THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AMENDMENTS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 11265

A BILL TO AMEND AND EXTEND CERTAIN FEDERAL LAWS RELATING TO HOUSING, COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND PRESERVATION, AND RELATED PROGRAMS, AND FOR OTHER PURPOSES

H.R. 12574

A BILL TO REVISE THE INTERSTATE LAND SALES FULL DISCLOSURE ACT

H.R. 3084

AN ACT TO AMEND AND EXTEND CERTAIN FEDERAL LAWS RELATING TO HOUSING, COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND PRESERVATION, AND RELATED PROGRAMS, AND FOR OTHER PURPOSES

AUGUST 1, 2, AND 3, 1978

Printed for the use of the
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THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AMENDMENTS

TUESDAY, AUGUST 1, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT,
Washington, D.C.

The subcommittee met at 10:30 a.m. in room 2212 of the Rayburn House Office Building, Hon. Thomas L. Ashley (chairman of the subcommittee) presiding.

Present: Representatives Ashley, Gonzalez, AuCoin, Brown, and Grassley.

Also present: Representative S. William Green of New York.

Chairman ASHLEY. The subcommittee will come to order.

This morning, the House and Community Development Subcommittee begins 3 days of hearings on the Interstate Land Sales Full Disclosure Act and the administration of this act by the Office of Interstate Land Sales and Registration [OILSR] in the Department of Housing and Urban Development.

Congress, 10 years ago, passed the Interstate Land Sales Full Disclosure Act in response to evidence of widespread abuses in the sale of undeveloped land. Many people bought land, sight unseen, on easy installment payment terms. They relied on the developers' assurances and seductive advertising campaigns that promised secluded home sites and good investments.

Many of these investments turned out to be worthless. The land was underwater or without water. The developer went bankrupt before providing promised amenities. Title to the land was encumbered after the land was sold pursuant to installment contracts. Often, there was no resale market for the land, whatever.

The essence of this act is that a fully informed consumer will make a reasoned investment decision. While the intent of the act is laudable to prevent fraud by assuring that consumers are adequately informed and to provide remedies for fraud when it occurs—the act and its administration by OILSR have not escaped criticism.

The land sales and building industry have criticized some requirements for being burdensome and being contrary to congressional intent. Many consumers believe that disclosure without substantive standards provides weak protection and that existing legal remedies are inadequate.

This debate has raised several significant issues that these hearings will address. We now have the opportunity, based on 10 year's experience, to review the act in its entirety and to legislate necessary changes.

Among the issues we will consider are the following: First, the Federal role in regulating intrastate sales of undeveloped land; two, whether fraudulent and unfair practices are any less prevalent in developments which differ in size, type, or location; three, the usefulness of requiring full disclosure without establishing substantive standards; four, the burden which existing law and regulation places on builders and developers; and five, the adequacy of existing consumer remedies.

Several bills are before this subcommittee: H.R. 11265, which contains the administration's proposals, H.R. 12574, introduced by our colleague, Mr. Minish, and S. 3084, which contains amendments passed by the Senate. In addition, the Office of Interstate Land Sales Registration has proposed regulatory changes based on existing law.

[Excerpts from H.R. 11265, the full text of H.R. 12574, and S. 3084, together with a table "Comparison of Proposed Statutory and Regulatory Changes to Interstate Land Sales Full Disclosure Act," and staff summaries of H.R. 12574, H.R. 11265, and S. 3084, follow:]

95TH CONGRESS
2D SESSION

H. R. 11265

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1978

Mr. ASHLEY (for himself and Mr. REUSS) (by request) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes.

AMENDMENTS TO INTERSTATE LAND SALES FULL DISCLOSURE ACT

SEC. 421. (a) Section 1402 (3) of the Interstate Land Sales Full Disclosure Act is amended by striking "fifty" and inserting in lieu thereof "one hundred".

(b) Section 1403 (a) (1) of such Act is amended by striking "fifty" and inserting in lieu thereof "one hundred".

(c) Section 1403 (a) (2) of such Act is amended by striking "five acres or more" and inserting in lieu thereof "more than forty acres".

(d) Section 1403 (a) (4) of such Act is amended by inserting immediately before the semicolon "when the Secretary determines it to be in the public interest".

(e) Section 1403 (a) of such Act is further amended by striking paragraph (10), by inserting the word "or"

after the semicolon at the end of paragraph (9) and by redesignating paragraph (11) as paragraph (10).

(f) Section 1404 of such Act is amended to read as follows:

"PROHIBITIONS RELATING TO THE SALE OR LEASE OF LOTS IN SUBDIVISIONS

"SEC. 1404. (a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect in accordance with section 1407 and a printed property report, meeting the requirements of section 1408, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; and

"(b) It shall be unlawful for any developer or agent thereof subject to this title who directly or indirectly makes use of any means of transportation or communication in interstate commerce, or of the mails, in selling or leasing, or offering to sell or lease, any lot in a subdivision—

"(1) to employ any device, scheme, or artifice to defraud; or

"(2) to obtain money or property by means of

any untrue statement of a material fact, or any omission to state a material fact necessary in order to make the statements made not misleading, with respect to any information included in the statement of record or the property report or with respect to any other information pertinent to the lot or subdivision; or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

"(c) Any contract or agreement for the purchase or lease of a lot in a subdivision covered by this title, where the property report has not been given to the purchaser in advance or at the time of the purchaser's signing, shall be voidable at the option of the purchaser.

"(d) A purchaser may revoke any contract or agreement for the purchase or lease of a lot in a subdivision covered by this title until midnight of the fourteenth day after signing the contract or agreement and the contract or agreement shall so provide.".

(g) Section 1405(b) of such Act is amended by inserting, immediately after "amendment thereto", "or a request for an exemption," and by striking "not in excess of $1,000".

(h) (1) Section 1409(a) of such Act is amended to read as follows:

"(a) In administering this title the Secretary shall cooperate with State authorities charged with the responsibility of regulating the sale of lots in subdivisions which are also subject to this title. The Secretary may accept for filing under sections 1405 and 1408 and declare effective as a statement of record and property report, material found acceptable by such authorities if the Secretary finds such action to be appropriate in the public interest or for the protection of purchasers. Unless the Secretary has accepted State materials, the property report described in section 1408 shall be used in lieu of any State disclosure document delivered to purchasers.

(2) Section 1409(b) of such Act is amended by striking "Nothing" and inserting in lieu thereof "Except as provided in subsection (a), nothing".

(i) Section 1410 of such Act is amended to read as follows:

"CIVIL LIABILITIES

"SEC. 1410. (a) A purchaser may bring an action at law or in equity against a developer or agent subject to this title if the sale or lease was made in violation of (1) section 1404(a) or (2) section 1404(b). In a suit authorized by this section for violation of section 1404 (a) or (b), the court may order damages, specific performance, or such other relief as the court deems fair, just, and equitable. In deter-

mining such relief the court shall take into account but not be limited to the following factors: the contract price of the lot; the amount the purchaser actually paid; the cost of any improvements to the lot; the fair market value of the lot at the time of sale; and the fair market value of the lot at the time such suit was brought.

"(b) A purchaser may bring an action at law or in equity to enforce any right under section 1404 (c) or (d). In any suit to enforce a right created under section 1404 (c) or (d) the purchaser, upon tender of an instrument divesting the purchaser of his or her interest in a lot, shall be entitled to all moneys paid pursuant to such purchaser's contract or agreement.

"(c) A purchaser may bring an action at law or in equity against a developer or agent subject to this title if such developer or agent fails to carry out any obligation set forth in the statement of record and property report.

"(d) The amount recoverable in a suit authorized by this section may include interest, reasonable attorneys' fees, independent appraisers' fees, and court costs.

"(e) Every person who becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any person who, if sued separately, would have been liable to make the same payment.".

(j) Section 1412 of such Act is amended to read as follows:

"LIMITATION OF ACTIONS

"SEC. 1412. (a) No action shall be maintained to enforce any right created under clause (1) of section 1410(a) or under section 1410(b) unless brought within one year after discovery of the violation upon which such liability is based. In no case shall any such action be brought more than four years after the sale or lease notwithstanding delivery of a deed to the purchaser or the sale or assignment of the purchaser's contract or agreement to a third party.

"(b) No action shall be maintained to enforce any right created under clause (2) of section 1410(a) unless brought within three years after discovery of the violation upon which such liability is based or after discovery should have been made by the exercise of reasonable diligence.

"(c) No action shall be maintained to enforce a right created under section 1410(c) unless brought within three years after the discovery of the violation upon which such liability is based or after discovery should have been made by the exercise of reasonable diligence, notwithstanding the delivery of a deed to the purchaser.".

(k) Section 1415 of such Act is amended by adding at the end thereof the following new subsections:

"(e) Whenever the Secretary believes that any de-

veloper or agent is or has been engaged in (1) an act violative of this title or a rule or regulation prescribed pursuant thereto in a case which the Secretary certifies is of substantial importance or (2) recurring conduct violative of any such provision, rule, or regulation, or that a developer or agent has failed to comply with the terms of any order issued by the Secretary, the Secretary may issue and serve upon such developer or agent a complaint stating the charges in that respect and containing a notice of a hearing, at a time and a place therein fixed. Such hearing shall be on a date at least twenty days and not more than forty-five days after service of said complaint. The developer or agent shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Secretary requiring the developer or agent to cease and desist from the violation or failure to comply as so charged in said complaint. Notwithstanding the preceding sentence, if the developer or agent fails to file an answer and intention to appear within fifteen days after service of the complaint and notice, such developer or agent shall be deemed to have waived the right to a hearing and the Secretary may issue an order to cease and desist. The Secretary shall issue a decision within ten days after any hearing, and any order issued to cease and desist shall be effective upon service on the developer or agent.

"(f) (1) Whenever the Secretary shall determine that the violation or failure to comply specified in the complaint served upon an agent or developer pursuant to subsection (c) of this section is likely seriously to prejudice the public interest, the Secretary may issue a temporary order requiring the developer or agent to cease and desist from any such violation or failure to comply. Such order shall become effective upon service upon the developer or agent, and, unless suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to the complaint and notice, or if an order to cease and desist is issued against the developer or agent pursuant to subsection (c), until the effective date of any such order.

"(2) Within ten days after any agent or developer has been served with a temporary order to cease and desist, such developer or agent may apply to the United States district court for the judicial district where the developer or agent is located, or to the United States District Court for the District of Columbia, to determine whether such order was arbitrary, capricious, or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The sole effect of any order of the court will be only to suspend the effectiveness of the temporary

order to cease and desist, pending completion of the administrative proceedings pursuant to the complaint and notice served upon the developer and agent under subsection (e) of this section.".

(l) Such Act is further amended by renumbering sections 1417 through 1422 as sections 1418 through 1423, and by inserting after section 1416 the following new section 1417:

"CIVIL PENALTIES

"SEC. 1417. (a) Any person who violates any provisions of this title or any rule, regulation, or order issued by the Secretary thereunder, may be subject to a civil penalty, in a determination by the Secretary after opportunity for a hearing, of not to exceed $5,000 for each such violation. Each separate offense shall constitute a violation and, in the case of a continuing offense, each day shall constitute a separate violation. Any determination of the Secretary shall be subject to review only as provided in section 1411.

"(b) Penalties assessed pursuant to this section may be collected in an action brought by the Secretary in any district court of the United States. In any such action the validity and appropriateness of the final determination imposing the penalty shall not be subject to review.

"(c) The amount of such penalty, when finally determined, shall be payable to the United States Treasury.".

95TH CONGRESS
2D SESSION

H. R. 12574

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1978

Mr. MINISH (for himself, Mr. ADDABBO, Mr. AKAKA, Mr. ANNUNZIO, Mr. EILBERG, Mr. FARY, Mrs. FENWICK, Mr. FLORIO, Mr. GONZALEZ, Mr. HANLEY, Mr. HARRINGTON, Mr. HOLLENBECK, Ms. HOLTZMAN, Mr. HUBBARD, Mr. HYDE, Mr. MITCHELL of Maryland, Mr. NEAL, Mr. PATTEN, Mr. RICHMOND, Mr. RODINO, Mr. ROE, Mr. ST GERMAIN, Mr. SIMON, Mrs. SPELLMAN, and Mr. VENTO) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To revise the Interstate Land Sales Full Disclosure Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Interstate Land Sales Reform Act of 1978".

EXEMPTIONS

SEC. 2. (a) (1) Paragraphs (1) and (2) of section 1403 (a) of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1702 (a) (1) and (2)) are amended to read as follows:

"(1) the sale or lease of real estate not pursuant to a common promotional plan to offer or sell forty or more lots in a subdivision;

"(2) the sale or lease of lots in a subdivision, all of which are forty acres or more in size;".

(2) Section 1402(3) of such Act (15 U.S.C. 1701 (3)) is amended by striking out "fifty" and inserting in lieu thereof "forty".

(b) Section 1403(a)(4) of such Act (15 U.S.C. 1702(a)(4)) is amended by inserting the following before the semicolon at the end thereof: "; except that the provisions of this title shall apply to sales and leases pursuant to court orders issued in connection with bankruptcy proceedings".

PROHIBITIONS AND RIGHT OF REVOCATION

SEC. 3. (a) Section 1404(a)(1) of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1703(a)(1)) is amended by striking out "; and" and inserting in lieu thereof "; or".

(b) Section 1404(a)(2)(B) is amended to read as follows:

"(B) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statements made not misleading, with respect to any

information included in the statement of record or the property report or with respect to any other information pertinent to the lot or the subdivision, or"

(c) Section 1404(b) of such Act (15 U.S.C. 1703 (b)) is amended by striking out the last sentence thereof.

(c) Section 1404 of such Act (15 U.S.C. 1703) is amended by adding at the end thereof the following new subsection:

"(c) Any contract or agreement for the purchase or lease of a lot in a subdivision covered by this title shall be voidable at the option of the purchaser or lessee until midnight of the thirtieth day following the signing of such contract or agreement and such contract or agreement shall so provide. Any contract or agreement for the purchase or lease of a lot in a subdivision covered by this title shall be voidable at the option of the purchaser or lessee for three years after the signing of the contract or agreement if—

"(1) the signing of the contract or agreement takes place on the day on which the purchaser or lessee is first presented with the contract or agreement for the purchase or lease of the lot;

"(2) any part of the financing of such purchase or lease of such lot is provided by the developer, by an agent of such developer, or by any other partnership,

association, corporation, or other business entity with regard to which such developer or agent of such developer or any person who has a financial interest in such developer, owns at least 30 per centum of such entity's financial assets; except that this paragraph shall not apply to any arrangement for the financing of the purchase of a lot, which, as determined by the Secretary, provides that—

"(A) transfer of title to the purchaser of the lot shall occur within thirty days of the date of the signing of the contract or agreement;

"(B) a formal foreclosure proceeding shall occur before such purchaser is deprived of such title in case of default or breach by the purchaser;

"(C) the purchaser of a lot shall establish equity in his lot proportional to his payments which are applied to reduce the principal amount of obligation owed with respect to the lot; and

"(D) the purchaser shall not be obligated in any case to pay as damages, in the event of the purchaser's breach or default, any specified amount as liquidated damages or any amount in excess of the developer's proven damages; or

"(3) such contract or agreement does not contain a

legally sufficient and recordable description of the boundaries of the lot.".

INFORMATION REQUIRED IN STATEMENT OF RECORD

SEC. 4. Section 1406 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1705) is amended by striking out "and" at the end of paragraph (11), by striking out the period at the end of paragraph (12) and inserting in lieu thereof "; and", and by adding the following new paragraph at the end thereof:

"(13) copies of all printed material used by a developer or his agents to promote the purchase or lease of a lot in a subdivision covered by this title; transcripts of all television and radio advertisements used by a developer or his agents to promote the purchase or lease of such a lot; and accurate summaries of all verbal representations made by a developer or his agents to promote the purchase or lease of such a lot; except that additional submissions of printed material, transcripts, or summaries pursuant to this paragraph shall not be construed to be changes affecting material facts under section 1407(c) unless such additional printed material, transcripts, or summaries do reflect substantial changes in the representation made by the developer, as determined by the Secretary in regulations.".

EFFECT ON STATE LAWS

SEC. 5. Section 1409 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1708) is amended by adding at the end thereof the following new subsection:

"(c) Nothing in this title shall annul, alter, affect, or exempt any dealer in land from complying with the laws of any State relating to the sale of interstate lands, except to the extent that those laws are inconsistent with the provisions of this title or rules, regulations or orders issued thereunder, and then only to the extent of the inconsistency.".

DAMAGE AWARDS

SEC. 6. Section 1410 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1709) is amended to read as follows:

"SEC. 1410. (a) Where any part of the statement of record, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, any person acquiring a lot in the subdivision covered by such statement of record from the developer or his agent during such period the statement remained uncorrected (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue the developer.

"(b) Any developer or agent, who sells or leases a lot in a subdivision—

"(1) in violation of section 1404, or

"(2) by means of a property report which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, may be sued by the purchaser of such lot.

"(c) A purchaser or lessee may bring an action at law or in equity to enforce any right under sections 1404(b), 1404(c), or 1425(b). In any suit to enforce a right under section 1404(b), 1404(c), or 1425(b), the purchaser or lessee, upon tender of an instrument divesting the purchaser of his or her interest in a lot, shall be entitled to all moneys paid pursuant to such purchaser's contract or agreement.

"(d)(1) The suit authorized under subsection (a) or (b) may be to recover such damages as shall represent the difference between the amount paid for the lot, the reasonable cost of any improvements thereto, any reasonable court costs, and any reasonable cost incurred by the purchaser or lessee in connection with such suit for attorneys' fees, appraisal costs, and travel expenses to and from the lot, and the lesser of (A) the value thereof as of the time such suit was brought, or (B) the price at which such lot shall have been disposed of in a bona fide market transaction before the suit, or (C) the price at which such lot shall have been disposed of after

suit in a bona fide market transaction but before judgment.

"(2) The suit authorized under subsection (a) or (b) may, in lieu of a suit to recover damages, be for the purpose of securing specific performance of the contract or agreement and any other promises made by the developer or his agent in connection with such sale or lease.

"(e) Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

"(f) In no case shall the amount recoverable under this section exceed the sum of the purchase price of the lot, the reasonable cost of improvements, reasonable court costs, and any reasonable cost incurred by the purchaser or lessee in connection with such suit for attorneys' fees, appraisal costs, and travel expenses to and from the lot.".

STATUTE OF LIMITATIONS

SEC. 7. Section 1412 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1711) is amended to read as follows:

"STATUTE OF LIMITATIONS

"SEC. 1412. No action shall be maintained to enforce any liability created under section 1410 (a) or (b) (2) unless brought within three years after the discovery of the untrue statement or omission or after such discovery should

have been made by the exercise of reasonable diligence. No action shall be maintained to enforce any liability created under section 1410(b)(1) or (c) unless brought within three years after the discovery of the violation upon which it is based or after such discovery should have been made by the exercise of reasonable diligence. In no event shall any such action be brought by a purchaser or lessee more than seven years after the sale or lease to such purchaser or lessee.".

