITIES, OR IMPROVEMENTS. IT MAY BE
37 ADVISABLE FOR YOU TO CONSULT AN ATTORNEY
38 OR OTHER KNOWLEDGEABLE PROFESSIONAL
39 WHO IS FAMILIAR WITH REAL ESTATE AND



1 DEVELOPMENT LAW IN THE COUNTRY WHERE
2 THIS SUBDIVISION IS SITUATED.

3

4 (b) If an offer on property described in subdivision (a)
5 is not initially made in writing, the foregoing disclaimer
6 shall be received by the offeree in writing prior to a visit
7 to a location, sales presentation, or contact with a person
8 representing the offeror, when the visit or contact was
9 scheduled or arranged by the offeror or its
10 representative. The deposit of the disclaimer in the
11 United States mail, addressed to the offeree and with
12 first-class postage prepaid, at least five days prior to the
13 scheduled or arranged visit or contact, shall be deemed
14 to constitute delivery for purposes of this section.

15 (c) If any California resident is presented with an
16 agreement or contract to lease or purchase a property
17 described in subdivision (a), where an offer to lease or
18 purchase that property was made to that resident in
19 California, a copy of the disclaimer set forth in subdivision
20 (a) shall be inserted in at least 10-point type at the top of
21 the first page of that agreement or contract and shall be
22 initialed by that California resident.

23 SEC. 12. Section 10249.91 of the Business and
24 Professions Code is amended to read:

25 10249.91. The term of a registration issued pursuant to
26 this article shall be one year, unless the commissioner by
27 regulation prescribes a longer term.

28 SEC. 13. Section 10249.92 of the Business and
29 Professions Code is amended to read:

30 10249.92. A registration application pursuant to the
31 provisions of this article shall be accompanied by an
32 irrevocable consent stating that if in any action
33 commenced against the applicant in this state personal
34 service of process upon the applicant cannot be made
35 after the exercise of due diligence, a valid service may
36 thereupon be made upon the applicant by delivering the
37 process to the Secretary of State.

38 Insofar as possible, the provisions of Section 1018 of the
39 Code of Civil Procedure relating to service of process on
40 the Secretary of State are applicable to this section.



1 SEC. 14. Article 8.5 (commencing with Section
2 10250) is added to Chapter 3 of Part 1 of Division 4 of the
3 Business and Professions Code, to read:

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5
6

Article 8.5. Multistate Timeshare Promotions

7 10250. A person acting as a principal or agent may not
8 in this state sell or lease or offer for sale or lease lots or
9 parcels in a subdivision, as defined in Section 10250.1,
10 which includes structural dwelling units located both
11 within and outside of this state except as provided in this
12 article.

13 10250.1. "Subdivision," as used in Section 10250,
14 includes both of the following:

15 (a) A time-share project as defined in Sections 11003.5
16 and 11004.5, which includes elements located both within
17 and outside of this state.

18 (b) A qualified resort vacation club as defined in
19 Section 10260.

20 10250.2. (a) The sale or lease, or the offering for sale
21 or lease, of lots or parcels in a subdivision shall be
22 governed by Article 6 (commencing with Section 10237)
23 and Chapter 1 (commencing with Section 11000) of Part
24 2, insofar as applicable, except that Sections 10237.6,
25 10237.8, and 10238.4 shall not be applicable.

26 (b) The commissioner shall apply the provisions of
27 Sections 11018 and 11018.5, after taking into consideration
28 the differences in the applicable laws of the various states
29 with respect to subdivisions, to afford substantially the
30 same level of public protection to purchasers of an
31 interest in a subdivision offering governed by this article
32 as is afforded to purchasers of subdivision interests
33 situated entirely within this state.

34 The commissioner may adopt regulations reasonably
35 necessary to enforce this article.

36 10250.3. (a) The commissioner may by regulation
37 prescribe filing fees in connection with applications to the
38 Department of Real Estate pursuant to the provisions of
39 this article that are lower than the maximum fees
40 specified in subdivision (b) if the commissioner



1 determines that the lower fees are sufficient to offset the
2 costs and expenses incurred in the administration of this
3 article. The commissioner shall hold at least one hearing
4 each calendar year to determine if lower fees than those
5 specified in subdivision (b) should be prescribed.

