

201 KAR 11:180. Promotion of out-of-state property and time-shares, registration and prerequisites.

RELATES TO: KRS 324.020(6), 324.142

STATUTORY AUTHORITY: KRS 324.142, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.142 authorizes the Real Estate Commission to promulgate administrative regulations establishing requirements and procedures for its licensees who are engaged in promotional activities in this commonwealth for property located outside this commonwealth. This administrative regulation establishes the procedure and content of registration required for promotional activities of out-of-state property and time-shares.

Section 1. Definitions. (1) "Promotional activities" means every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or award with regard to an interest in real estate.

- (a) A time-share estate, wherein a freehold estate or an estate for years is conveyed;
- (b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;
- (c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years; or
- (d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

(2) "Time-share" means an arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. A time-share may be:

- (a) A time-share estate, wherein a freehold estate or an estate for years is conveyed;
- (b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;
- (c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years; or
- (d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

Section 2. To obtain commission approval for engaging in promotional activities in the Commonwealth for property located outside of the Commonwealth, each applicant shall file with the commission the applicable documents set forth below:

(1) "Registration of out-of-state properties and time share" form, setting forth pertinent data pertaining to: legal description of property, name(s) of developers, owners and persons involved in promotional activities, type of offering, form of ownership of property, encumbrance(s) on property, current and anticipated improvements, taxes and assessments, facilities and services offered or to be offered in the future, and description of promotional activities to be conducted in Kentucky.

(2)(a) If a corporation, submit a copy of the Articles of Incorporation with all amendments thereto and a current list of the names and addresses of officers and directors with their principal occupation at the current time,

(b) Out-of-state corporations must also submit "certificate of authority" issued by the office of the Secretary of State of the Commonwealth of Kentucky.

(3) If a partnership or association, submit a copy of Articles of Partnership or other organizational documents.

(4) "Consent to Service of Process" form.

(5) Copies of all sales contracts, agreements, option forms, lease forms, and the prospectus currently used for the property.

(6) "Consent to Inspect" form, for commission to inspect the real estate being promoted and to inspect and copy books and reports of the owner and/or developer at the cost of the applicant.

Section 3. Exemptions. The registration required under Section 2 of this administrative regulation shall not apply to:

(1) The making of any offer or disposition of any out-of-state property:

(a) By an owner in a single or isolated transaction;

(b) By any government or government agency; or

(c) By court order.

(2) Any applicant that has been granted an exemption by the Kentucky Real Estate Commission on the ground that their promotional activities involve property of a small amount or of such a limited character that the public interest and protection of purchasers is deemed unnecessary with regard to said offerings.

(3) Any applicant who has registered under the Federal Interstate Land Sales Full Disclosure Act shall be exempt from the registration requirements contained in Section 2 of this administrative regulation, upon the filing with the commission of a copy of an effective statement of record filed with the Secretary of Housing and Urban Development.

Section 4. Sellers of time-share plans in Kentucky regardless of location of property shall verify, on the "Affidavit of Timeshare Developer" form:

(1) That each purchaser shall receive a fully completed copy of any contracts pertaining to the sale which includes the date of execution of contract, financial obligations of purchaser (including initial purchase price and any additional charges to which purchaser may be subject), estimated date of availability of accommodation or facility which is not completed at time of contract, and a description of the nature and duration of the time-share being sold.

(2) That each purchaser shall be informed orally at the time he or she signs a contract of the purchaser's right to rescission, which shall be substantially similar to that set forth in subsection (3) of this section.

(3) That all sales contracts utilized in the promotion and sale of said time-share plans shall include in underlined, bold face type of a minimum size of ten (10) points substantially the following statement: "You may cancel this contract without any penalty or obligation within three (3) business days from the above date. If you cancel, any payments made by you under the contract and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to:

Name of seller at:

Address of seller:

NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

(4) That if no interest in real property is being conveyed, contracts shall also contain the following statements in underlined, bold face type of a minimum size of ten (10) points: "You may also cancel this contract at any time after the accommodations or facilities are no longer available as

provided in this contract."

Section 5. (1) Violation of any of the requirements of this administrative regulation or failure to comply with the provision of the notice of cancellation by a licensee shall constitute a violation of KRS 324.160(4)(u) of this administrative regulation.

(2) Pursuant to KRS 324.142, commission approval is required for a licensee to promote out-of-state property and time-shares, even if exempted from other registration requirements under Section 3 of this administrative regulation. Violation of any of the requirements of this administrative regulation or failure to comply with the provision of the notice of cancellation by an owner/developer shall result in either revocation or denial of approval, whichever is applicable, and may be enforced by injunctive action under KRS 324.020(6).

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Registration of Out-of-State Properties and Time Shares" (1985);
- (b) "Consent to Service of Process" (1985);
- (c) "Consent to Inspect" (1985); and
- (d) "Affidavit of Timeshare Developer" (1985).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. (11 Ky.R. 1215; Am. 1368; eff. 3-12-85; 31 Ky.R. 1332; 1648; eff. 4-22-2005.)