ADMINISTRATIVE REMEDIES

SEC. 8. (a) Section 1415 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1714) is amended by adding at the end thereof the following new subsections:

"(e) If it appears to the Secretary at any time that there is a reasonable basis for believing that any developer or agent is violating or has violated any provision of this title or any rules or regulations prescribed pursuant thereto, or that a developer or agent has failed to comply with the terms of any order issued by the Secretary, the Secretary may issue and serve upon such developer or agent a complaint stating the charges and containing a notice of a hearing at a time and a place described therein. Such hearing shall be on a date at least twenty days and not more than sixty days after service of such complaint. The developer or agent shall have the right to appear at the place and time

of such hearing and show cause why an order should not be entered by the Secretary requiring the developer or agent to cease and desist from the violation or failure to comply as so charged in such complaint. If the developer or agent fails to file an answer and intention to appear within fifteen days after service of the complaint and notice, such developer or agent shall be deemed to have waived the right to a hearing and the Secretary may issue an order to cease and desist. The Secretary shall issue a decision within twenty days after any hearing, and any order issued to cease and desist shall be effective upon service on the developer or agent.

"(f) (1) Whenever the Secretary determines that the violation or failure to comply specified in the complaint served upon an agent or developer pursuant to subsection (e) is likely to prejudice seriously the public interest, the Secretary may issue a temporary order requiring the developer or agent to cease and desist from any such violation or failure to comply. Such order shall become effective upon service upon the developer or agent, and, unless suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to the complaint and notice, or, if an order to cease and desist is issued against the developer or agent pursuant to subsection (e), until the effective date of any such order.

"(2) Within ten days after any agent or developer has been served with a temporary order to cease and desist, such developer or agent may apply to the United States district court for the judicial district where the developer or agent is located, or to the United States District Court for the District of Columbia, to determine whether such order was arbitrary, capricious, or an abuse of discretion, or whether the order was issued in accordance with procedures established by law. The sole effect of any order of the court will be to suspend the effectiveness of the temporary order to cease and desist, pending completion of the administrative proceedings pursuant to the complaint and notice served upon the developer and agent under subsection (e).".

(b) The Interstate Land Sales Full Disclosure Act is amended by adding the following new section at the end thereof:

"CIVIL PENALTIES

"SEC. 1423. (a) Any person who violates any provision of this title or any rule, regulation, or order issued by the Secretary thereunder shall be subject to a civil penalty, in a determination by the Secretary after opportunity for a hearing, not to exceed $5,000 for each such violation. Each separate offense shall constitute a violation and, in the case of a continuing offense, each day shall constitute a separate

violation. Any determination of the Secretary shall be subject to review only as provided in section 1411.

"(b) Penalties assessed pursuant to this section may be collected in an action brought by the Secretary in any district court of the United States. In such action the validity and appropriateness of the final determination imposing the penalty shall not be subject to review.

"(c) The amount of such penalty, when finally determined, shall be payable to the United States Treasury.".

ADMINISTRATION

SEC. 9. Section 1416(a) of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1715(a)) is amended by inserting the following new sentence after the first sentence thereof: "In carrying out this subsection, the Secretary shall appoint an Administrator of Interstate Land Sales who shall be responsible for carrying out delegations of functions, duties, and powers made by the Secretary under this subsection and who shall report directly to the Secretary.".

CRIMINAL PENALTIES

SEC. 10. Section 1418 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1717) is amended to read as follows:

"PENALTIES

"SEC. 1418. Any person who willfully violates any of the provisions of this title or the rules and regulations pre-

scribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than $10,000 or imprisoned not less than one year nor more than seven years, or both.".

REGULATION OF ADVERTISING

SEC. 11. Section 1419 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1718) is amended by adding the following new sentence at the end thereof: "In carrying out this section, the Secretary may make, issue, amend, and rescind rules, regulations, and orders with respect to advertising and other promotional material which may be used to promote the sale or lease of lots in subdivisions covered by this title.".

PUBLIC EDUCATION

SEC. 12. Section 1421 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1720) is amended by inserting the following before the period at the end thereof: ", including sums which may be used by the Secretary exclusively for public education concerning the dangers and difficulties inherent in the purchase or lease of lots in subdivisions covered by this title".

PARENS PATRIAE

SEC. 13. The Interstate Land Sales Full Disclosure Act is amended by adding the following new section at the end thereof:

"PARENS PATRIAE RIGHT TO SUE

"SEC. 1424. (a) (1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of individuals residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary or injunctive relief as provided in this section for injury sustained by such individuals by reason of any violation of this title, any violation of any rule, regulation, or order issued under this title, or any violation of other Federal law if such violation is also a violation of this title or of any rule, regulation, or order issued thereunder. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief—

"(A) which duplicates amounts which have been awarded for the same injury; or

"(B) which is properly allocable to—

"(i) individuals who have excluded their claims pursuant to subsection (b) (2) of this section, and

"(ii) any business entity.

"(2) The Court shall award the State as monetary relief the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including reasonable attorney's fees.

"(b) (1) In any action brought under subsection (a) (1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to circumstances of the case.

"(2) Any individual on whose behalf an action is brought under subsection (a) (1) may elect to exclude from adjudication the portion of the State's claim for monetary relief attributable to such individual by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

"(3) The final judgment in an action under subsection (a) (1) shall be res judicata as to any claim under this section by any individual on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

"(c) An action under subsection (a) (1) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

"(d) In any action under subsection (a), the amount of the plaintiff attorney's fee, if any, shall be determined by the court; and the court may, in its discretion award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

"(e) In any action under subsection (a) (1) of this section, in which there has been a determination that a defendant committed any violation of this title, any violation of any rule, regulation, or order issued under this title or any violation of other Federal law if such violation is also a violation of this title or of any rule, regulation or order issued thereunder, damages may be proved and assessed in the aggregate by statistical or sampling methods, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

"(f) Monetary relief recovered in an action under subsection (a) (1) shall—

"(1) be distributed in such manner as the district court in its discretion may authorize; or

"(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

except that in either case any distribution procedure adopted shall afford each individual a reasonable opportunity to secure his appropriate portion of the net monetary relief.

"(g) (1) Whenever the Attorney General of the United States or the Secretary has brought an action under this title, under any rule, regulation, or order issued thereunder, or under any other Federal law with regard to a violation which is also a violation of this title or such rule, regulation, or order, and such Attorney General or the Secretary has reason to believe that any State attorney general would be entitled to bring an action, under this section, based substantially on the same alleged violation of Federal law, he shall promptly give written notification thereof to such State attorney general.

"(2) To assist a State attorney general in evaluating the notification described in paragraph (1) or in bringing any action under this section, the Attorney General of the United States or the Secretary shall, upon request by such State attorney general, make available to such State attorney general, to the extent permitted by law, any investigative files or other materials which are or may be

relevant or material to the actual or potential cause of action under this section.

"(h) For purposes of this section, the term 'State attorney general' means the chief legal officer of a State, or any other person authorized by State law to bring actions under this section, including the corporation counsel of the District of Columbia, except that such term does not include any person employed or retained on—

"(1) a contingency fee based on the monetary relief awarded under this section; or

"(2) any other contingency fee basis unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under subsection (d) of this section.".

IMPROVEMENTS DEALING WITH BASIC SERVICES

SEC. 14. The Interstate Land Sales Full Disclosure Act is amended by adding the following new section at the end thereof:

"IMPROVEMENTS DEALING WITH BASIC SERVICES

"SEC. 1425. (a) Any developer or agent who agrees or promises to provide basic services in connection with a lot in a subdivision covered by this title shall deposit in escrow, within ninety days after the signing of the contract of sale or lease, an amount to be determined by the Secretary, except that such amount shall not be less than an amount equal

to the total cost of the basic services which have been promised and not completed with respect to the subdivision at the time of the agreement or promise, divided by the number of lots in the subdivision which will receive such services. Such total cost and number of lots shall be determined by a registered engineer and shall be certified to the Secretary by the engineer. The costs of such determination shall be paid by the developer. Such escrow shall be deposited in an account at a banking or similar financial institution approved by the Secretary and shall be withdrawn and utilized pursuant to rules issued by the Secretary for the purpose of assuring that such amount be used solely for providing the basic services which are to be provided in connection with such lot. For purposes of this section, the term 'basic services' means water, sewage disposal, roads, and any other amenities which may be specified by the Secretary. If, in the Secretary's judgment a State's requirement with respect to the establishment of escrow accounts in connection with the sale and lease of real property located in such State is sufficient to meet the purposes of this section, he may waive the requirements of this section with respect to property located in such State.

"(b) If any developer promises before or at the time of the signing of a contract for the sale or lease of a lot in a subdivision covered by this title, to install or complete basic

services which will serve the lot of a purchaser or lessee by a specific date, and if such developer fails to install or complete such basic services by such promised date, the contract of sale shall be revocable at the option of the purchaser, and upon revocation, such purchaser may recover all moneys which have been paid to the developer for the purchase or lease of his lot.".

EFFECTIVE DATE

SEC. 15. The amendments made by this Act shall become effective at the beginning of the one hundred and twentieth day after the date of the enactment of this Act.

95TH CONGRESS
2D SESSION

S. 3084

AN ACT

To amend and extend certain Federal laws relating to housing, community, and neighborhood development and preservation, and related programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Housing and Community Development Amendments of 1978".

AMENDMENTS TO INTERSTATE LAND SALES FULL DISCLOSURE ACT

SEC. 715. (a) Section 1403(a) of such Act is amended—

(1) by inserting "condominium," after "commercial," in clause (3);

(2) by inserting after "adverse claims do not refer to" in clause (10) the following: "United States land patents or Federal grants and reservations similar to United States land patents, nor to"; and

(3) by striking out the matter which precedes "when—" in clause (11) and inserting in lieu thereof the following:

"(11) the sale of lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development or which is restricted to such use by a declaration of covenants, conditions and restrictions which has been recorded in the official records of the city or county in which such real estate is located,".

(b) Section 1403 of such Act is amended—

(1) by redesignating subsection (b) thereof as subsection (c); and

(2) by inserting after subsection (a) thereof the following:

"(b) Unless the method of disposition is adopted for the purpose of evasion of this title, the requirements of sections 1405 to 1408 inclusive, shall not apply to—

"(1) the sale or lease of real estate by a developer who is engaged in a sales operation which is intrastate or almost entirely intrastate in nature. A sales operation shall be considered 'intrastate or almost entirely intrastate in nature' for the calendar year if not more than 5 per centum of the lots sold in such year were sold to residents of another State, or if not more than five lots sold in such year were sold to residents of another State, whichever is greater, exclusive of sales made under the provisions of clause (2) of this sub-

section. For the purpose of the exemption contained in the preceding sentence, a lot may be sold to a resident of another State only if—

"(A) the lot is free and clear of all liens, encumbrances, and adverse claims;

"(B) the purchaser or his or her spouse has made a personal on-the-lot inspection of the lot purchased; and

"(C) the developer executes and supplies to the purchaser a written instrument designating a person within the State of residence of the purchaser as his agent for service of process and acknowledging that the developer submits to the legal jurisdiction of the resident State of the purchaser.

As used in this clause (1), the terms 'liens', 'encumbrances', and 'adverse claims' do not include United States land patents and similar Federal grants or reservations, property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law,

constitute liens on the property before they are due and payable, or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if—

"(i) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement setting forth in descriptive and concise terms all such reservations, taxes, assessments, which are applicable to the lot to be purchased or leased; and

"(ii) receipt of such statement has been acknowledged in writing by the purchaser or lessee;

"(2) the sale or lease of real estate by a developer to the resident of another State when the principal residence of the purchaser is within a radius of one hundred miles from the property purchased if—

"(A) the lot is free and clear of all liens, encumbrances, and adverse claims;

"(B) each purchaser or his or her spouse has made a personal on-the-lot inspection of the lot purchased; and

"(C) the developer executes and supplies to the purchaser a written instrument designating a person within the State of residence of the purchaser as his agent for service of process; and acknowl-

edges that the developer submits to the legal jurisdiction of the resident State of the purchasers; and

"(D) the developer executes a written affirmation to the effect that he has complied with the provisions of clauses (A), (B), and (C) of this clause (2), such affirmation to be given on a form provided by the Secretary, where such form shall include only the name and address of the developer, the name and address of the purchaser, a legal description of the lot, an affirmation that clauses (A), (B), and (C) have been complied with, a statement that the developer submits to the jurisdiction of the Act in regard to the sale, and the signature of the developer. The affirmation is to be kept on file by the Secretary.".

Sales made under this clause shall not be subject to the limitation contained in clause (1) but the number of sales made under this clause will be added to sales made under clause (1) to arrive at the total number of sales made in one year by a developer for purposes of calculation of the 5 per centum out-of-State sales limitation factor contained in clause (1). As used in this clause (2), the terms 'liens', 'encumbrances', and 'adverse claims' do not include United States land patents and similar Federal grants or reservations, property reserva-

tions which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable, or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if—

"(i) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement setting forth in descriptive and concise terms all such reservations, taxes, assessments, which are applicable to the lot to be purchased or leased; and

"(ii) receipt of such statement has been acknowledged in writing by the purchaser or lessee; or

"(3) the sale or lease of real estate which is located within a municipality or county whose governing body specifies minimum standards for the development of subdivision lots taking place within its boundaries, when—

"(A) the subdivision meets all local codes and standards and is either zoned for single family resi-

dences or, in the absence of a zoning ordinance, is limited exclusively to single family residences;

"(B) the real estate is situated on a paved, public street or highway which has been built to a standard acceptable to the municipality or county or a bond or other surety acceptable to the municipality or county in the full amount of the cost of the improvements has been posted to assure completion to such standards, and that authority has accepted or has agreed to accept the responsibility of maintaining the public street or highway;

"(C) at the time of closing, potable water, sanitary sewage disposal and electricity have been extended to the real estate or the municipality or county has agreed to install such facilities within 180 days. For subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round or that the land is approved for the installation of septic tanks;

"(D) the contract of sale requires delivery of a warranty deed to the purchaser within 180 days of the signing of the sales contract;

"(E) a policy of title insurance or title opinion

is issued in connection with the transaction showing that at the time of closing, title to the real estate purchased or leased is vested in the seller or lessor, but nothing herein shall be construed as requiring the recordation of a lease;

"(F) each and every purchaser or his or her spouse has made a personal on the lot inspection of the real estate which he purchased or leased, prior to the signing of a contract to purchase or lease;

"(G) there are no direct mail or telephone solicitations or offers of gifts, trips, dinners, or other such promotional techniques to induce perspective purchasers or lessees to visit the subdivision or to purchase or lease a lot.

"(c) Section 1412 of such Act is amended by striking the last sentence and inserting in lieu thereof 'In no event shall any action be brought by a purchaser more than three years after the signing of a contract or lease, not withstanding delivery of a deed to a purchaser on the sale or assignment of the purchaser's contract or agreement to a third party.'".

(c) Section 1416 of such Act is amended by adding at the end thereof the following:

"(c) (1) In discharging his responsibilities under this

title, the Secretary shall conduct all actions with respect to rulemaking or adjudication in accordance with the provisions of chapter 5 of title 5, United States Code.

"(2) The Secretary, by rule, shall prescribe the procedure applicable to every case pursuant to this title of adjudication (as defined in section 551 of title 5, United States Code) not required to be determined on the record after notice and opportunity for hearing. Such rule shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of legal authority and other written reasons.".

COMPARISON OF PROPOSED STATUTORY AND REGULATORY CHANGES TO INTERSTATE LAND SALES FULL DISCLOSURE ACT

Topic	Existing Law and Regulations	Proposed Regulations	Minish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Definitions "Sale" (Section 1402)	Not defined in law. Regulations defined as an obligation for consideration to purchase or lease.	Define "sale" as an obligation continuing until completion of payment or delivery of deed.	No provision.	No provision.	No provision.
Statutory Exemptions From Registration (Section 1403)					
A. Self-determining					
1) Lot size	Sales of lots over 5 acres each.	No change.	Sales of lots over 40 acres.	Sales of lots over 40 acres.	No provision.
2) Subdivision size	Developments containing fewer than 50 lots.	No change.	Developments with fewer than 40 lots.	Developments with fewer than 100 lots.	No provision.
3) Bankruptcy sale	Lots sold pursuant to a court order eg. bankruptcy sale.	No change.	Deletes court order exemption.	Permits Secretary to refuse court order exemption in individual cases.	No provision.
4) Land on which buildings exist	Land on which any commercial, residential or industrial building exists or will be built within 2 years.	No change.	No provision.	No provision.	Specifically exempts condominiums.
5)Commercial/ industrial land	Land zoned for industrial or commercial development		No provision.	No provision.	Land restricted to commercial or industrial development by recorded covenant.
B. Secretary determination required					
1) On-site Inspection	Lots which are free and clear of liens, encumbances and adverse claims at time of sale and purchaser has made on-site inspection.	No change.	No provision.	Deletes on-site exemption.	Retains exemption but defines adverse claims so do not include U. S. land patents or similar federal grants or reservations.

Topic	Existing Law and Regulations	Proposed Regulations	Mtatish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Regulatory exemptions defined by Secretary who has discretion to exempt when not against public interest					
A. Secretarial determination required					
1) Local offering	Subdivision has fewer than 300 lots and sales to non-residents of state cannot exceed 5% of total sales and all advertising must be in-state. Secretarial determination required.	Subdivision must have fewer than 150 lots and advertising must be in most logical median for local area, even if out of state. No 5% limitation on out-of-state sales. Secretarial determination required.	No provision.	No provision.	a) exemption for sales to purchasers residing within 100 miles of subdivision even across state lines if: 1) lot free and clear of liens; 2) on-site inspection; 3) seller submits to jurisdiction of purchasers home state; 4) developer certifies to HUD that he has met above requirements. (See local offering exemption below) b) exemption for developer who annually sells no more than 5 lots or 5% of lots to out-of-state buyers during calendar year if: 1) lot is free and clear of liens; 2) on-site inspection; 3) seller submits to jurisdiction of purchasers home state.

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Topic	Existing Law and Regulations	Proposed Regulations	Minish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
2) Primary home site	No provision.	Exemption for subdivisions designed for primary home sites with all utilities in place at time of sale. Secretary determination required.	No provision.	No provision.	Statutory exemption for single-family lots that are "fully improved" (or a bond posted for streets, and the county will install water, sewage and electricity within 6 months), with an on-site inspection, title insurance issued, delivery of deed within 6 months and no direct solicitation techniques.
B. Self-determining exemptions					
1) Limited sales	Sales of unimproved lots in an otherwise exempt subdivision up to 5% of subdivision or 49 lots.	Raises limitation to 10% or 49 lots.	No provision.	No provision.	No provision.
2) Persons in land sales business	No provision.	Lots sold to persons engaged in the land sales business are exempt.	No provision.	No provision.	No provision.
3) Adjoining lot owned by purchaser	No provision.	The sale of a lot adjoining a lot owned by the purchaser which has a residential, commercial, and industrial building on it.	No provision.	No provision.	No provision.
4) Limited yearly sales	No provision.	Where no more than 12 sales in any 12 month-period have been or will be made.	No provision.	No provision.	No provision.
5) Scattered site	No exemption if lots in scattered sites are linked through a "common promotional plan" and total 50 or more lots.	The sale of lots in scattered sites if each site has fewer than 50 lots.	No provision.	No provision.	No provision.