6 (b) The filing fee for an application for a permit to be
7 issued under authority of this article shall not exceed the
8 following for each subdivision or phase of the subdivision
9 in which interests are to be offered for sale or lease:

10 (1) One thousand seven hundred dollars (\$1,700) plus
11 ten dollars (\$10) for each subdivision interest to be
12 offered for an original permit application.

13 (2) Six hundred dollars (\$600) plus ten dollars (\$10)
14 for each subdivision interest to be offered that was not
15 permitted to be offered under the permit to be renewed
16 for a renewal permit application.

17 (3) Five hundred dollars (\$500) plus ten dollars (\$10)
18 for each subdivision interest to be offered under the
19 amended permit for which a fee has not previously been
20 paid for an amended permit application.

21 (4) Five hundred dollars (\$500) for a preliminary
22 permit application.

23 (c) Fees collected by the Department of Real Estate
24 under authority of this article shall be deposited into the
25 Real Estate Fund under Chapter 6 (commencing with
26 Section 10450) of Part 1. Fees received by the department
27 pursuant to the provisions of this article shall be deemed
28 earned upon receipt. A part of a fee is not refundable
29 unless the commissioner determines that it was paid as a
30 result of mistake or inadvertence.

31 10250.4. The commissioner may issue a conditional
32 permit for an improved multistate residential
33 subdivision. The conditional permit shall be issued on the
34 same basis and conditions upon which the commissioner
35 may issue conditional public reports for subdivisions
36 located within the state.

37 10250.5. The provisions of Section 11010.2 shall apply
38 to an application for issuance of a permit for any
39 subdivision subject to this article or Article 9



1 (commencing with Section 10260), except as to the
2 following:

3 (a) A reference to a public report in Section 11010.2
4 shall be read as referring to a permit under this article.

5 (b) The commissioner shall notify the applicant in
6 writing of the determination that the notice and
7 application is, or is not, substantially complete with
8 respect to quantitative requirements within 15 days of
9 receipt of the notice and application.

10 (c) After making the determination that the notice
11 and application are substantially complete as described in
12 subdivision (b), the commissioner shall provide the
13 applicant with a list of all deficiencies and substantive
14 inadequacies necessary for the notice and application to
15 be qualitatively complete within 75 days of that
16 determination in the case of subdivisions described in
17 Section 11004.5, and within 30 days of that determination
18 in the case of other subdivisions.

19 (d) The commissioner shall issue a permit within 30
20 days, in the case of a subdivision specified in Section
21 11004.5, or 20 days, in the case of other subdivisions, after
22 the notice and application are determined to be
23 qualitatively and substantially complete and submittal of
24 recorded or filed instruments and evidence of financial
25 arrangements required by the commissioner.

26 10250.6. The term of a final permit issued pursuant to
27 this article shall be one year, unless the commissioner by
28 regulation prescribes a longer term. A permit may not be
29 issued for a term longer than one year unless the
30 developer or subdivider is required to submit to the
31 commissioner annual reports containing information the
32 commissioner may require by regulation.

33 10250.7. A nonresident applicant for a permit
34 pursuant to the provisions of this article shall, along with
35 the application, file with the commissioner an irrevocable
36 consent stating that if in an action commenced against the
37 applicant in this state personal service of process upon the
38 applicant cannot be made after the exercise of due
39 diligence, a valid service may thereupon be made upon



1 the applicant by delivering the process to the Secretary
2 of State.

3 Insofar as possible, the provisions of Section 1018 of the
4 Code of Civil Procedure relating to service of process on
5 the Secretary of State are applicable to this section.

6 SEC. 15. Section 10261 of the Business and Professions
7 Code is amended to read:

8 10261. A person acting as a principal or agent may not
9 in this state sell or lease, or offer for sale or lease, interests
10 in a qualified resort vacation club, except as provided in
11 this article, in Article 6 (commencing with Section
12 10237), Article 8.5 (commencing with Section 10250), and
13 Chapter 1 (commencing with Section 11000) of Part 2,
14 insofar as is applicable.