Title	Existing Law and Regulations	Proposed Regulations	Minish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Fraudulent and deceptive practices (Section 1404(a))	Developer may not use phones or mails in interstate commerce to defraud or materially misrepresent any information in the statement or pertinent to the lot.	Property report may not materially misrepresent nor omit a material fact.	Adds prohibition on omissions of material facts and deletes requirement to prove purchasers reliance.	Adds prohibition on omissions of material facts and deletes requirement to prove purchasers reliance.	No provision.
Rights of rescission (Section 1404(b))	3-day conditional right of rescission: where the purchaser has received the property report less than 48 hours before he signed the contract.	No change.	A) 30-day absolute right of rescission. B)3-year right of rescission when: 1)contract does not contain legally sufficient and recordable description of lot; 2)same day sales; or 3)extension of credit by developer except when: a)title is transferred within 30 days of contract; b)formal foreclosure proceedings take place before loss of title; c)purchaser establishes equity proportional to his payments; d)no liquidated damages or an amount greater than developer's proven damages may be paid by the purchaser.	14-day absolute right of rescission.	No provision.
Registration Fees (Section 1405(b))	Fees are limited to $1000 per filing.	Fees are scaled from $300 - $1000.	No provision.	Deletes $1000 limit on fee for developer's filing.	No provision.

Title	Existing Law and Regulations	Proposed Regulations	Minish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Cooperation with state authorities (Section 1409)	The Secretary shall cooperate with comparable state authorities and accept state filings as a substitute for section 1405 requirements if they are sufficiently protective of the consumer.	No change.	Developer is not exempt from any state laws, unless inconsistent with this title.	Requires federal property report to be given in addition to any state report unless HUD okays state report.	No provision.
Civil remedies (Section 1410)	Damages are limited to: the difference between the amount paid for the lot and the reasonable cost of any improvements thereto, and the lesser of the value of the lot at the time of suit or in a market transaction before the suit or after the suit; the amount recoverable shall never exceed the cost of the lot with improvements plus court costs.	No change.	Allows recovery of attorney's fees, appraisal costs and travel expenses for civil suits.	Gives more flexibility in computing damages; allows attorney's fees, appraisal costs, court costs and interest.	No provision.
Suit for specific performance (Section 1410)	No provision.	No provision.	Purchaser may sue for specific performance of any promise made by developer in connection with the sale.	Purchaser may sue for specific performance and to enforce obligations from property report or statement of record.	No provision.
Refund on tender of contract (Section 1410)	No provision.	No provision.	Purchaser can get refund upon tender of contract when: a)there is a suit to enforce rights;	Purchaser can get refund: a)upon tender of contract when sues to enforce rights;	No provision.
(Section 1425)	No provision.	No provision.	b)developer fails to complete improvements by specified date.	b) No provision.	No provision.

Title	Existing Law and Regulations	Proposed Regulations	Minish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Statute of limitations (Section 1412)	A) Suit based on absence of or material misrepresentation in statement of record and property report -- 1 year from discrovery	No provision.	A) Time limit extended to 3 years from discovery	A) Suit based on sale in absence of effective statement of record or property report unfurnished -- 1 year from discovery or maximum of 4 years from sale or lease	A) No change.
	B) Suit based on failure to deliver property report, material misrepresentation in report or record and scheme to defraud -- 2 years from discovery		B) Time limit extended to 3 years from discovery	B) Suit based on fraudulent schemes or omissions in statement of record or property report -- 3 years from discovery	B) No change.
	C) In no event may any suit be brought 3 years after sale or lease		C) Maximum time limit extended to 7 years after sale or lease	C) 3 year maximum time limit deleted.	C) Maximum time limit 3 years--not withstanding delivery of deed to purchaser or assignment to 3rd party
	D) No provision.		D) No provision.	D) Suit for failure to carry out obligations stated in property report or statement of record -- 3 years from discovery.	D) No provision.

Title	Existing Law and Regulations	Proposed Regulations	Mi ıish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Investigations, injunctions and prosecutions (Section 1415)	Secretary may bring actions in any District Court in the U. S. to enjoin any practices in violation, and upon a proper showing, a permanent or temporary injunctions or restraining order; the Attorney General may institute such proceedings.		In addition, Secretary may issue cer se and desist order, order of suspension, or both.	In addition, Secretary may issue cease and desist order, order of suspension, or both.	No provision.
Civil penalties after administrative hearings	No provision.		Secretary may impose civil penalties of $5000 per violation after administrative hearings.	Secretary may impose civil penalties of $5000 per violation after administrative hearings.	No provision.
Administration					
A) Administrator	No provision but Assistant Secretary now in charge.	No provision.	Creates "Administrator of Interstate Land Sales" who reports directly to the Secretary.	No provision.	No provision.
B) Administrative Procedures Act	No specific provision but all procedures are in accordance with the APA.	No provision.	No provision.	No provision.	Makes APA applicable to administrative actions OILSR.
Criminal penalties (Section 1418)					
A) Maximum imprisonment	A) Imprisonment up to 5 years, and/or	No provision.	A) Raises penalty to: not more than 1 year nor more than 7 years, and/or	No provision.	No provision.
B) Maximum fine	B) Not more than $5000.	No provision.	B) Not more than $10,000.		

Title	Existing Law and Regulations	Proposed Regulations	Mitish Bill (H. R. 12574)	Hud Proposal (H. R. 11265)	Senate Bill (S. 3084)
Authority to regulate advertising (Section 1419)	Secretary has authority as necessary or appropriate to exercise functions and powers conferred on her in this Act. Regulations include advertising guidelines.	Minor changes.	OILSR specifically given the authority to regulate advertising. Advertising and sales pitches are made part of Statement of Record (thereby subject to suit for misrepresentation and fraud under Section 1404).	No provision.	No provision.
Public education (Section 1421)	No provision.	No provision.	Allows HUD to spend money for public education concerning land sales.	No provision.	No provision.
Parens Patriae (Section 1424)	No provision.	No provision.	Gives state attorney general power to bring civil suit in federal court on behalf of residents of his state for violations by developers.	No provision.	No provision.
Escrow Accounts (Section 1425)	No provision.	No provision.	Requires developers who promise basic services to establish escrow accounts to insure their completion.	No provision.	No provision.

SUMMARY OF INTERSTATE LAND SALES REFORM ACT OF 1978
H.R. 12574 (MINISH BILL)

Section 2 - Subdivisions of less than 40 lots and subdivisions containing lots over 40 acres each are exempt.
- Deletes existing exemption for sales pursuant to bankruptcy proceedings.

Section 3 - Adds omissions to state material facts as violations and eliminates requirement of proof of reliance in order to establish material misrepresentation as a violation.
- Provides an absolute 30-day right of recission for lot purchasers.
- Provides that purchaser has right to void contract at any time during 3 years after signing contract if:
  (a) contract signed on first day contract is offered,
  (b) contract does not contain a legally sufficient and recordable description of the lot, or
  (c) the developer provides financing except when title is transferred within 30 days of signing contract, formal foreclosure proceedings take place before loss of title, purchaser establishes equity proportional to payments and on default, and purchaser not required to pay liquidated damages greater than developers proven damages.

Section 4 - Copies of advertising and sales pitches must be filed as part of Statement of Record.

Section 5 - Nothing in Act shall affect requirement that person comply with State laws regarding sale of interstate land except to extent State laws are inconsistent with this Act.

Section 6 - Expands damages consumer may recover in civil suit under Act to include attorneys fees, travel expenses and appraisal costs. Purchasers may sue for specific performance of promises made by developers and on tender of the contract or deed pursuant to suit to enforce rights may be entitled to a total refund of monies paid pursuant to the contract.

Section 7 - Extends statute of limitations to a maximum of 7 years after sale or lease.
- Lengthens statute of limitations to 3 years after discovery for suit on basis of untrue statement or omission and for suit on basis of failure to file a statement of record or to give purchaser a property report.

Section 8 - Gives OILSR authority to issue cease to desist orders against developers and to impose civil penalties on developers after an administrative hearing.

Section 9 - Directs Secretary of HUD to appoint an Administrator of Interstate Land Sales.

Section 10 - Raises the criminal penalties for violators of the Act from a maximum of $5,000 and 5 years imprisonment to maximum of $10,000 and 7 years imprisonment.

Section 11 - Clarifies HUD authority to regulate advertising by developers.

Section 12 - Authorizes HUD to expend funds for public education concerning problems of buying property covered by this Act.

Section 13 - "Parens Patriae" section allows attorney general of a State to bring civil actions on behalf of citizens of his State who have purchased land against developers who have violated this Act.

Section 14 - Requires that developers who promise to provide basic services, such as water, sewage disposal and electricity establish escrow accounts to assure completion of these services.
- Lot purchasers may revoke contracts of sale if developers fail to install basic services by date specified.

Summary of Administration's Proposed Amendments to
Interstate Land Sales Full Disclosure Act
H. R. 11265

Sec. 421(a): Raises from 50 to 100 lots the size of a subdivision within the jurisdiction of the Act.

Sec. 421(b) and (c): The sale or lease of subdivisions of less than 100 lots, or where all lots are more than 40 acres, are exempt from the Act.

Sec. 421(d): The sale or lease of land under or pursuant to a court order, where the Secretary of HUD determines it to be in the public interest, is exempt.

Sec. 421(e): Eliminates exemption from the Act for the sale or lease of unencumbered land after the on-site inspection by the purchaser.

Sec. 421(f): Adds prohibition against omissions to state material facts and eliminates requirement of proof of purchasers reliance in order to establish material misrepresentation as a violation.

Sec. 421(f): Creates unqualified right of revocation until the 14th day after signing contract.

Sec. 421(g): Deletes the $1000 ceiling on the fee for filing, and adds requirement that such a fee be paid for filing a request for exemption.

Sec. 421(h)(1): Unless the Secretary has accepted state approved materials, the property report shall be used in lieu of any state disclosure document.

Sec. 421(i): In a civil suit by the purchaser, court may order damages, specific performance, or such other relief as the court deems fair, just, and equitable; the court must take into account: the lots contract price, the price actually paid by the purchaser, the cost of any improvements, the fair market value at the time of sale, fair market value at time suit was initiated; a purchaser may sue to revoke the contract where no property report was given at the time of signing, and the purchaser, upon divestment of his or her interest in the lot, shall be entitled to all monies paid pursuant to the contract; the purchaser may sue if developer does

not fulfill any obligation set forth in the statement of record or property report; the amount recoverable in such a suit may include: interest, reasonable attorneys' fees, independent appraisal fees, and court costs;

Sec. 421(g): -The statute of limitations for any right where no property report has been supplied, or no statement of record or property report filed is one year after discovery, but not more than four years after the sale notwithstanding delivery of the deed, or assignment of the contract;
-the statute of limitations for actions based on fraudulent schemes, untrue statements or omissions, or failure by developer to fulfill promises is three years after discovery.

Sec. 421(k): Secretary may issue cease and desist orders.

Sec. 421(l): Developer may be subject to a civil penalty of no more than $5,000 per violation.

Summary of Senate Amendments to Interstate Land Sales Full Disclosure Act (Nelson Bill)

Senate Bill does the following:

Sec. 715(a)(3): An exemption from all provisions of the Act is added for real estate restricted to commercial or industrial use by recorded covenants. The commercial exemption is now limited to property restricted by zoning.

Sec. 715(b)(2)(b): Exemption from Registration and Property Report requirements for three new categories:

(A) developments where not more than 5% or five lots (whichever is greater) are sold to out-of-state residents if title is clear of all liens and an onsite inspection has been made;

(B) sales made to out-of-state purchasers living within 100 miles of the property under same conditions as above;

(C) real estate located in a municipality with subdivision development standards if (1) the subdivision meets all local codes and standards, (2) is limited to single family residences, (3) is on a paved public street which the municipality has agreed to maintain, (4) water, sewage and electricity in place, (5) a deed will be delivered within 180 days, (6) title insurance issued, (7) on site inspection has been made, and (8) direct mail and telephone or similar solicitations and promotions have not been employed.

Sec. 715(c): Maintains present 3-year maximum statute of limitations.

Chairman ASHLEY. I look forward to the advice of the witnesses who will testify during the next 3 days and hope that they will not limit their comments solely to the proposals before us.

These proposals are only a starting point for reviewing the present state of the industry, the effectiveness of HUD's administration of the existing act, and the need for statutory changes.

We will be pleased to hear first from our colleague, Congressman Joseph G. Minish. At my suggestion, his Subcommittee on General Oversight and Renegotiation, as most of you know, has conducted extensive hearings which have provided the basis for the reforms included in H.R. 12574.

I do commend Congressman Minish and his subcommittee for their efforts and their recommendations now before us. After Mr. Minish, we will hear from Jean Halloran, accompanied by Leslie Allan, and then from Patricia M. Hynes, who will be properly introduced in a few minutes.

So our first witness, with the cleanest teeth in the room, I am sure, is our colleague from New Jersey, Congressman Minish. I want to say that there isn't a more worthy and respected member of the full committee than the chairman of the Subcommittee on General Oversight and Renegotiation.

He has done outstanding work in a number of areas, not the least of which is the area that is of interest at this time; namely the status of the Interstate Land Sales Full Disclosure Act.

So if you will proceed, Mr. Minish, we will be grateful to you.

STATEMENT OF HON. JOSEPH G. MINISH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. MINISH. Thank you, Mr. Chairman.

Members of the subcommittee, thank you for inviting me to testify on the subject of interstate land sales.

At the request of Chairman Ashley, the Oversight Subcommittee of the Banking Committee, of which I am chairman, conducted an extensive investigation of the land development industry. This included the first comprehensive review of the Interstate Land Sales Full Disclosure Act since its inception in 1968. We held hearings in April, at which we heard testimony from more than 30 witnesses, representing Federal and State governments, industry, public interest groups, and consumers. Various other interested parties submitted written testimony to our subcommittee. I would like to share the findings of our investigation with you.

Our primary finding was that consumers are not adequately protected by present laws. Although several Federal and State agencies have taken steps toward cleaning up the land sales industry, severe problems remain. Literally millions of consumers continue to be defrauded or disappointed by land developers every year. Unfortunately, the shady developers tend to prey on those who are least able to protect themselves; consumers who are elderly, poorly educated, or unsophisticated, constitute prime markets for land schemes.

I believe that the problems in the land sales industry result in large part from three basic facts:

Fact No. 1: Land Sales regulation is an "orphan," especially within the Federal Government. Although a number of Federal agencies at-

tempt to police land sales, none of them has been able to devote the time and resources necessary to insure regulation with teeth. The primary regulator, the Office of Interstate Land Sales within HUD has a total of 107 employees and a yearly budget of less than $3.5 million with which it attempts to oversee a multibillion dollar industry. The Federal Trade Commission and the Securities and Exchange Commission have done some regulating but only on a very limited basis. Many States do not even have statutes dealing with land development and only a handful have laws which even approach being adequate. Local laws vary widely and the least sophisticated ordinances are often in the same rural areas which are the primary target of developers.

Fact No. 2: Disclosure by itself cannot prevent abuses in the land sales industry. The selling practices of the land sales industry work against effective disclosure. Any land salesman will tell you that a sale which is not closed on the same day the sales pitch is made is almost always lost. The high pressure push toward same-day closings run directly contrary to the theory of disclosure. In real life, land buyers, who usually purchase at sales dinners or on their first visit to developments, rarely have a chance to read, much less understand, the information in the property report.

Fact No. 3: There are a number of commonplace practices within the land sales industry which are extremely unfair to consumers. Among them are: the financing of lot purchases through installment contracts which give buyers almost no protection for their money; the promising of improvements such as water, sewage disposal and recreational facilities which the developer cannot complete; high pressure sales tactics designed toward insuring same-day closings; and false or misleading advertising.

None of these practices can be controlled by a simple disclosure statute and all of them should be discouraged. Most of the consumer abuses in the land sales industry can be eliminated without putting developers out of business. The bill which I and 26 of my colleagues have introduced, H.R. 12574, would eliminate many of the worst consumer abuses in the land sales industry without seriously affecting honest developers.

I am happy to report that five of the members of this subcommittee, Representatives St Germain, Gonzalez, Mitchell, Hanley, and Spellman, have decided to cosponsor this bill. I would like to discuss a few of its major provisions, but before I do so, I want to speak briefly on another measure being considered by this subcommittee, the "Nelson bill," which has been incorporated into the Senate version of the Housing Act of 1978.

During the investigation and the subsequent hearings which my subcommittee held, we received testimony from various industry sources which suggested that OILSR has overstepped its jurisdiction by regulating some small, primarily intrastate developers. This may, in fact, be the case and there may be some need for legislation which clarifies the jurisdiction of OILSR. However, I question whether the Nelson bill is the way to accomplish this.

I think that the Nelson bill, in its present form, is an unwise proposal. It will exempt some of the worst interstate developers in the country from the requirements of the Interstate Land Sales Full Disclosure Act. It contains complicated and probably unworkable exemp-

tions which will leave developers, consumers, and HUD uncertain as to who is covered by the Federal law. Although it may be possible to draft amendments to the Interstate Land Sales Act, which exempt only some intrastate developers, this proposal does not accomplish that. It is far too broad and contains loopholes which would allow many large interstate developers to escape Federal regulation.

I know that HUD intends to testify as to the problems of the Nelson bill. In general, I concur with its analysis. There are, however, several difficulties which I think deserve special mention.

First, the two main exemptions in this bill, the five lot or 5-percent exemption and the 100-mile exemption, are very complicated yet they are self-executing. This means that many developers may think they qualify for exemptions and then be forced to cancel sales contracts when they find out later that they are covered by the Interstate Land Sales Act.

Second, the Nelson proposal makes the fraud provisions of the act applicable to all developers covered by that law, even if they qualify for the Nelson exemptions. However, as was pointed out by several witnesses in the Senate Banking Committee's hearings on land sales, criminal prosecutions or civil suits are almost impossible to bring without the benefit of the information provided in the statement of record. Without the information provided under the disclosure sections of the Interstate Land Sales Act, attorneys for buyers will be operating in the dark. The fraud provisions, by themselves, will be almost meaningless.

Third, one section of this proposal requires OILSR to comply with the Administrative Procedures Act. OILSR already does this by regulation. No one seems to know which this section is in the bill.

Fourth, the provision of the Nelson bill that concerns me most is the 100-mile radius exemption. This exempts sales to people who live within 100 miles of the developer. It is a lot-by-lot exemption which means that no matter how big or how bad the developer is, he may sell to anyone within 100 miles of his development, without being covered by the Federal law. I would like to give one example of the nightmares which would occur if this provision is adopted.

One of the primary areas for land subdivision in the East is the Pocono Mountains of Pennsylvania. Within 100 miles of most Pocono developments are the metropolitan areas of New York City, northern New Jersey, and Philadelphia. Taken together, these three areas represent a market of over 20 million people. Under the Nelson bill, none of these people would be protected by the Federal disclosure requirements if they bought lots in the Poconos.

During our hearings, our subcommittee heard testimony concerning a number of very poor subdivisions in the Poconos. One will serve as a good example.

Sherwood Forest, near Newfoundland, Pa., sold over 800 lots during 1972 and 1973. Three hundred and sixty-five of the lots were sold to people from New Jersey. At least 30 of the buyers are my constituents. Most of the other lots were bought by residents of the Philadelphia or New York metropolitan areas. Among other things, Sherwood Forest promised improvements such as sewage disposal and water, which it never completed. It concealed from prospective buyers a dispute with local township authorities which made Sherwood Forest

unable to deliver clear title to the lots it sold. It used high-pressure sales tactics and committed other consumer abuses.

Today, 6 years after most sales took place at Sherwood Forest, the buyers are unable to build on their lots, they can't sell their lots because of the clouded titles and the inability to build, and they have been unable to get any money back from Sherwood Forest, which is now insolvent.

HUD suspended Sherwood Forest from selling lots and recommended that several of the principals be prosecuted for violations of the Interstate Land Sales Act and the Federal mail fraud statutes. If the Nelson bill had been in effect in 1972 and 1973, the great majority of the sales made by Sherwood Forest would have been exempt from most of the major provisions of the Interstate Land Sales Act. The situation at Sherwood Forest would be even more of a travesty than it is today.

If the Nelson bill, as presently in the Senate Housing Act, is passed, there will be new Sherwood Forests all over the Poconos and other areas of the country and the Federal Government will be unable to intervene in any meaningful way. Although there may be some need for a clarification of OILSR'S jurisdiction, it would be very wrong to make that the major thrust of land sales legislation. The people who suffer most under the present law are not the developers; they are consumers.

As you may know, a number of the provisions of my bill closely parallel provisions in the administration's proposal. These include restrictions on the statutory bankruptcy exemptions, an absolute right of recision for lot purchasers, the prohibition of omissions of material facts by developers, a provision which allows purchasers to sue for specific performance of promises made by the developer, extension of the statutes of limitations on civil suits under the Land Sales Act, and provisions which allow OILSR to issue cease-and-desist orders and to impose civil penalties. My bill does go beyond the administration's proposal in several key areas. I would like to mention three of them.

Our bill attempts to eliminate the use, in its present form, of the installment-contract method of financing lot purchases. Under the traditional installment contract, the purchaser agrees to pay for his lot over a period of years, usually 7 to 10, through monthly installments. There is no transfer of title to the purchaser until he has completed payments and, in many cases, purchasers who finish paying discover that the developer is unable to deliver clear title. Most installment contracts contain a "liquidated damages" clause which provides that in the case of default by the purchaser, all money paid by the purchaser is retained by the developer. Thus, the purchaser builds no equity proportional to his payments as he would under a traditional mortgage method of financing. In some cases, purchasers have paid over 90 percent of what they owe and then have been left with nothing when they cannot continue to pay.

Another problem which results from the installment contract method of financing is that developers often sell the installment contracts to third parties. The purchaser then owes his payment to the third party, but, because of the holder in due course laws, the purchaser cannot force the third party to fulfill any of the obligations of the developer. In addition to all these problems, because the purchaser

does not get title until he has completed payments, he may not be able to use the property for 7 to 10 years after he signs the contract of sale.

In short, consumers who buy under installment contracts are all-around losers.

Our bill would prevent this abuse by insuring that developers who extend credit for the purchase of their own lots, do so by means of the more traditional mortgage or deed—deed of trust arrangements. They would have to use contracts which provide for formal foreclosure proceedings in case of default and which do not contain liquidated damages clauses. This would insure far more protection to the consumer.

A second provision of our bill requires that developers who promise to provide basic services such as water, sewage disposal, and electricity must establish escrow accounts which insure completion of these services. During our investigation, we found that developers often promise all kinds of improvements as part of their sales pitch. In many cases, those developers are financially unable to keep their promises and thus force lot buyers to spend money which they never anticipated having to spend. A number of States already have escrow requirements which have provided increased consumer protection without imposing excessive economic burdens on developers.

The third major reform which our bill provides is our "parens patriae" section. We found that many people who have civil causes of action under the present Interstate Land Sales Act are unable to bring suit because individual suits are too expensive and it is too difficult to bring class actions in Federal court.

Our parens patriae section allows the attorney general of a State to bring civil actions against deevlopers on behalf of citizens of his State who have purchased land. This provision does not create any new rights but simply makes it easier for consumers to enforce rights which they already have.

There are a number of other reforms in our bill which I shall not go into at this time. I would like to submit a summary of the major provisions of our bill.

[Mr. Minish subsequently furnished the following summary for inclusion in the record:]

33-716 O - 78 - 5

BRIEF SUMMARY OF INTERSTATE LAND SALES REFORM ACT OF 1978

Section 2 deals with the coverage of and exemptions to the Interstate Land Sales Full Disclosure Act (ILSFDA). The floor of the ILSFDA is lowered from 50 to 40 lots, thus exempting subdivisions of less than 40 lots. The ILSFDA is also amended to cover lots up to 40 acres. The present Act is limited to lots of 5 acres or less. The exemption in the present Act for sales pursuant to bankruptcy proceedings is eliminated.

Section 3 provides an absolute 30-day right of rescission for lot purchasers. It also discourages sales on the same day that the buyer receives the contract of sale from the developer and, with certain exceptions, prevents developers from extending credit on their own lot sales. Preventing the extension of credit by developers will do away with a number of the major abuses in the land sales industry, including installment contracts, the inability of some developers to deliver good title and the sale of bad commercial paper by developers. This section also requires a legally sufficient and recordable description of lots sold by developers. Under the present Act a "material misrepresentation" is a violation if the buyer relies on it. This section includes omissions to state material facts as violations and eliminates the requirement of proof of reliance.

Section 4 requires that copies or transcripts of all advertising and summaries of verbal presentations made by a developer or his agent be made a part of the Statement of Record filed with the Office of Interstate Land Sales Registration.

Section 5 provides that nothing in the Act shall affect state laws except to the extent that the state laws are inconsistent with the Act.

Section 6 expands the damages which consumers may recover in civil suits under the ILSFDA to include attorneys' fees, travel expenses and appraisal costs. It allows consumers to sue for specific performances of promises made by developers and gives purchasers the right to sue to enforce their rights of revocation.

Section 7 extends the statute of limitations of the ILSFDA to a maximum of seven years and also lengthens the specific statutes of limitations on various sections of the Act.

Section 8 provides new administrative remedies for OILSR. It gives OILSR the authority to issue cease and desist orders against developers and also allows OILSR to impose civil penalties upon developers after an administrative hearing.

Section 9 changes slightly the administrative structure of the Department of Housing and Urban Development by providing for an administrator of interstate land sales within HUD.

Section 10 raises the criminal penalties for violators of the Act.

Section 11 makes it clear that OILSR has the authority to regulate advertising by developers.

Section 12 authorizes HUD to expend money for public education concerning the problems of buying land.

Section 13 the "Parens Patriae" section allows the attorney general of a state to bring civil actions against developers on behalf of citizens of his state who have purchased land. This provision will make it easier for consumers who have been defrauded by land developers to get their money back.

Section 14 requires that developers who promise to provide basic services such as water, sewage disposal and electricity establish escrow accounts which insure the completion of these services. It also provides that lot purchasers may revoke their contracts of sale if developers fail to keep specific promises with regard to the installation of basic services.

Mr. MINISH. I could also cite additional examples of abuse by developers, but I'm sure you will hear plenty in the testimony to be presented by INFORM, Patrcia Hynes, and Attorney General Anaya.

In closing, I would like to give you a word of warning. You are going to hear a lot of industry testimony which paints a picture of small, overburdened businessmen, tormented by a giant government bureaucracy at HUD. Don't believe it. The real victims here are unsophisticated, lower and middle class people who are led into buying land they often don't want through financial arrangements they don't understand. The main issue before this subcommittee is not protecting business from big government—OILSR has 107 employees. The main issue here is protecting little people from big business. If you follow the testimony closely for the next 3 days, I think this will become very clear. I think you will conclude that the main thrust of land sales legislation has to be increased consumer protection.

Mr. Chairman, I want to thank you very much, and considering that I have a numb jaw, I don't think I was too bad.

Chairman ASHLEY. If you will let us know when the anesthetic starts to wear off, we will be happy to let you go at that juncture. [Laughter.]

That is a very good and forceful statement. I suppose that this question could be directed at other witnesses, those from HUD and elsewhere. But in your statement you say that literally millions of consumers continue to be defrauded or disappointed by land developers every year, and I am wondering about the effectiveness of the original act and the extent to which it has provided adequate protection. And obviously, this comment reflects on those interests that I have expressed.

What kind of testimony did you get as to the incidence of continued fraud, of deception within or without the law, the disappointment, the whole range of activities that you are concerned with addressing?

Mr. MINISH. Mr. Chairman, let me just take one. Sherwood Forest, which I am familiar with, is in the Poconos, not very far from where I was born and only about 75 miles from where I live now. Just the other day a lady stopped by my office and said: "Mr. Minish, what do I do with my land?" She said: "I just got a bill to pay school taxes, and I can't build." The reason lot owners can't build up there is because the developer was supposed to put sewers in there, and never did and somehow the money disappeared. The lot owners cannot put septic tanks in because of the high water table. So all of these people up there—and there are literally hundreds—are hung up with all of this land that they can't do a darned thing with. They don't know what to do.

I had another case. A gentleman from New Jersey bought 40 acres in Colorado. And when he bought the land, he didn't have a chance to go out there and see it. The developer told him that there was no question that he could earn money on the land, and probably what he earned by leasing it out to cattle owners would more than pay whatever the cost was per month.

Well, he found out that not a single cattleman was interested in it, because when he finally went out there, he found that the lot was on the side of a mountain, all stone, and not even billy goats could climb up there. And so he has been paying for 7 or 8 years, and he has 2 years to go on the contract. And he says: "What do I do?" It is rather diffi-

cult to tell a man what to do in that case. Do you tell him to stop paying and forget everything?

I said: "I really don't know what to tell you. Chances are if you have only 2 years to pay, maybe you ought to pay it. Who knows, you may find uranium or gold up there. I don't know."

But anyhow, OILSR has not done the job. I don't think that they have enough employees. And I am not in favor of building the bureaucracy, but I am for requiring government to protect consumers. If you want to know how well consumers are protected, ask Patricia Hynes, the assistant U.S. attorney from New York, because I think she will tell you a story that will be more convincing than anything that I can tell you, about some developer who got about $170 million for land that he paid about $20 million for, and that is a pretty good profit.

And I am inclined to remember something Bob Strauss said. When asked about our oil problem he said, "I am from Texas and I don't know any poor oilmen." I am getting to the point where, I am from New Jersey and I haven't heard of a poor land developer in the United States.

Chairman ASHLEY. In your hearings, apparently you established to the satisfaction of just about everybody that there are only a handful of States that have adequate laws protecting their consumers.

Mr. MINISH. That is right, Mr. Chairman.

Chairman ASHLEY. And that for that reason this has escalated into a national problem, requiring a national solution.

Of course, that was decided 10 years ago when we legislated in the first instance. Is it your impression that States are looking to the Federal Government to provide this protection? Is that the reason that only a handful of States are in this business of trying to protect their own people from the kinds of fraud and deception that is found both in intrastate and interstate land sales?

Mr. MINISH. Mr. Chairman, that is an accurate statement. Some of the States are looking for Federal assistance. I think that the attorney general from Colorado, Mr. MacFarlane, and also the one from New Mexico, will testify to that, that they are looking to the Federal Government for help with this problem.

Chairman ASHLEY. One of the things that has interested me is that OILSR doesn't seem to be interested in establishing any kind of cooperative arrangements with those States that do pursue aggressively the kind of legislation that affords protection to citizens purchasing property either within that State or outside that State. Generally within the State, that would be the province of State governments.

And I am curious as to what your notions are about the situation where a State, whether it be New York or Florida or any other State, directs itself aggressively to this problem. In that situation wouldn't it be appropriate for there to be some kind of cooperative arrangement between OILSR and that State which would obviate the necessity for the honest developer—and we are concerned with him, as well as the dishonest developer—to fill out the reams of disclosure material, and go through the registration and so forth, twice rather than once. What is your thought on that?

Mr. MINISH. Well, I think that is a good suggestion, Mr. Chairman. I think that OILSR should work with the States to eliminate a lot of

duplication. It is my information that the only State whose property report is accepted by OILSR is California.

Chairman ASHLEY. Well, it certainly suggests itself to me that this might be an area that together we might look at closely. It would seem to me to be one way of encouraging the States to direct their attention to this matter in the first instance; and it would help to eliminate costly duplication, which obviously is paid for in large measure by the taxpayers, be they Federal or State.

Mr. MINISH. Well, Mr. Chairman, I agree with you that there should be cooperation. But I get a little concerned, whether many States have the interest or ability to do the job. I am reminded, and I am sure you are well aware of, the meat inspection issue, where some of the people who were against Federal legislation said that the States could do it. Then the people who were managing the bill showed pictures in the Speakers lobby of what the States were doing. And I think that if anyone here saw some of those pictures, he would probably be a vegetarian from that day on. [Laughter.]

So I question whether the States have the will or the means to regulate land sales by themselves.

Chairman ASHLEY. Well, it strikes me that we might consider establishing some kind of Federal standards to be met by the States, at least where there is the duplication and the States don't do everything that OILSR does, because the problem from the Federal standpoint is broader than that of the States, I suspect. I seems to me that through the establishment of standards, where appropriate and where those standards are met, duplication could be eliminated. It would be a good idea.

Mr. Grassley, any questions?

Mr. GRASSLEY. Thank you.

Before I ask our colleague a question, I would like to say that I worked very closely with Mr. Minish on this legislation and I think he needs to be complimented for his hard work. I am the ranking Republican member and, even though we don't agree on everything, I find that he has a fine reputation around here, and it has been supported by my work with him. He probably doesn't need any flowers thrown in his path, but in all the investigations I have shared the podium with him, I found him to be very thorough and very extensive, and a person that can ask fair and penetrating questions to get to the bottom of things.

So I feel your calling him as a witness is a good place to start the meeting, Mr. Chairman.

Mr. Minish, I was interested in your discussion concerning Sherwood Forest. Starting on page 3 of your statement about the Nelson bill, where you state that it will exempt some of the worst interstate developers, your testimony deals almost exclusively with that 100-mile exemption. I was wondering if there was any other problems with that bill, and specifically, do you have any specific examples related to the Nelson exemption of where there are other problems.

Mr. MINISH. Well, Mr. Grassley, first of all, thank you for your kind remarks. The think that upsets me most about the bill is that 100-mile exemption. Mr. Green, who is from New York City, has a lot of constituents who could be burned and who would not be protected under the Nelson bill. And while there are many other problems—I

don't have the bill before me and I don't know all of the specifics of it—I would say that that alone is enough information to make you be against it.

There is the self-executing problem, also.

Mr. GRASSLEY. What you could do is, if you think of any of the others, you could submit them to us in writing. I would appreciate that.

Mr. MINISH. I will have my staff provide a summary of all the problems in the Nelson bill.

[The following summary of problems in the Nelson bill was provided for the record by Congressman Minish:]

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON GENERAL OVERSIGHT
AND RENEGOTIATION
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS
WASHINGTON, D.C. 20515
August 15, 1978

SUBJECT: PRESENT STATUS OF THE NELSON PROPOSAL

As you know, S. 3084, the Housing and Community Development Amendments of 1978, was passed by the Senate on July 20, 1978 and is now in conference. Section 715 of this bill contains the so-called Nelson proposal which provides a number of new exemptions for developers from the present law. Since the House version of the Housing bill, H.R. 12433, contains no land sales amendments (Chairman Ashley chose to defer consideration of land sales until you reported to him on our Subcommittee's investigation), one of the main issues at the conference will be whether to accept any or all of the Nelson amendments. It would be best for us if the conference accepts none of the Nelson land sales proposals. Our objections to the Nelson amendments are as follows:

1. Policy Objections. The investigation which our Subcommittee has pursued has shown that large numbers of consumers continue to be defrauded or disappointed by land developers every year. It is widely agreed that the federal law is inadequate to protect lot buyers. Two bills (our proposal, H.R. 12574 and the Carter Administration's proposal) would make the Interstate Land Sales Full Disclosure Act significantly tougher, but neither of those reform proposals is included in either of the Housing bills.

Therefore, under the rules of the conference, the only question for the conferees is whether to provide more exemptions to an already inadequate law. There is no possibility of getting any consumer-oriented amendments into the final Housing bill. In light of the results of our investigation and the testimony which has been given at the various hearings held on land sales, it would be irresponsible for the Congress to make exemptions for developers the only concern of its legislation. Any land sales amendments should be primarily concerned with protecting the public, not with taking care of developers.

It should be pointed out that since lot purchasers have little or no organized voice in Washington, the only way to get any increased protection for them may be to tie it to changes in the law that the land sales industry wants. If the Congress accepts the Nelson amendments by themselves, even the possibility of a tradeoff will be non-existent.

2. Procedural Objections. If the conference committee accepts the Nelson proposals, it will be short circuiting the legislative process.

As you know, although two House subcommittees (ours and the Housing Subcommittee) have held hearings on land sales, there have been no markups of any of the various proposals for change. No member of the House has voted on any land sales amendments.

The Senate's procedure in adopting the Nelson proposal was disjointed, to say the least. The impetus for the Nelson bill came out of hearings, chaired by Senator Nelson, which the Senate Small Business Committee held in January of this year. Besides the Office of Interstate Land Sales Registration of H.U.D., which administers the federal law, the only other witnesses were developers or other representatives of the land sales industry. No representatives of the lot-buying public testified. Shortly thereafter, Senator Nelson introduced a bill, S. 2716, which provided a number of new exemptions from the Interstate Land Sales Act. The bill made no attempt to deal with consumer problems.

The Nelson bill was introduced as an amendment to the Housing bill which was marked up by the Senate Banking Committee in May, 1978. The Senate Committee deleted the consumer-oriented reforms which were in the original Carter Administration proposal and substituted the Nelson bill. The Committee had held no hearings on the Nelson bill prior to accepting it. In the face of strenuous objections by Senator Williams, the Committee scheduled hearings on land sales to be held before consideration of the Housing bill by the full Senate. At those hearings, a number of witnesses, including yourself, H.U.D., public interest groups and plaintiffs' attorneys testified about the large loopholes which would be created by the Nelson proposals. Despite extensive criticism, only minor changes were made to the Nelson amendments before their passage by the full Senate. Hopefully, the conference committee will decide to reject these ill-considered and one-sided amendments.

3. Substantive Objections. Although there may be some need for clarification of the jurisdiction of OILSR, the Nelson bill goes far beyond its stated purpose and adds new exemptions which would apply to some of the biggest and worst developments in the country. The following is our analysis of several of the Nelson proposals.

(a) The 5%-5-lot Exemption. The Nelson bill would amend section 1403 of the Interstate Land Sales Act to exempt from its disclosure requirements any developer who sells no more than five lots or five percent of his total lots sold during a calendar year (whichever is greater) to out-of-

state purchasers if the developer meets the following requirements:

i) The land is free and clear of liens and encumbrances.

ii) The purchaser makes an on-site inspection of the lot.

iii) The seller agrees to submit himself to the jurisdiction of the home state of the purchaser.

This exemption is undesirable for several reasons.

- It is quite complicated, yet it is also self-determining. This means that the developer himself decides whether he has complied with all the requirements for the exemption and then merely notifies OILSR that he is claiming exemptions. If the developer misinterprets some part of the requirements, for example, what constitutes a "lien" or "encumbrance" or if he makes a mistake in computing his out-of-state sales, OILSR may subsequently question his exempt status. If this happens, all the developer's sales under the challenged exemption may be subject to rescision.

- There is no cap on the 5% requirement. Some subdivisions have well over 10,000 lots, and thus would be able to sell a substantial number of lots to out-of-state residents without being subject to federal disclosure requirements.