15 SEC. 16. *Section 10263.1 is added to the Business and*
16 *Professions Code, to read:*

17 *10263.1. On and after the date upon which the total*
18 *number of owners of interests in a qualified resort*
19 *vacation club first exceeds 200, the commissioner may not*
20 *impose an absolute presale requirement by regulation.*

21 SEC. 17. *Section 10264 of the Business and Professions*
22 *Code is amended to read:*

23 10264. On or before January 1, 1995, the department
24 shall submit a preliminary report to the Legislature and
25 on or before January 1, ~~1996~~ 1999, the department shall
26 submit a final report to the Legislature on the
27 effectiveness of this article in the regulation of the
28 marketing of qualified resort vacation clubs including,
29 but not limited to: the number of permit applications
30 received; the number of permit applications issued; the
31 size, characteristics, and scope of the projects;
32 information on the regulatory or enforcement problems
33 experienced; and, in the case of the final report,
34 recommendations on whether or not to continue the
35 program and, if the recommendation is to continue the
36 program, any proposed changes to the law, regulations,
37 or related program requirements.

38 SEC. 18. *Section 10265 of the Business and Professions*
39 *Code is amended to read:*



1 10265. (a) This article shall remain in effect only until
2 January 1, ~~1997~~ 2000, and as of that date is repealed unless
3 a later enacted statute, which is enacted before January
4 1, ~~1997~~ 2000, deletes or extends that date.

5 (b) The repeal of this article shall not affect or prevent
6 the commissioner from issuing, amending, or renewing
7 any permit pursuant to the requirements of this article as
8 this article reads on December 31, ~~1996~~ 1999, for the
9 continued operation of a qualified resort vacation club for
10 which an original permit was issued prior to January 1,
11 ~~1997~~ 2000.

12 (c) The repeal of this article shall not affect or prevent
13 the commissioner from issuing, renewing, or amending
14 any permit pursuant to the requirements of this article as
15 this article reads on December 31, ~~1996~~ 1999, to January
16 1, ~~1997~~ 2000, for the purpose of continuing the phased
17 development of the project, which allows the
18 commissioner to approve the addition of units subject to
19 this part at existing resort properties which are part of the
20 project, or at new resort properties which become part of
21 the project.

22 *SEC. 19.* Section 11000 of the Business and Professions
23 Code is amended to read:

24 11000. (a) “Subdivided lands” and “subdivision”
25 refer to improved or unimproved land or lands, wherever
26 situated within California, divided or proposed to be
27 divided for the purpose of sale or lease or financing,
28 whether immediate or future, into five or more lots or
29 parcels. However, land or lands sold by lots or parcels of
30 not less than 160 acres which are designated by lot or
31 parcel description by government surveys and appear as
32 such on the current assessment roll of the county in which
33 the land or lands are situated shall not be deemed to be
34 “subdivided lands” or “a subdivision” within the meaning
35 of this section, unless the land or lands are divided or
36 proposed to be divided for the purpose of sale for oil and
37 gas purposes, in which case the land or lands shall be
38 deemed to be “subdivided lands” or “a subdivision”
39 within the meaning of this section. This chapter also does
40 not apply to the leasing of apartments, offices, stores, or



1 similar space within an apartment building, industrial
2 building, commercial building, or mobilehome park, as
3 defined under Section 18214 of the Health and Safety
4 Code, except that the offering of leases for a term in
5 excess of five years to tenants within a mobilehome park
6 as a mandatory requirement and prerequisite to tenancy
7 within the mobilehome park shall be subject to the
8 provisions of this chapter. The leasing of apartments in a
9 community apartment project, as defined in Section
10 11004, and the creation of a time-share project as specified
11 in Section 11004.5, in an apartment or similar space within
12 a commercial building or complex, shall be subject to the
13 provisions of this chapter.

14 (b) Nothing in this section shall in any way modify or
15 affect any of the provisions of Section 66424 of the
16 Government Code.

17 (c) Subdivisions located entirely outside California
18 shall be exempt from the provisions of this part.