- Reliance on on-site inspections. As an alternative to the information which is presented in the federal property report (the disclosure statement required under the present Interstate Land Sales Act), this exemption relies heavily on an on-site inspection by the purchaser. However, most of the truly crucial information about a development cannot be discerned by merely looking at it. An on-site inspection tells the buyer nothing about the financial stability of the developer, about whether there is sufficient water, about whether the land is suitable for proper sewage disposal, about whether the land is subject to flooding, about the provisions the developer has made for installing promised amenities, about the cost of necessary utilities, about local land use laws, etc. Purchasers who are deprived of property reports and who make their on-site inspections in the company of high-powered salesmen will be at a decided disadvantage.

(b) The 100-Mile Radius Exemption. The Nelson bill would amend section 1403 of the Act to provide a lot-by-lot exemption of any sales made to buyers who reside within 100 miles of the developer, if the following requirements are met.

i) The land is free and clear of all liens and encumbrances.

ii) The purchaser makes an on-site inspection.

iii) The seller agrees to submit himself to the jurisdiction of the home state of the purchaser.

iv) The developer certifies to OILSR that he has complied with the first three requirements.

This is probably the most harmful of the Nelson proposals for numerous reasons.

- Since this is a lot-by-lot exemption, no matter how big or how bad a development is, it can benefit from this exemption. H.U.D. officials have stated that many of the worst developments in the country would qualify for at least partial exemption under this section.

- Crossing state boundaries. The Nelson bill purports to assist small intrastate developers, yet many of the prime beneficiaries of the 100 mile exemption are neither small nor intrastate. A good example of the problems with this exemption is the case of the Pocono Mountains of Pennsylvania, a primary area for land subdivision in the East. Within 100 miles of the Poconos are the metropolitan areas of New York City, Northern New Jersey and Philadelphia. A circle with a 100-mile radius drawn around a development in the Poconos thus encompasses an area of over 31,000 square miles with a population well in excess of 20 million people. Under the Nelson bill, any Pocono developer could sell to any of those people without being required to disclose a thing by the federal law. To cite another example, Washington, D. C. is within 100 miles of many of the developments in rural Maryland and Virginia. This problem repeats itself throughout the country.

- This exemption is self-executing. Therefore, serious problems of interpretation arise. For example, who knows exactly how many miles he lives from any given point? Once again, misinterpretation or mistake by the developer may make him liable to recisions and other penalties.

- This exemption, like the 5% - 5-lot exemption, says that developers who are exempt from disclosure requirements are still covered by the fraud prohibitions in the Interstate Land Sales Act. However, several prosecutors and plaintiffs' attorneys have testified that prosecution or civil suit for fraud would be practically impossible without the information contained in the statement of record and property report. If the information required by the disclosure sections of the Act is not available, attorneys representing purchasers who believe they have been defrauded will be working in the dark. The fraud provisions will become an empty remedy, providing a false sense of security and little else.

- Like the 5% - 5-lot exemption, the 100 mile exemption relies heavily on on-site inspections which do not provide a great deal of useful information to the prospective purchaser.

(c) Statute of Limitations. The Nelson proposal would amend section 1412 of the Act to insure that no action can be brought within more than three years after the signing of a contract for the sale or lease of the lot.

This provision would make it even more difficult for disappointed purchasers to assert the rights they have under the present law. In our investigation of the land sales industry, one of the most common complaints we heard was that people often don't discover that they have been swindled until after the statute of limitations has run out. This is because people commonly buy lots on long-term installment contracts which require transfer of title only after the purchaser has completed payment, often seven to ten years after the signing of the contract. In addition, many purchasers act in reliance upon the promises of developers to install utilities and other amenities many years in the future. Because of this, many purchasers just don't know whether they have a cause of action until long after the three year limit has passed. In recognition of this, several courts have tried to extend the statute of limitations by tying it to the discovery of the defect or to the period of the installment contract. The Nelson bill would preclude such equitable solutions. Once again consumers lose.

(d) The Administrative Procedures Act. The Nelson bill would amend section 1416 of the Act to require OILSR to comply with the Administrative Procedures Act. OILSR already does this by regulation. No one has been able to explain why this section is in the Nelson proposal.

Mr. GRASSLEY. Specifically, where the point where we were talking about the exemption, I was thinking, as Chairman Ashley was asking you his last question on the possibility of the States administering parts of this law, it seemed to be in our testimony, though, we run into reluctance on the part of OILSR to do that now. And I don't know whether were indicating that they really didn't want to do it or whether the law did not permit it. I assume that the law permitted some of that, but they really don't want to go in that direction.

Mr. MINISH. The law does permit it.

Mr. GRASSLEY. There is some reluctance from the Department. But also, there was some reluctance expressed by consumer groups to having State enforcement, as well as some developers wanting to deal with the Federal Government rather than dealing with individual States.

So I don't know how widespread the support would be for having the States do it. Frankly, I would prefer to have the States more involved, and I think it could be done. Because I know in my own State of Iowa we have an aggressive attorney general and assistant attorney general who have been working in this area. And I think it can be done, and I think we ought to be working toward that direction. Because I think if the job is going to be done right, it would just take too many people at the Federal level and then still not do it as well as if we had the States more intimately involved.

Mr. MINISH. Well, my only comment, Mr. Grassley, would be that, unless we set the guidelines from up here, it is not going to be done, because some of those States don't have the legislation to do what I know you believe in and I believe in also.

Mr. GRASSLEY. Mr. Chairman, I don't have anything else.

Chairman ASHLEY. Mr. Gonzalez?

Mr. GONZALEZ. Thank you, Mr. Chairman. I don't have any questions. I would just compliment Chairman Minish for his leadership in this area. And I am privileged to serve on the Subcommittee on General Oversight and Renegotiation with the gentleman.

Chairman ASHLEY. Mr. Green?

Mr. GREEN. I have a couple of questions on one point. I know that HUD had cooperative relationships with not only California but two or three other States, one of which was New York, which has a quite aggressive program in its department of law, under its attorney general, for dealing with the problem of fraudulent land sales.

Do you have any reason to know why these arrangements with the other States are no longer operative?

Mr. MINISH. No, I do not, unless it is because of the aggressiveness of the department, or lack of it, I should say.

Mr. GREEN. The other question I have was what sort of escrow arrangements you had in mind. Who would be the escrow holders, and what sort of expense would that involve? Also, would bonding be another way of reaching the problem of nonperformance of promises on the part of developers?

Mr. MINISH. They have an escrow requirement similar to the one we are proposing. It requires the developer to set aside a fixed percentage of the money he takes in to pay for improvements. As the payment of the lot is completed, more money will be in the account to assure the people who purchased the lot that they would not be left hanging, as they were in other areas.

Mr. GREEN. Did you look into whether a performance bond was a possible alternative?

Mr. MINISH. I am advised that our staff looked into corporate performance bond financing, but that it doesn't work, because so many developers go bankrupt.

Mr. GREEN. I was thinking in terms of a bonding company.

Mr. MINISH. I have been told that if you asked them to provide a surety bond, most of the developers say they can't afford it.

Chairman ASHLEY. Absolutely. I was interested—excuse me. Do you want to question, Mr. Brown?

Mr. BROWN. I might have a couple of questions Mr. Chairman.

Chairman ASHLEY. I just have one with respect to the provision in your legislation to eliminate the installment contract as a means of financing lot purchases. That is a pretty extreme remedy. I mean, this kind of contract is really a land contract, isn't it?

Mr. MINISH. The one they are using now?

Chairman ASHLEY. Yes. It is a form of land contract, I would suppose; isn't that right?

Mr. MINISH. Yes, it is.

Chairman ASHLEY. A lot of States, Ohio included, have taken a very good look at land contracts and have passed legislation that is very protective of a buyer under a land contract. Now, it certainly used to be the situation that land contracts were scandalous. They gave every conceivable advantage and opportunity for mischief to the seller.

But it is my impression that a number of States over the years have recognized that problem and have passed corrective legislation, as has Ohio.

Mr. MINISH. Well, Mr. Chairman, I am not so sure that some of the States where we have the major problems have done anything about that, because I know of a personal incident where an individual entered into a 7-year contract—I think it was $25 a month—and then unfortunately, lost his job after paying for 6 years. He could not pay the $25 a month, and the land reverted, or the land stayed with the developer. And this individual is out 48 times $25, or whatever he paid in.

Chairman ASHLEY. You mean the entire amount?

Mr. MINISH. Yes, the entire amount.

Chairman ASHLEY. Well, isn't there the principle of equity of redemption. But under Ohio law, it is presumed that the property can be sold again and the purchaser can receive what he paid in.

Mr. MINISH. Well, in this case it was sold again by the developer.

Chairman ASHLEY. But the point is the pernicious provision in the land contract or the installment contract is a stipulation of damages of one kind or another, because it means that if a person is unable to make the payments he loses everything that he put down. That is what caused the massive difficulties we've had at the time of the 1929 closing of the banks. People weren't able to make their payments and they lost their property—and I mean all of their property.

Mr. MINISH. The other problem, Mr. Chairman, is that many of these purchases are made on the spur of the moment. You attend a meeting in some fancy motel or hotel and they feed you and you buy, and then later on you get to see the land, and then you decide that it was a bad purchase. Then it is almost impossible to sell it.

Chairman ASHLEY. There is a different problem when you are talking about developed real estate and the redemption that a buyer is entitled to there and the situation where it is totally undeveloped land that in many cases has never been seen.

Let me call on Mr. Brown.

Mr. BROWN. I realize that caveat emptor is dead, but do we have to go the complete other route? Who is the beneficiary, would you say, of the interstate land sales legislation?

Mr. MINISH. Who is? The developers, the ones that sell it.

Mr. BROWN. No, no, the developers are not the beneficiaries. I assume that it is aimed primarily at the purchasers.

Mr. MINISH. Our legislation? Positively. It is to protect the consumers.

Mr. BROWN. Now, who are these purchasers? Who are these consumers? How do they get into the market in the first place?

Mr. MINISH. Well, many ways: Advertisements on TV; they are invited to dinners. You know, a lot of these developers contract the work out to salesmen.

Mr. BROWN. Now, even to invite someone to one of these things, you have to have some kind of advertising, right?

Mr. MINISH. Right.

Mr. BROWN. Doesn't the FTC have jurisdiction over all advertising that would be applicable to interstate land sales?

Mr. MINISH. The FTC has done some work in this area, but not enough to satisfy me or the people who got burned.

Mr. BROWN. But then, because the FTC has not done the kind of job it should do, should we therefore change this law?

Mr. MINISH. Yes.

Mr. BROWN. The substantive law with respect to interstate land sales?

Mr. MINISH. Yes.

Mr. BROWN. Well then, supposing you change the substantive law, but they still go on and advertise fraudulently. You are going to say that they would benefit by the ex post facto right to rescind the transaction, right?

Mr. MINISH. In the legislation that is before your subcommittee now, that is, the legislation that came out of our subcommittee, we have proposals which deal with the advertising problem. The FTC hasn't been able to do the job by itself and it doesn't want to. If I called Mr. Brown and the members of this subcommittee over to my home next month and said, "Come on over, we're having some fellow come up from the Poconos or the Catskills who has some land, he's got a nice block of land and he's going to divide it up, and here's a chance for us to get into the act." And while I know your fellows are all sophisticated and sharp, the average guy may be snowed under by that.

Mr. BROWN. But is the average guy going out to the Poconos and buying a lot?

Mr. MINISH. Many times he doesn't go out there at all. Other people read advertisements in the mail or advertisements in the paper. Any paper you pick up in New Jersey, and I assume New York has ads that say: "Come on up. We'll give you 3 days free lodging and a radio and this and that."

Mr. BROWN. But you have criticized the Nelson bill, and doesn't that require actual onsite inspections in order to qualify for the exemption?

Mr. MINISH. Well, first of all, it excludes everybody within the 100-mile limit, and how much can you learn about the development from an onsite inspection? You look at the foliage and the nice green trees.

Mr. BROWN. Well, it exempts from the term "interstate commerce," as I recall, those who reside within 100 miles if they have visited onsite. Isn't that true?

Mr. MINISH. Right.

Mr. BROWN. So therefore, the Nelson bill isn't saying that you can do it by a letter or meeting at somebody's house. You've got to actually visit the site and live within a 100 miles in order to come within the exemption of the Nelson bill.

Mr. MINISH. How much can you learn by an onsite inspection? The average person doesn't know anything about sewers and septic tanks. For example in Sherwood Forest, they were told that, fine, this is a beautiful area and we are going to have sewers installed. And there were no sewers put in and the lot owners can't build because of the water table. The municipality in which this development is situated will not give people permission to put septic tanks there now.

You tell me, how can an onsite inspection tell an individual whether the water table is involved or not, or whether they can put septic tanks in or not.

Mr. BROWN. Apparently, there are six States that account for about 75 percent of the developments that would be really involved.

Those States are Florida, Texas, Arizona, New Mexico, Colorado, and California. You, in effect, feel that even though these few States constitute 75 percent of the problem, nevertheless you would impose the requirements on all the States. Right?

Mr. MINISH. Well, we don't know when one of the States that is left out might have new problems.

Mr. BROWN. I noticed, in your proposal, you require escrow accounts for all kinds of improvements in the property.

Mr. MINISH. Well, not all kinds; just the improvements the developer agrees to put in, like the roads, or the sewers.

Mr. BROWN. Water, sewage disposal, electricity. You have escrow accounts to insure these improvement are made.

If that State did not require it, that developer might very likely opt not to get into interstate land sales. Right?

And then, for all intents and purposes, since there would be no holding out access to that development, it would in short be precluded to that purchaser you're talking about. Right?

Mr. MINISH. Correct.

Mr. BROWN. Because there would be no obligation to do these things.

Mr. MINISH. If some of these developers that came before the committee did not get involved in interstate land sales, a lot of people would be a lot happier today and have a little bit more money in the bank.

Mr. BROWN. Why did you, in your proposal, even though HUD recommended that there should be an exemption of developments of fewer than 100 lots, and the present law says 50, drop yours down to 40?

Mr. MINISH. Well, Mr. Brown, we think that everyone ought to be protected.

Mr. BROWN. Well, then, why 40? Why not 10?

Mr. MINISH. Well, maybe it should be 10. But, you know, we have fellows who develop 25, 30, 35 lots. We wanted to help the little guy as much as we can; but we wanted to protect the consumers from the big developers who have the power to apply all of this pressure to land sales, and advertising, and whatever.

Mr. BROWN. I notice that you, in your parens patriae provision in your bill would permit the attorney general of any State to bring a class action on behalf of residents of his State, against the developer in the other State even though it may involve only one or two residents of his State.

Mr. MINISH. That is my understanding of it.

Mr. BROWN. And there is no definition of "class," for the purposes of bringing such an action?

Mr. MINISH. There is no definition, other than the people who got burned.

Mr. BROWN. But, I mean, one person could insist that the attorney general of the State bring the action?

Mr. MINISH. Well, the attorney general has discretionary powers. I would assume that if there was only one person, the attorney general might be able to jawbone somebody into straightening it out, rather than going into court and spending a lot of money.

Mr. BROWN. You don't change the existing law. Apparently the regulations now are going to give the Secretary discretion to make a determination in subdivisions of fewer than 300 lots, if sales out of State do not exceed 5 percent.

You don't touch that area at all, in your bill, as I understand it?

Mr. MINISH. No.

Mr. BROWN. Would you be willing to let the Secretary exempt—if the Secretary decided to—a development if up to 20 percent of the sales were out of State?

Mr. MINISH. The answer is "No."

Mr. BROWN. What? I am not sure——

Mr. MINISH. No, I'm not giving the Secretary the right the exempt anyone, other than whatever the law provides for.

Mr. BROWN. Well, the law presently provides that she can make this determination.

Mr. MINISH. Up to 300.

Mr. BROWN. And now they are going down to 150 lots. But still, the 5-percent limitation——

Mr. MINISH. Well, we ought to bring it down to minus zero.

Mr. BROWN. In other words, you would not want—even if there were no sales——

Mr. MINISH. Well, if there are no sales, there is no action. Nobody is being burned.

Mr. BROWN. But all of the provisons of your law would still be applicable, apparently.

Mr. MINISH. Where it applies, sure.

Mr. BROWN. I have no further questions, Mr. Chairman.

Chairman ASHLEY. Just one final question.

For what period of time does the right of recission apply? Are there different circumstances for different periods of time?

Mr. BROWN. Thirty days, isn't it?

Mr. MINISH. Thirty is the absolute right of recission.

Chairman ASHLEY. Mr. Minish, I thank you very much indeed for your testimony this morning. It has been helpful indeed, and we really appreciate, more than can be said, the work that you have directed in this important area.

Mr. MINISH. Mr. Chairman, let me say that this committee and its chairman have done great work. There are a lot of people in the United States who live in better conditions, and who will live in better conditions because of Chairman Ashley and his subcommittee.

All I would like the committee to do now is make sure that the houses on land that is secure, with sewers and whatever is needed.

Thank you very much.

Chairman ASHLEY. Thank you, Mr. Minish.

Our next witness is Jean Halloran, who is the editor of "Promised Lands," a comprehensive, three-volume study of the land sales industry conducted by INFORM, a nonprofit organization which conducts research on the impact of corporations on consumers and the environment; and Patricia M. Hynes, who is an assistant U.S. attorney for the Southern District of New York, who has prosecuted major land sales fraud cases.

We will now hear from Ms. Halloran.

STATEMENT OF JEAN HALLORAN, ON BEHALF OF INFORM, A PUBLIC INTEREST GROUP, ACCOMPANIED BY LESLIE ALLAN

Ms. HALLORAN. Thank you, Mr. Chairman.

I am Jean Halloran, and with me is Leslie Allan, who is the primary author of "Promised Lands." I would like to ask that the full text of my remarks be incorporated into the record.

INFORM is a nonprofit, public interest research organization that studies the impact of business on society. We have a permanent, full-time staff of 20, and a subscriber list of over 100 major corporations, institutions, and Government agencies.

Our organization has been studying the practices and regulation of the land sales industry for 5 years. Our primary finding has been that the land sales and subdivision industry is rife with consumer abuse. It is riddled with problems of consumer deception and fraud.

Our conclusion was that a new regulatory approach is sorely needed. For this reason, we feel that Congress Minish's effort to reform the Interstate Land Sales Full Disclosure Act is a vital step forward, a step which can save ordinary people millions of dollars.

For this same reason, we are extremely dismayed to see Senator Nelson's bill which would exempt vast numbers of developers from what little regulation now exists, progressing through the legislative process.

We understand, and indeed support, the goal of reducing the regulatory burden on the small, legitimate businessman and of freeing Federal regulators for more important tasks. But the broadly worded Nelson provisions go far beyond this goal.

The past history of this industry does not justify such loosely drawn exemptions, nor does it justify the hasty consideration given the Nelson amendments by the Senate Banking Committee prior to substituting them for the administration proposals in the Housing and Community Development Act.

I would like, if I may, to tell you some of what we found in our research, and then to discuss specifically how this relates to the various legislative proposals on land sales you have before you.

Chairman ASHLEY. We will proceed until the second bell, at which time the subcommittee will recess and retire to the floor for two votes that are on suspension that should take us about 10 minutes, and then we will return at that juncture.

So if you would please proceed.

Ms. HALLORAN. The impact of the land sales industry is enormous, but no one seems to know exactly how enormous. The land sales industry is generally defined as consisting of companies engaged in selling lots in subdivisions.

The companies range from mom and pop businesses to multimillion dollar corporations traded on the Stock Exchange. The lots range from quarter-acre, quote, "townhouse," unquote, lots, to 40 or 50 ranchettes; and the subdivisions, from 5-lot developments to 200,000-lot planned, new communities.

Since 1969, most companies selling lots have had to file with OILSR. Alan Kappeler estimated in 1976 that approximately 6,200 individual projects were registered with his agency.

There are subdivisions in all States except North Dakota and Rhode Island. And as you noted before, most subdivision activity is concentrated in Florida, New Mexico, Arizona, California, Colorado, and Texas.

One industry expert estimates the total stock of lots in this country covers 35 to 40 million acres of land, about 2 percent of the continental United States.

Assuming 3 residents per subdivision lot, this land could accommodate 45 to 60 million people. That is more than the populations of Los Angeles, San Francisco, Chicago, Detroit, Boston, New York, Philadelphia, and Washington, D.C., and the entire State of New Jersey combined.

These figures on the scope of the industry are sometimes challenged on the grounds that land sales are declining and the problems are now moot.

The recession of the seventies did cause a precipitous slide in industry volume. However, a survey by the American Land Development Association indicates that sales are on the upswing. The industry seems to be riding on the coattails of the current real estate boom.

Of the 163 companies they surveyed, 78 percent had better sales in 1976 than 1975, and most were planning new projects. Most observers agree that OILSR and the FTC had had a chilling effect on some of the most flagrant abuses conducted by the very largest companies, yet OILSR continues to receive about 3,000 consumer complaints a year, as it has for each of the past 6 years.

INFORM has studied, in detail, a sample of companies and sites which represent the various aspects of the mass-market portion of the industry in the States with the most widespread land sales activity. The sites are old and new, large- and modern-sized, and in varied terrains.

They were marketed by the largest companies, who should have the most resources, and therefore be the most responsible.

We identified several important problem areas. Problems begin with representations made in advertising—which is generally the purchas-

er's first contact with the subdivision project. For example, promotional materials for Colorado City, a Great Western United project, promised, quote, "plenty of water," closed quote; and prominently featured a photograph of lushly flowing Greenhorn Creek. Yet, the subdivision has legal rights to only enough water for, at best, one-tenth of its projected population.

Similarly, Palm Coast, ITT's 100,000-acre project in northeast Florida, was promoted as, quote, "not an ordinary development," close quote.

Full-page ads stated, quote, "only the immense resources of a giant corporation like ITT could build a community of this scope," close quote.

Yet, at Palm Coast, development is being financed not by the multibillion dollar ITT corporation, but by its subdivision subsidiary, so small that its assets are not listed separately in ITT's annual report.

Again—is that the bell?

Chairman ASHLEY. Yes.

Again, Ms. Holloran, we are about to take leave of your charming company, but we will return.

[Whereupon, at 11:30 a.m., the subcommittee recessed for lunch.]

AFTERNOON SESSION

Chairman ASHLEY. The subcommittee will come to order.

The Chair apologizes for starting a little late. It was a matter of urgency that suddenly arose.

If you will continue, then, Ms. Halloran, with your oral statement, we would receive your testimony with considerable interest.

Ms. HALLORAN. Thank you.

I was talking about Horizon Corp. and some of its advertising.

The Horizon Corp. is selling a project called Rio Communities in New Mexico which it advertises as a "carefully planned cluster of communities growing so rapidly that they seem like a mirage."

A mirage it may, in fact, be: There are only 800 homes in the 7 communities, despite the fact 170,000 lots have been sold. If construction at Rio Communities continues at its present rate, Rio Communities will not be fully occupied in less than 3,600 years.

The second major problem we uncovered is that of the installment contract.

All of the companies we studied were selling lots via installment contracts generally extending over 10 years, and installment contract sales are characteristic of the industry.

Many purchasers think they are buying a lot when they sign a contract but, in fact, the contract is not a deed, nor is it similar to a conventional mortgage whereby the purchaser may live in a house while he is paying for it. An installment contract purchase agreement doesn't transfer ownership of the land, and it doesn't transfer the right to use the land; it simply gives the purchaser the right to make monthly payments for 5 or 10 years, at the end of which the company promises to turn over the land and whatever improvements it has agreed to furnish.

Under this sort of contract the purchaser has virtually no rights or protections. Should a purchaser ever fail to make the monthly pay-

ment for the lot he in most cases will forfeit everything, both lot and all prior payments. And I would like to say that was true for seven of the nine companies we studied.

Should the company go bankrupt in the course of the 10 years and be unable to provide promised improvements, there is usually little the purchaser can do.

We also found abuses in terms of the product that the lands sales companies are selling. All of the companies we looked at sell lots either implicitly or explicitly as homesites or as investments; yet all too often they do not provide the basic services that make the lots usable and salable.

INFORM found only 5 of the 19 projects we looked at had most necessary basic services, such as water supplies, sewage system, electricity and telephones and adequate drainage.

The problems we uncovered do not end with the lack of basic services. The condition of the land itself can often be a problem. INFORM found that subdivisions are frequently located on land prone to natural hazards such as flooding, landslides, earthquakes, and hurricanes.

Marco Beach and Cape Coral, to take two Florida subdivisions, are in the coastal hurricane flood zone, a fact which is not necessarily apparent to the naked eye, even during an onsite inspection.

Lake Havasu City, located in the dry and barren Arizona desert, has experienced flash floods in which three people have died and, I might add, $4 million worth of damage was done.

Is such land a good investment? Companies claim it is, or at least that they are providing land cheaply to people who otherwise could not afford it. However, INFORM has found that lot prices are actually the opposite—inflated and fraught with hidden and/or unanticipated costs, disguised by the elaborate wording and long duration of the payment arrangements.

Lots sold on the installment plan at the projects we looked at range from $1,000 to $60,000 in their base price. On top of this the purchaser must pay a finance charge of 4 to 9 percent, which adds $200 to $2,800 to the price.

They must also pay property taxes, although they do not own the land, special service, district assessments, bond reduction charges, reduction charges, recreation fees, property owners' association dues, and often improvement fees or betterment fees. They must often sink wells and dig septic tanks.

At the sites we studied, these additional charges add up to $26,000 to the lot price over the course of the 10-year contract.

In the end, a purchaser usually receives a bad bargain. We polled local realtors and found that at virtually all of the projects we studied lots can be resold only at hardship prices, that is, at less than the purchaser initially paid.

At several of the projects local realtors reported that it was virtually impossible to unload a lot at any price.

If the problems of consumer abuse are so endemic to the industry, the question arises as to what the existing laws do do. INFORM analyzed the laws of six States and the Federal Government and found that regulation of this industry is not adequate. What little protection exists is embodied in the Interstate Land Sales Full Disclosure Act. This act requires the subdividers to register with OILSR and to pre-

pare a property report. It also gives purchasers and the government the right to sue for damages on the basis of misstatements of fact in the statement of record of property report.

I would like to turn to the various legislative alternatives pending before this committee. I would like to start with the Nelson admendment which is now part of the Senate version of the Housing and Community Development amendments of 1978.

This would exempt certain types of land sales operations from having to register with OILSR and having to give consumers a property report although the companies could still be used for fraud.

Companies marketing to residents of the same States would be exempt. Companies marketing to people who live within a 100-mile radius of the subdivision would also be exempt, provided a lot purchaser has inspected the lot before buying. Finally, companies selling lots having certain kinds of basic services who deliver a deed and who do not use elaborate sales techniques and who require an on-the-lot inspection would also be exempt.

In our view these amendments would be devastating to the effectiveness of the Office of Interstate Land Sales Registration, and for vast numbers of consumers remove one of the few protections against deception and fraud in land sales which they now have.

The 100-mile exemption which would allow land sales companies to operate virtually unregulated in a 31,400-square-mile area is particularly dangerous.

As Congressman Minish has pointed out, its impact in the Northeast would be most serious. In that area, without a property report, with only a site visit and a salesman's pitch to go on, purchasers buying in the Poconos would have no way of knowing whether the project has a water supply, who will build and pay for the sewage system, whether the land is in a flood zone, or any of the other myriad facts that purchasers should consider before making a $5,000 or $10,000 investment in land.

The developers will argue that the purchaser still has the right to sue for fraud if there is misrepresentation, but without a property report, the purchaser has very little in the way of documentation on which to base a suit.

An exemption for land sales companies operating intrastate, though perhaps not quite so blatantly contrary to the intent of the original act as the 100-mile exemption, is still, we feel, not in the public interest.

Again, companies operating solely within one State include both large and small developers, honest and irresponsible operators. The larger companies will use elaborate phone and mail solicitation techniques. Smaller ones may have problems with raising the capital to extend services. Consumers approached by these companies need the protection of property reports. State governments are simply not equipped to take on the job of regulating these companies.

Fully 27 States have no land sales laws of their own or mechanisms for supervising preparation of property reports. In many cases this is at least partly because State legislatures felt the Federal Government was handling the problem. Those States would have to establish their own State agencies to take over registration and disclosure tasks now handled by OILSR. They will have to setup expensive bureaucracies and acquire staff and expertise. Conflicting and duplicative rules and procedures will proliferate.

INFORM has examined the property reports and consumer protection laws of five States which do already attempt to regulate this industry. Without exception the State property reports are less complete than those prepared under current Federal requirements.

The Federal OILSR now provides an extremely useful, helpful, and important service to the States, and it should not be taken away.

And I would like to add that the Federal Office of Interstate Land Sales and Registration does accept State property reports if it deems them to be as effective or equally adequate as the Federal report, but so far only California has qualified under that kind of rule.

Many more States, a couple of dozen, have done the reverse, have accepted the Federal report in lieu of their own property report, being happier to have the Federal Government take over this task for them.

Even the third Nelson exemption, designed to exempt subdividers who have installed all basic services and who are delivering the deed to the buyer, thus, presumably, obviating the need for a property report, is, in our opinion, somewhat loosely worded.

For example, a drainage system, without which a lot could be under water half the year, is omitted from the list of services which must be completed in order to obtain the exemption in the Nelson bill.

The Nelson amendments were proposed in the guise of helping the small businessman, but we feel that the three types of exemptions in these amendments open the door for fast consumer abuse by deregulating not just small businesses but large ones, as well.

Were there a cap on the size of these exemptions limiting them to projects of less than 250 lots, thus truly designing this bill for the small businessman, our concern would not run so deep. More important, the need for statutory exemption for small developers may not be moot.

About 1 month ago the Office of Interstate Land Sales Registration issued a set of proposed guidelines which outlined exactly what had been proposed by Senator Nelson, exemptions for small developers. However, these exemptions, unlike the Nelson provisions, are very carefully drawn to separate the large developer from the small, the sound from the unsound.

Among the exemptions which OILSR proposes are the sale of lots to other land sales companies, sale of lots to builders, and several other exemptions I won't go into. Sales in projects of less than 150 lots if marketed locally, sales in subdivisions of less than 300 lots which have all basic services delivered and do not use installment contracts.

This last exemption is similar to the third exemption in the Nelson bill, yet because the OILSR is carefully drawn, we favor it while we oppose the Nelson version.

In general, we feel that OILSR's approach, establishing exemptions based on the character of the subdivision, is far preferable to the blanket approach of the Nelson bill. It is our sincere hope that these regulations pending now for over a year and a half will be soon made final. These exemptions would ease the burden in the existing protections for consumers.

I would also like to mention at least one provision of the Nelson bill which we feel does a gross disservice to consumers. It is the provision prohibiting a lot purchaser from bringing any action against a developer more than 3 years after signing a contract, regardless of whether he has received a deed.

Such a law would make it impossible for most of the consumers in a majority of the subdivisions we studied to bring any kind of legal action against a developer even if the developer committed the most blatant kind of fraud. This is because most companies do not even promise to make any kind of improvements until all payments are complete, usually 10 years after contract signing.

Some specify that services will not be made available until the lot purchaser obtains a building permit, something he might not do for several years after completing all payments. There is no way a consumer can know by year 3 whether the subdivider will fullfill his promises in year 10. To mandate that the statute of limitations runs out in year 3 is, in effect, taking away the purchaser's right to sue before the subdivider even has the opportunity to commit the fraud.

A lightening of the burden on the small developer may be in order. We feel, however, that there is an equal if not more pressing need for better consumer protection in land sales. Congressman Minish's bill would be a large step in that direction.

I have mentioned some of the problems of misleading advertising we came across in our search. The Minish bill would give OILSR specific authority to set standards for advertising.

I have also mentioned some of the sophisticated sales techniques the industry employs. These tactics create a strong need for a reasonable cooling-off period in which a consumer can think seriously about the purchase, consult experts, read the property report, and if necessary, get a refund.

The Minish bill would guarantee consumers a 30-day cooling off period.

As I have noted, the basic services that make lots usable are an implicit part of the product purchased in the subdivision. The Minish bill in specifically providing for the escrowing of moneys for promised improvements and a refund in the case these improvements are not forthcoming affords necessary consumer protection an area of heavily documented abuse.

Addressing the problems created by the installment contract itself is a difficult task. As I noted earlier, under this form of agreement the purchaser does not have the use of the land while he or she is paying for it, and is assured no refund if he defaults on any payments.

The Minish bill would ameliorate the problems created by the use of installment contracts in several ways.

First, it would give purchasers a 3-year period in which to revoke the contract, unless the consumer receives title immediately, has equity while making payments, and has the right to a partial refund in the event of a default.

This in itself would be a definite benefit.

The Minish bill also extends the statute of limitations under which purchasers can sue a subdivider for fraud, rather than making it shorter as the Nelson bill does.

Were we at INFORM drafting legislation, we would prefer a law which set forth rigorous conditions that would have to be met before any land could be registered for sale at all. Such conditions, in addition to those addressed in the Minish bill, would include a subdivider having received all necessary Government permits to complete basic improvements and at least partial refunds to any purchaser who de-

faults on a contract—on an installment contract—at any time during the contract period.

On balance, however, we feel the Minish bill goes a long way toward protecting consumers from the most flagrant and prevalent land sales abuses.

I would like to conclude by telling you about a phone call I got a few months ago from a woman in New Hampshire, and I must say, I get similar phone calls at least once a week and sometimes more often.

The woman and her husband had just sold a small family business and were looking for someplace to invest the proceeds, about $9,000. They thought of land, and accepted an invitation for an all-expense-paid weekend in Florida to see a very large subdivision called Lehigh Acres.

There they made a downpayment and signed their installment contract for a quarter-acre lot priced at $7,195.

The woman called INFORM shortly thereafter because she read a magazine report on our research and had become concerned about the soundness of her investment.

As I spoke to her, it became clear that she had not seen the lot she signed for. Only one which the salesman described as similar to it, that the lot was not improved, although she thought these improvements were promised in the future, and that she had no idea of how the price of her lot compared to the prices of comparable lots on the resale market. She had received only the Florida property report, which is permissible in certain situations under current OILSR regulations, which gives only very sketchy information on these issues.

Lehigh Acres was not one of the projects which we studied in detail, so I could not give her detailed answers to her questions, but from the description of the sales operation and the location of the subdivision, in one of the most oversubdivided sections of the State, and what I knew of similar projects, I feared the worst for the future of her lot as an investment.

I think this woman was concerned enough that she would go out and get the answers she needed, and if she found that her land was a poor investment, she was at least only at the beginning of her contract period, and would lose only the $700 she had made as a downpayment.

My point here, however, is that this woman and thousands like her deserve more protection than they now get. Mr. Brown this morning mentioned the edict of caveat emptor, but like most Americans, this woman is a decent, basically trusting person. She is not unintelligent, but she did not operate on the assumption that others are out to cheat her. She also does not operate on the assumption that the law permits fraud or allows it to go on, and she is not a gambler out to make something for nothing in real estate. She deserves to have, as Congressman Minish proposes, 30 days in which to talk to knowledgeable individuals, and if she discovers problems, she should receive a refund. If she is paying on an installment contract which gives her no equity in the land, she deserves to have 3 years to cancel and get a refund. She deserves to have money escrow to guarantee the completion of improvements, and she deserves to receive a Federal property report.

We strongly urge you to oppose the Nelson amendments in conference, amendments which would take away the property report for thousands of consumers, because consumers need the property report

and because the administrative regulations proposed by OILSR will shortly accomplish the same basic goal, that of helping small business, by a better means.

We also hope you will give serious consideration to the Minish bill and to certain provisions of the original administration bill which we do not have the time to discuss here. The entire area of land sales regulation deserves your serious and thoughtful review.

And I would like to thank you for taking time to spend several days on the subject.

[Ms. Halloran's prepared statement, on behalf of INFORM, follows:]

TESTIMONY OF JEAN HALLORAN

RESEARCH DIRECTOR, INFORM

ACCOMPANIED BY LESLIE ALLAN

before the

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SUBCOMMITTEE ON HOUSING

on

Interstate Land Sales Regulation

August 1, 1978

INFORM
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My name is Jean Halloran. I am Research Director of INFORM and the editor of INFORM's three-volume study of the retail land sales and subdivision industry entitled PROMISED LANDS. With me is Leslie Allan, primary author of PROMISED LANDS.

By way of background, I would just like to say that INFORM is a nonprofit public-interest research organization that studies the impact of business on society. We have a permanent full-time staff of 20 and a subscriber list of over 100 major corporations, institutions and government agencies. Our organization has been studying the practices and regulation of the land sales industry for five years.

Our primary finding has been that the land sales and subdivision industry is rife with consumer abuse; that it is riddled with problems of consumer deception and fraud. Our conclusion was that a new regulatory approach is sorely needed. For this reason, we feel Congressman Minish's effort to reform the Interstate Land Sales Full Disclosure Act is a vital step forward, a step which could save ordinary people millions of dollars. For the same reason, we are extremely dismayed to see Senator Nelson's bill, which would exempt vast numbers of developers from what little regulation now exists, progressing through the legislative process. We understand and indeed support the goal of reducing the regulatory burden on small legitimate businessmen and freeing federal regulators for more important tasks. But the broadly worded Nelson provisions go far beyond this goal. The past history of this industry does not justify such loosely drawn exemptions, nor does it justify the hasty consideration

given the Nelson amendments by the Senate Banking Committee prior to substituting them for the Administration proposals in the Housing and Community Development Act of 1978.

I would like, if I may, to tell you some of what we found in our research, and then discuss specifically how this relates to the various legislative proposals on land sales you have before you today.

The impact of the land sales industry is enormous, but no one seems to know exactly how enormous. Existing fragments of descriptive data only suggest the broad features of land sales activities.

The land sales industry is generally defined as consisting of companies engaged in selling lots in subdivisions. The companies range from mom-and-pop affairs to multi-million-dollar corporations traded on the stock exchange. The lots range from 1/8 acre "townhouse" lots to 40 or 50 "ranchettes;" and the subdivisions from 5-lot developments to 200,000 lot "planned new communities." Since 1969, companies selling lots of less than 5 acres in size in subdivisions of over 50 lots in size must file with the Federal Office of Interstate Land Sales Registration. Alan Kappeler, of OILSR, estimated in June of '76 that approximately 6200 individual subdivision projects are registered with his agency. The President's Council on Environmental Quality has found that most developments registered with HUD are relatively large, averaging about 1,000 acres, and that most of the lots marketed are relatively small, about a quarter-acre to one acre.

Another analysis of OILSR's filings indicates that there are subdivisions registered in all states except North Dakota and Rhode Island, and that the most subdivision activity is concentrated in six states: Florida, New Mexico, Arizona, California, Colorado, and Texas. However, OILSR's filings may be very incomplete. For example, it had

315 projects registered for Colorado, while the Colorado Real Estate Commission had 1,000 projects registered. Similarly, OILSR shows half a million acres subdivided in California, while California's Department of Real Estate shows 2-1/2 million acres subdivided. Frankly, we have been unable to come up with an adequate explanation for this discrepancy: whether it reflects the existence of many federally unregistered subdivisions or whether it reflects simply poor or inadequate record-keeping.

Considering both state and federal information, one industry expert estimates that the total standing stock of lots subdivided in this country covers 35 to 40 million acres of land. This amounts to 62,000 square miles, which is about 2 percent of the continental United States. Assuming three residents per subdivision lot, this land could accommodate 45 to 60 million people. That is more than the populations of Los Angeles, San Francisco, Chicago, Detroit, Boston, New York, Philadelphia, and Washington, and the entire State of New Jersey, combined.

These figures on the scope of the industry are sometimes challenged on the grounds that land sales are declining, and the problems are now moot. The recession of the mid 1970's did cause a precipitous slide in industry volume. However, a survey conducted by the American Land Development Association indicates that sales are on the upswing. The industry seems to be riding on the shirt-tails of the current real estate boom. Of 163 companies surveyed, 78% had better sales in 1976 than 1975, and most were planning new projects.

Most observers agree that since 1969 OILSR and the FTC have had a chilling effect on some of the most flagrant abuses conducted by the

very largest companies. Yet OILSR continues to receive about 3000 consumer complaints a year, as it has for each of the past six years. The land sales industry has historically gone through boom-and-bust cycles and will undoubtedly continue to do so, particularly if it remains relatively free from substantive government regulation.

INFORM has studied in detail a sample of companies and sites which represents the various aspects of the mass-market portion of industry in the states with the most widespread land sales activity. They are old and new, large and small, and in varied terrains. They are marketed by the largest companies, who should be the most responsible.

Our primary finding was that the industry is in radical need of reform. Problems begin with the representations made in advertising, which is generally the purchaser's first contact with the subdivision project. As an example, promotional materials for Colorado City, a Great Western United project, promised "plenty of water," and prominently featured a photograph of a lushly flowing Greenhorn Creek; yet, the subdivision has the legal rights to only enough water for, at best, a tenth of its projected population.

Similarly, Palm Coast, ITT's huge, 100,000-acre project in northeast Floraida, was promoted as "not an ordinary development." Full page ads stated, "Only the immense resources of a giant organization like ITT could build a community of this scope." Yet, at Palm Coast, development is being financed not by the multibillion dollar ITT Corporation, but by a subdivision subsidiary so small that its assets are not listed separately in ITT's annual report. The water supply for

the project has been in question since its inception, and it was only the combined efforts of the Federal Trade Commission and several Florida agencies that managed to rein in this massive problem.

Again, Horizon Corporation is selling a project called Rio Communities in New Mexico, which it advertises as a "carefully planned cluster of communities growing so rapidly that they seem like a mirage." A mirage it may in fact be: There are only 800 homes in these 7 communities, despite the fact that 170,000 lots have been sold. If construction at Rio Communities continues at its past rate, Rio Communities will not be fully occupied in less than 3600 years.

The second major problem we uncovered is the installment contract. All the companies we studied were selling lots via installment contracts generally extending over 10 years, and installment contract sales are characteristic of the industry. Many purchasers think they are buying a lot when they sign a contract, but, in fact, the installment contract is not a deed. Nor is it similar to a conventional mortgage, whereby a purchaser may live in a house while he is paying for it. An installment contract purchase agreement doesn't transfer ownership of the land, and it doesn't transfer the right to use the land. It simply gives the purchaser the right to make monthly payments for five or ten years, at the end of which the company promises to turn over the land and whatever improvements it has agreed to furnish. Under this sort of contract, the purchaser has virtually no rights or protections. Should a purchaser ever fail to make the monthly payments for the lot, he in most cases will forfeit everything, both lot and all prior payments. Should the company go bankrupt in the course of the ten years and be unable to provide

promised improvements, there is usually little the purchaser can do. Finally, the contract is often used by the developer as a source of revenue, either as commercial paper discounted to a bank, or as collateral for loans. The holder of the paper is not necessarily liable for the developer's obligations.

We also found abuses in terms of the product that the land sales companies are selling. All of the companies we looked at sell lots either implicitly or explicitly as homesites or as investments; yet, all too often they do not provide the basic services that make the lots usable and saleable.

INFORM found that only 5 of the 19 projects we looked at had most necessary basic services such as water supply, sewage system, electricity, and telephones, adequate drainage available. The others lacked these services, do not guarantee installation by the time the purchaser has paid for his land, have not set aside any funds for installation, and do not offer a refund if land is not usable.

This can prove very costly to purchasers of lots in these communities. At Rio Communities, for example, if a purchaser wants to use his plot of sparsely vegetated desert grassland, he has to pay up to $11,000 for a well, a septic tank, a radio-telephone, and a generator; or he can pay local utilities up to $12,000 a mile to extend electricity and telephone service to whatever part of this vast 400-square-mile site he is located in; or he may be able to trade the land for a lot in the core development area. However, there are no guarantees that any land will be available for trade, and to get it he will have to pay considerably more money and he will have to build immediately. His original lot, which he has paid

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for over 10 years with 30 percent interest, is virtually useless, except as an option to buy a conventional home on a conventional-mortgage basis.

The problems do not end with lack of basic services. The condition of the land itself is often a problem. INFORM found that subdivisions are frequently located on land prone to natural hazards such as flooding, landslides, earthquakes and hurricanes. Marco Beach and Cape Coral, to take two Florida subdivisions as an example, are in the coastal hurricane flood zone, a fact which is not necessarily apparent to the naked eye even during an on-site inspection. Lake Havasu City, located in the dry and barren Arizona desert, has experienced flash floods in which three people died. Many California subdivisions are in earthquake zones.

Is such land a good investment? Companies claim it is, or at least that they are providing land cheaply to people who otherwise could not afford it. However, INFORM found that lot prices are actually the opposite: inflated and fraught with hidden and/or unanticipated costs, disguised by the elaborate wording and long duration of the payment arrangements. Lots sold on the installment plan at the projects we looked at ranged from $1000 to $60,000. On top of this, purchasers must pay a finance charge of 4 to 9 percent annually, which adds $200 to $28,000 to the price. They must also pay property taxes, although they do not own the land; special service district assessments; bond reduction charges, recreation fees, property owners' association dues; and often, improvement fees or betterment fees. At the sites we studied these additional charges added up to $26,000 to the lot price over ten years.

In the end, the purchaser usually receives a bad bargain. We polled local realtors to see if any of the lots were an adequate

investment. We found that at virtually all of the projects, lots can be resold only at hardship prices, that is, at less than what the purchaser initially paid. At several of the projects local realtors reported that it was virtually impossible to unload a lot at any price.

The problems I have described do not respect state boundaries. They are endemic to land sales transactions conducted in the absence of substantive regulation. They are as likely to occur if the subdivider is on the eastern shore of Maryland selling to Baltimore residents, in the Poconos selling to Philadelphians, in the Nassanutton Mountains selling to Washington Suburbanites, or in northern Wisconsin selling to Milwaukee residents, as they are if he is in New Mexico or Florida selling to New Yorkers.

If the problems of consumer abuse are so endemic to the industry, the question arises then as to what the existing laws do. To answer this question, INFORM analyzed the laws of five states which are the sites of intense subdivision activity and a sixth state, New York, where many of the lots are marketed. We also analyzed the laws of the Federal Government. We found out that regulation of this industry is not adequate. What little protection now exists is embodied in the Interstate Land Sales Full Disclosure Act. This Act requires subdividers to register with OILSR, and to prepare a property report disclosing important information to consumers. It also gives purchasers and the government the right to sue for damages on the basis of misstatements of fact in the statement of record or property report.

Beyond OILSR's registration and disclosure requirements, only 20 states have their own laws requiring subdividers to issue property

reports to lot purchasers. And only a very few states actually have substantive regulations to require a central water system, for example. or escrowing of funds for refund purposes.

Both INFORM and the President's Council on Environmental Quality, which has also studied this industry, found disclosure to be inadequate protection for consumers. But, weak as it is, it is a vital and necessary minimum.

I would now like to turn to the various legislative alternatives pending before this Committee. I would like to start with the Nelson amendments, which are now part of the Senate version of the Housing and Community Development Amendments of 1978. This would exempt certain types of land sales operations from having to register with OILSR and give consumers a Property Report, although the companies could still be sued for fraud under the Interstate Land Sales Full Disclosure Act (ILSFDA). Companies marketing to residents of the same state would be exempt. Companies marketing to people who live within a 100-mile radius of the subdivision would also be exempt, provided the lot purchaser has inspected the lot before buying. Finally, companies selling lots having certain kinds of basic services, who deliver a deed, who do not use elaborate sales techniques, and who require an on-the-lot inspection would also be exempt.

In our view, these amendments would be devastating to the effectiveness of the Office of Interstate Land Sales Registration, and for vast numbers of consumers remove one of the few protections against deception and fraud in land sales which they now have. The 100-mile exemption, which would allow a land sales company to operate virtually unregulated in a 31,400-square-mile area, is particularly dangerous. Its impact in the Northeast would perhaps be the most serious. There, an unscrupulous land sales operation in the Poconos would have the entire metropolitan area to market to, since a 100-mile line drawn around the Poconos includes New York City, all of New Jersey and Philadelphia. With this huge market to approach, it is very likely that an exempt land sales operation could sell thousands of lots and do millions of dollars of business a year in interstate commerce, using high-pressure sales tactics--the very type of abuse which the ILSFDA sought to address ten years ago. Without a Property Report, with only a site visit and a salesman's pitch to go on, purchasers will have no way of knowing whether the project has a water supply, who will build and pay for the sewage system, whether the land is in a flood zone, or any of the other myriad facts a purchaser should consider before making a $5,000 or $10,000 investment in land. The developers will argue that the purchaser still has the right to sue for fraud if there is an misrepresentation. But without a Property Report, a purchaser has very little in the way of documentation on which to base a suit.

An exemption for land sales companies operating intrastate, thought perhaps not quite so blatantly contrary to the intent of the original ILSFDA as the 100-mile exemption, is still, we feel, not in the public interest. Again, companies operating solely within one state include both large and small developers, honest and irresponsible operators. The larger companies will use elaborate phone and mail solicitation techniques. Smaller ones may have problems with raising the capital to extend services. Consumers approached by these companies need the protection of property reports. State governments are simply not equipped to take on the job of regulating these companies. Fully 27 states have no land sales laws of their own or mechanisms for supervising preparation of property reports. In many cases this is a least partly because state legislatures felt the federal government was handling the problem. Thus, if the Nelson amendments become law, the intrastate sale of subdivision lots would be totally unregulated in over half of the states in the country. Those states would have to establish their own state agencies to take over the registration and disclosure tasks now handled by OILSR. They will have to set up bureaucracies and acquire staff and expertise. Conflicting and duplicative rules and procedures will proliferate.

INFORM has examined the property reports and consumer protection laws of five of the states which do already attempt to regulate this industry. Without exception, the state property reports are less complete than those prepared under current

federal requirements. The federal OILSR now provides an extremely useful, helpful and important service to the states which should not be taken away.

Even the third Nelson exemption, designed to exempt subdividers who have installed all basic services and are delivering a deed to the buyer--thus presumably obviating the need for a property report--is, in our opinion, somewhat loosely worded. For example, a drainage system, without which a lot could be underwater half the year, is omitted from the list of services which must be completed in order to obtain the exemption.

The Nelson amendments were proposed in the guise of helping the small businessman. We feel that the three types of exemptions in these amendments open the door for vast consumer abuse by deregulating not just small businesses but large businesses as well. Were there a cap on the size of all these exemptions--limiting them to projects of perhaps less than 250 lots, thus truly designing this bill for the small businessman--our concern would not run so deep. The amendments as drawn, however, contain no such limitation.

Most important, the need for statutory exemptions for small developers may now be moot. About a month ago, OILSR issued a set of proposed regulations pursuant to ILSFDA which outline exactly what has been proposed by Senator Nelson--exemptions for small developers. However, these exemptions,

unlike the Nelson provisions, are very carefully drawn to separate the large developer from the small, the sound from the unsound, and the responsible from the irresponsible. Among the exemptions which OILSR proposes are the sale of lots to other land sales companies, sale of lots to builders, sale of lots in large subdivisions where there are less than 12 sales a year, sales in projects of less than 150 lots if the marketing is entirely local (as carefully defined by the agency), and sales in subdivisions of less than 300 lots which have all basic services, deliver a deed to the purchaser, and do not use installment contracts. This last exemption is similar to the third exemption in the Nelson bill. Yet because the OILSR version is carefully drawn, we favor it. Because the Nelson version has clear loopholes, we strongly oppose it.

In general, we feel that OILSR's approach, establishing exemptions for small developers based on the character of the subdivision, is far preferable to the blanket approach of the Nelson bill. We feel OILSR's regulations take adequate stock of the needs of the consumer while trying to lighten the load of the small operator. It is our sincere hope that these regulations, pending now for a year and a half, will soon be made final. These exemptions would ease the burden of small, legitimate developers without establishing huge loopholes in the existing law.

I would also like to mention one last provision of the Nelson bill which we feel does a gross disservice to consumers. It is the provision prohibiting a lot purchaser from bringing any action against a developer more than three years after signing a contract, regardless of whether he has received a deed. Such a law would make it impossible for most of the consumers in a majority of the subdivisions we studied to bring any kind of legal action against a developer even if the subdivider committed the most blatant kind of fraud. This is because most companies do not even promise to make any kind of improvements until all payments are complete--usually ten years after contract signing. Some specify that services will not be made available until the lot purchaser obtains a building permit, something he might not do for several years after completing all payments. There is no way a consumer can know by Year Three, whether the subdivider will fulfill his promises in Year Ten. To mandate that the statute of limitations runs out in Year Three is in effect taking away the purchaser's right to sue before the subdivider even has the opportunity to commit the fraud.

A lightening of the burden on the small developer may be in order. We fell, however, that there is an equal, if not more pressing need for better consumer protection in land sales. Congressman Minish's bill would be a large step in that direction.

I have mentioned some of the problems of misleading advertising we have come across in our research. The Minish bill would give OILSR specific authority to set standards for

advertising.

I have also described some of the sophisticated sales techniques the industry employs. These tactics create a strong need for a reasonable cooling-off period in which a consumer can think seriously about the purchase, consult real estate experts, read the property report thoroughly, and if necessary get a refund of his or her downpayment (usually at least several hundred dollars). The Minish bill would guarantee consumers a 30-day cooling-off period.

As I have noted, the basic services that make lots usable are implicitly part of the product purchased in a subdivision, and the costs of these improvements are generally reflected in the purchase price; yet neither federal law nor any of the six states we studied provides for a purchaser to receive a refund if the developer fails to provide promised services.

Further, given the long installment contract period, escrowing of the cost of promised improvements is especially necessary; yet of the six states that we studied, only Florida addresses this question at all. In that state, contract payments for promised improvements must be escrowed, but only if refunds are promised in the purchase contract.

A number of states do require the posting of corporate performance bonds to guarantee these promised basic improvements, but this is inadequate protection. These bonds are backed only by the assets of the corporations and are worthless in the event of a bankruptcy. Florida required the GAC Corporation

to post a total of almost $62 million in corporate performance bonds for only two of its subdivisions. It also required $2.5 million in surety bonds, backed by a third party. When the company declared bankruptcy, the $62 million worth of corporate performance bonds were virtually useless.

The Minish bill, in specifically providing for the escrowing of moneys for promised improvements and a refund in the case these improvements are not forthcoming, affords necessary consumer protection in an area of heavily documented abuse.

Addressing the problems created by the installment contract itself is a difficult task. As I noted earlier, under this form of sales agreement the purchaser does not have the use of the land while he or she is paying for it and is assured no refund if he defaults on any payments. This highly inequitable arrangement, which all too often lot buyers fail to understand until they have sunk thousands of dollars into the deal, can impose severe financial hardships.

The Minish bill would ameliorate the problems created by the use of installment contracts in several ways. First, it would give purchasers a three-year cancellation period in which to revoke contracts and receive a refund, unless they are given several important protections, including immediate transfer of title, equity while making payments, and partial refunds in the event of a default. This in itself would be

a definite benefit. Whether providing a three-year cancellation period would have the important secondary impact of reducing the commercial paper value of the contract so that companies would stop discounting it or using it to obtain loans is more questionable. However, based on our knowledge of the industry, this provision would certainly have a chilling effect on the companies' reliance on discounted contracts as a source of immediate cash, and thus on the use of installment contracts themselves.

The Minish bill also extends the statute of limitations under which purchasers can sue a subdivider for fraud. INFORM believes, however, that instead of the seven years proposed, that a more appropriate period would be 10 years. As I stated earlier, most of the subdivisions we studied offer lots on 10-year installment contracts and the land sales company's obligations often do not come due until the end of the contract period. Ten years is also the statute of limitations under standard real property law.

Were we at INFORM drafting legislation, we would prefer a law which set forth rigorous conditions that would have to be met before any land could be registered for sale. Such conditions, in addition to those addressed in the Minish bill, would include a subdivider having received all necessary government permits to complete basic improvements, lot prices which have been determined to be fair, just and equitable (as is the law in California for out-of-state offerings), and

at least partial refunds to any purchaser who defaults on an installment contract. On balance, however, we feel the Minish bill goes a long way toward protecting consumers against the most flagrant and prevalent land sales abuses.

I would like to conclude by telling you about a phone call I got a few months ago from a woman in New Hampshire. The woman and her husband had just sold a small family business and had been looking for some place to invest the proceeds, about $9,000. They thought of land, and accepted an invitation for an all-expenses-paid weekend in Florida to see a very large subdivision called Lehigh Acres. There they made a downpayment and signed an installment contract for a quarter-acre lot priced at $7,195. The woman called INFORM shortly thereafter because she read a magazine report on our research and became concerned about her investment. As I spoke to her, it became clear that she had not seen the lot she signed for, only one which the salesman described as similar to it; that the lot was not improved although she thought these improvements were promised in the future; and that she had no idea of how the price of her lot compared to prices of comparable lots on the resale market. She had received only the Florida Property Report, which is permissible in certain situations under current OILSR regulations, which gives only very sketchy information on these issues. Lehigh Acres was not one of the projects which we studied, so I could not give her detailed answers to her questions; I could only refer her to people who could. But from the description of the sales operation, the

location of the subdivision--in one of the most over-subdivided sections of the state--and what I knew of similar projects, I feared the worst for the future of the lot as an investment. I think this woman was concerned enough that she would go out and get the answers to her questions. If she did find that the land was a poor investment, she at least was only at the beginning of her contract payments, and so would lose only the $700 or so she had given over as a downpayment if she decided better of the deal.

My point, here, however, is that this woman and thousands like her deserve more protection than they now get. Like most Americans, she is a decent, basically trusting person. She is not unintelligent, but she does not operate on the assumption that others are out to cheat her, and she is not a gambler out to make something for nothing in real estate. She deserves to have, as Congressman Minish proposes, 30 days in which to talk to knowledgeable individuals about her purchase, and if she discovers problems, receive a refund. If she is paying on an installment contract which gives her no equity in the land she is buying, she deserves three years to cancel and get a refund. She deserves to have money escrowed to guarantee the completion of the basic services to the lot, and she deserves to receive a federal Property Report.

We strongly urge you to oppose the Nelson amendments in Conference--amendments which would take away the property

report for thousands of consumers--because consumers need this protection and because the administrative regulations proposed by OILSR will shortly accomplish the same basic goal--that of helping small business--by a better means. We also hope you will give serious consideration to the Minish bill, and to certain provisions of the original Administration bill which we do not have the time to discuss here. The entire area of land sales regulation deserves your serious and thoughtful review.

Chairman ASHLEY. Well, we are very grateful to you for excellent testimony which will be extremely helpful to us in the days ahead.

Let me ask you a little bit about INFORM, which you describe as a nonprofit, public interest research organization that studies the impact of business on society.

Who funds INFORM?

Ms. HALLORAN. It is partially foundation funded and it is partially self-supporting from sales of publications and reports.

Chairman ASHLEY. And you indicate that you have a subscriber list of over 100 major corporations, institutions, and Government agencies.

Do these contribute to the support of INFORM?

Ms. HALLORAN. Yes. We have a sliding scale of subscription rates, ranging from $25 for individuals up to $500 for large corporations.

Chairman ASHLEY. Is ITT on your list?

Ms. HALLORAN. No, it isn't, although General Development is.

Chairman ASHLEY. I should think it would be worthwhile for them to be on your list.

Ms. HALLORAN. Well, I would think so.

Chairman ASHLEY. Is there any way of getting at the instances of fraud or deceptive practices and quantify it in any meaningful way?

Ms. HALLORAN. I can't think of one offhand.

Chairman ASHLEY. I mean your methodology has been to focus, and understandably so—I think it is a perfectly sensible methodology—to focus on 18 or 20 different-sized land development companies and corporations and to bring under a magnifying glass the nature of their operations.

And that, of course, gives us a body of information which we otherwise would not have. It is enormously valuable to the Minish subcommittee and to the Congress generally. We are often faced, of course, and will be in these hearings, with the assertion that the instances of fraud are blown out of proportion and there won't be any substantiation of that, I suspect, in that it is extremely difficult for you to quantify the instances of fraud and deception.

All that can be said, I take it, is that we know that it does exist and it exists with some degree of regularity.

Ms. HALLORAN. I suppose one could set up a group of investigators and send them out to listen to sales pitches. We did a little bit of that at INFORM on a spot basis, and I can report to you that at the one land sales dinner that I went to, a salesman blandly assured me that there was skiing at a subdivision in New Mexico in the middle of the summer.

When I indicated that I was interested in skiing, that happened to be the one dinner I went to—if you wanted me to think for the record of a possible method of quantifying this better, I would be glad to.

Ms. ALLAN. I think, in addition to trying to quantify actual examples of fraud, it would be possible to at least document a lot of the cases of dissatisfied consumers because while we were doing our research, we found in virtually every State office, as well as the OILSR office, boxes and boxes and boxes of letters. And whether each of these letters is a documentable fraud may be questionable, but in point of fact, they are a definite sign of some communication problem between the purchaser and the salesman.

Chairman ASHLEY. Ms. Hynes, I did not mean to proceed without hearing from you, and inasmuch as you are an assistant U.S. attorney from New York and have devoted considerable time to the subject area, give us the benefit of your thoughts at this time if you would.

STATEMENT OF PATRICIA M. HYNES, ASSISTANT U.S. ATTORNEY, SOUTHERN DISTRICT OF NEW YORK

Ms. HYNES. I would be happy to. Just in response to your last question about whether we could quantify the fraud, in the case that I investigated and prosecuted, which was the *Rio Rancho* case, this was a very large developer located in New Mexico. That particular subdivision, Rio Rancho, was located in New Mexico. AMREP is the parent company and has other subdivisions.

Our criminal prosecution focused on the Rio Rancho subdivision in New Mexico, which was the largest 91,000 acres. The basic selling device and technique used there was to take these 91,000 acres, subdivide it into lots, sell off these raw unimproved desert lots as a safe and sound financial investment.

That was the primary thrust of the sales pitch. That was inherently fraudulent and there were many other large developers who had vast tracts of lands, and I am really now talking about the really large developers, with 100,000 acres and more, who sold off subdivided lots as safe and secure financial investments which could be resold at a profit.

When you are talking about quantifying fraud, that type of operation is inherently fraudulent because when you are selling a subdivided lot, one of several hundred thousand lots, as a safe and financial investment, a subdivided lot in that situation is not an investment vehicle as these companies well knew. There was no resale market for the lots. There wasn't over a period of 15 to 20 years. And there is no resale market today for those lots.

So when you deal with that type of sales practice, which was prevalent in the sixties on into the seventies, and when we brought our criminal prosecution against Rio Rancho Estates and showed them that we meant business, that that was a fraudulent operation and a fraudulent way of selling land, I think, and at least I hope that the practice, if it has not stopped, it has at least made serious inroads into that type of sales operation.

But let me just give you some of the background of the *Rio Rancho* prosecution.

The company bought 54,000 acres of land in 1961. It paid $178 an acre for this land. They probably overpaid at that, but they paid $178 an acre.

They began to subdivide it and sell it off throughout the country. The sales effort was very successful. They sold through the mail in the early sixties and they started to advertise on radio. Then they started these dinners, which were a huge success. They would get people into a room, offer them a free chicken dinner. It escalated to a steak dinner at some point, and they made money.

They increased the sales price of the property, the property that they bought for $178 an acre. At the time we filed our indictment in 1975, it was being sold for up to $12,000 an acre—raw, unimproved

desert land. They had not done anything to that property other than blade in a dirt road.

They started these sales dinners in the midsixties. You would get salesmen up at the front of the room and it was a real hustle operation. high pressure sales. Get them to sign the contract that night—they could not even leave with the contract and think about it overnight. They had to sign it that night.

There were followup calls the next morning to deal with buyers' remorse. It was just a tank operation. They were rolling down the avenue and these people were just right in the middle being mowed down. And the sales training manuals had it down to a science and you had to follow the practices of the company.

And you would get—at that dinner, there would be salesmen who would be jumping up calling holds on property. The whole idea was to create this enthusiasm and to get people to believe that they were getting in on the ground floor.

Representations were made in sales literature that this land was increasing 25 percent a year. And basically, it was geared to the blue collar, unsophisticated buyer, although I will tell you, there were some professionals, some lawyers and accountants and doctors who fell for it as easily as the blue-collar worker. But primarily, it was geared to the blue-collar worker.

New York City was a huge marketplace for this sales effort, as other cold climates were as well, but New York was their primary market.

When the salesmen got the couple at the table, did the high pitch—they saw the films, were told in their advertising literature that they could make 25 percent a year as a financial investment, the sale was made.

In Rio Rancho, the evidence at trial showed that the company, while they represented themselves to these purchasers as community developers and you will hear a lot of talk, I am sure, from the land companies who will talk about themselves as being land developers and community developers. I disagree when you deal with really the large ones because they are not community developers; they are land subdividers. They have a small community as a secondary effort which aids their sales effort in selling off the subdivided lots out in the boonies. But their primary business is subdividing and selling raw, subdivided lots.

They are not community developers.

Now when a person bought the land, he was told that it was a safe financial investment and could be resold at a profit because there would be a demand for it.

Now in the Rio Rancho situation, they were told that Albuquerque was bursting at the seams and could only grow through that property.

Now there is another large subdivision outside of Albuquerque to the south, 40 miles, who gave the same pitch, only it says that Albuquerque is bursting at the seams and can only grow south. and that is why it is a good, safe financial investment. And we are talking about Horizon Corp., with 170,000 lots sold off, mostly to people out of State.

The Rio Rancho subdivision sales amounted to $170 million. Now I mentioned that the land that they bought in 1961 was bought for $178 an acre. Ten years later, 1971, they bought another 37,000 acres of land

which adjoined their property. They bought that for $180 an acre. Ten years later, $2 more an acre. I mean that wasn't even abreast with inflation. And they were selling it to the public as a safe financial investment that was appreciating at 25 percent per year.

Well, it wasn't appreciating even $2 an acre over 10 years for the company to buy the next 37,000 acres of that land.

Now they were successfully prosecuted on the theory that that land was not a safe financial investment and they knew it, and they misrepresented the facts.

Now AMREP and Rio Rancho came back and said, "But we have a community out there and we are building homes." Well, the evidence at trial showed, we found an internal management report, a report that was done for management, the management of Rio Rancho and AMREP never believed that more than 5 percent of the people that they sold land to would ever move to that property, and that was their basic operating premise.

So they set aside, and this is really how the very large subdividers operate, and this is what you have to be very careful about, they set aside a piece of land which this company owned—they don't offer it for sale nationwide. And they will put some utilities in that land and they will say to that 5 percent or less who want to move to the property, we will take one of the lots out in the boondocks and exchange it in and you can move into our building area and you build a house and you've got water, electricity and you are happy and we are happy.

That person is happy if he only bought one lot because he can only exchange one lot and build a house. If he bought 10 other lots for his financial investment, he is not happy. The company is happy because he then takes—they then take that small area, put it on film and use it at their sales dinner and say, "This is what we are going to do to the entire property."

Well, they are not. They know they are not. They don't have the capability because they've sold off the rest of the land to people in 37 States.

In the *Rio Rancho* case, they sold off 77,000 lots to 45,000 purchasers in 37 States, for a total sales price of $170 million. They paid a total of $18 million for that land and sold it for $170 million.

Now what you really have here in terms of trying to protect the consumer, when we come back to what we learned, having had this statute on the books for 10 years, I think that we have learned several things.

One, that the problem of fraud in the land industry is with us. It has been, it continues to be, and something has to be done about it.

We have learned lessons, we have taken some steps forward, but there is still much to be done.

One, you've got to enforce the law and I say in appropriate cases, you have to bring criminal prosecutions. That is the strongest deterrent to a land developer or a land subdivider, to be on notice that this is taken seriously, that he faces possible criminal jail time if he is going to violate the law and defraud the public.

Now the idea that there is a sucker born every day, I probably would agree. But it does not give you the right to go out and to just steal from that person.

In addition to really effective enforcement of the laws, I think that the laws must be strengthened. The Interstate Land Sales Act needs to

be strengthened in very precise ways, many of which are covered in the Minish bill.

For example, the escrow situation. In the *Rio Rancho* case, they advertised themselves as a master planned community and the investment value of these lots was supposed to come from the fact that they were going to place utilities in the land that you are buying. You were paying for it, God knows, I mean you were paying $6.000 to $12,000 an acre because you thought you were going to get utilities.

Well, it turns out you don't get utilities unless you want to build a house, and if you want to build a house, you don't build it on the land that you bought; you have to go into the company building area.

And to add insult to injury, you pay more to go into the company building area because it is a nice lot. It sure is. It is the only place you can build.

So you get to the situation where if you had the companies required to place money in escrow for those utilities, that would go a long way toward preventing fraud.

Now when the developers come in and say to this subcommittee, we can't do it because it is too expensive, then I say look very closely at what they are telling the consumer.

If they come into this subcommittee and say, we can't do it because the bond is too expensive and a bonding company thinks it is too risky, then I say if it is too risky for a bonding company, then it is too risky for the consumer and the consumer should not be in the position of having to buy that lot without any protection, believing the pitch that the company is making to them.

Now if the company is going to start making promises about utilities, which is really the situation that is covered in Congressman Minish's bill, if they are going to say they are going to put utilities in, then they have to put the money behind them, what they are saying, because if you had a situation in Rio Rancho, if their advertising was true, if there was going to be a demand for these lots, then Rio Rancho could have slowly placed the utilities in those lots and sold off those lots and made a profit.

If Albuquerque was, in fact, bursting at the seams and there was no place to grow, except through their property, they could have made the money. Those claims were not true.

So I say that for a developer who is not able to put money in escrow to back up his promises, then we had better be very careful about what he is selling and what he is promising to the consumer public, because if it is a legitimate operation, if there is the demand there, and if that situation is going to be that the utilities are going to be in place, there should be a situation that can be worked out where there will be financial protections for the consumer who is buying that property.

The second thing that I think that we really have to deal with in terms of these selling efforts, if now everyone is buying land or subdivided lots at these sales dinners or through the mails or through these mass marketing techniques, is that we absolutely need a cooling off period.

Now whether it is the 14-day cooling off period proposed by HUD or the 30-day cooling off period proposed by the Minish bill, a basic minimum has got to be the 14-day.

I think that the longer period of time, the better.

But when you give a purchaser a property report, you cannot expect any purchaser to absorb and intelligently understand the information that is in that property report when he is given the property report and asked to sign a contract the same evening.

So we absolutely need the cooling off period.

The other situation that really must be addressed by this subcommittee in terms of making the Interstate Land Sales Act effective is the statute of limitations.

In the *Rio Rancho* case, we had a criminal conviction affirmed on appeal. There were class actions brought immediately after the indictment was filed. However, the indictment was filed in 1975.

Under the HUD statute as it is presently on the books, there is a 3-year statute of limitations which meant that only the people who had bought the land in the last 3 years had a right of action to be included in that class, even though the entire—actually, the class was composed of all the purchasers who bought that land as a financial investment. Most of them were cut out of the class because of the statute of limitations.

I would say that in a fraud situation, there is no reason to have a cutoff point where you are excluding from the class of defrauded purchasers people who bought their land 5 years earlier or 6 years earlier or 7 years earlier.

In a fraud situation, if you have a provable fraud, there is no reason not in include in that class all of the defrauded victims, regardless of the statute of limitations.

But to start arbitrarily saying 3 years after you buy your property, you have no right of action is really a serious abuse. And I would agree with the comments of Ms. Halloran from INFORM, that it really is, not only is it not a protection, but it cuts off substantial rights of the consumer, particularly in a fraud case.

Chairman ASHLEY. Do you have any judgment as to whether or not the regulatory and the enforcement functions should be separated?

Ms. HYNES. I don't know whether they should be separated. I certainly think there has to be more done in terms of enforcement, in terms of the *Rio Rancho* case that was developed through a grand jury. There were very substantial benefits to proceeding in that way.

Chairman ASHLEY. Well, who referred that case to you?

Ms. HYNES. No one referred it to me.

Chairman ASHLEY. It did not come from the FTC did it?

Ms. HYNES. No. I started it. It was a situation where I was chief of the consumer fraud unit in the U.S. attorney's office, and I was looking for areas where there was not enough, where there was a Federal problem, but that the Federal Government had not done anything.

You find many agencies that are charged with enforcement. Few in the larger white-collar cases really don't get involved, and it is more appropriately handled through a grand jury, so I began the investigation into the *AMREP* case based on a survey of trying to find out what were the problems of consumers in the New York area and what was the largest category of problems, and I found out that land was one of them.

Chairman ASHLEY. What you are really saying is that neither HUD nor the FTC nor the SEC referred that particular case to you.

Ms. HYNES. That's correct.

Chairman ASHLEY. Have they ever referred any matters to you?

Ms. HYNES. Right now we are working with HUD jointly in an investigation that we had initiated and asked them to come in and help us with; in terms of specific referrals, I would have to say no. But I think that the enforcement effort has to be shouldered, perhaps by other law enforcement offices, such as the U.S. attorneys' offices.

Now, the Southern District of New York where I come from is a very large office, and we have good resources, but we committed substantial resources to that investigation. It was the largest fraud case that was ever brought by the U.S. attorney's office in the Southern District of New York, and we bring very large cases in the district, and the commitment of resources was tremendous, but we felt that the problem was tremendous, and it warranted that commitment of resources.

But I think that you really have to address the problem of effective enforcement, because the industry is going to realize that if the laws are on the books and they're not enforced, it doesn't make a bit of difference anyway. You can put a lot more laws on the books and if they are not enforced, it doesn't make any difference.

Chairman ASHLEY. Well, I can see that. But of course, from the Federal standpoint we are looking at divided jurisdiction.

Ms. HYNES. I don't think so. I think that in Congressman Brown's question this morning about does the FTC have jurisdiction, the FTC statute which I am familiar with, because I dealt in the U.S. attorney's office with the FTC and prosecuted some of their cases civilly, the FTC has their basic statute, is to prevent fraudulent and deceptive acts and practices in commerce.

Now, that is very broad. They can get into the land business which they did. I guess they could even get into the SEC if you started having television ads for brokerage houses that were fraudulent and deceptive. The point is that I don't think that the FTC does have exclusive jurisdiction, and I don't think we are taking anything away from the FTC in asking HUD to start to set standards for advertising and to beef up their enforcement effort in the area. I think you need——

Chairman ASHLEY. Well, it is a divided responsibility is what you are saying, which is just what I finished saying. Isn't that what the FTC is supposed to do?

Ms. HYNES. No. I think you need an agency that has expertise in the area, and HUD has that expertise and should build upon the expertise and then go after.

Chairman ASHLEY. I don't understand. I thought the FTC had expertise with respect to fraudulent advertising and that kind of thing.

Ms. HYNES. No; I am talking about an industry. I think that FTC theoretically has the jurisdiction, but I think HUD also has jurisdiction?

Chairman ASHLEY. So it is divided jurisdiction. And is that good or is that appropriate and beneficial? That is what I am trying to get at. There doesn't seem to be a lot of effectiveness at the present time.

Ms. HYNES. That I would agree with.

Chairman ASHLEY. Is this because it is divided jurisdiction?

Does anybody want to comment on this?

Ms. HALLORAN. Yes; I think there are a number of problems here. The first one is that although the FTC decided to get involved in the

issue, my understanding is that they have made a decision to get uninvolved and are rapidly phasing themselves out of it. They brought a couple of cases. Those cases were presumably leading to a trade regulation rule which would have and could have set very valuable consumer standards for the industry.

But the procedure for doing that takes several years and a commitment of resources on their part, which they feel they don't have, and it is my understanding that they are not going to proceed with the trade regulation rule, and they expect OILSR to be handling the problem from now on.

I think also OILSR's problem in enforcement is also one of lack of funds and lack of resources. Before you start thinking about jurisdictional problems, I think these agencies could all be doing a lot better job if they had a little bit more money. The question is not do too many people have the powers, but does anybody have the means to use the power.

Chairman ASHLEY. Well, I disagree with you there. One of our problems is we don't run our Government all that effectively, and rather than fund a number of different agencies and continue to give them more money, my thought is that why not centralize responsibility in a specific area, rather than have a proliferation of agencies that claim the same kind of responsibility and come to OMB or others to beef up their budget so they can each do their thing, generally overlapping each other.

That doesn't make any sense to me at all, unless there is a set of circumstances which appears to justify it.

Ms. HALLORAN. Well, unfortunately at this point, the Federal Trade Commission has the powers to substantively regulate the industry, but it doesn't want to commit the resources to it at this point.

OILSR, on the other hand, lacks those powers, although you could give it so that if you gave it more resources; it needs a little more authority.

Ms. HYNES. Mr. Chairman, I would just respond to your question that in my view it would be more economical and more effective to have the jurisdiction centered in HUD to give them the resources and give them the power to set standards for advertising and to give them the enforcement effort. And not to have it split up between HUD and FTC.

There is a considerable amount of expertise involved here, which is the prerequisite to effective enforcement. I just want to make one comment on the Minish bill, where I disagree with one of the provisions in that bill, and that is to submit the advertising to HUD for review.

I believe that HUD should have the power to set standards for advertising and be able to regulate advertising through setting standards. but in my experience in prosecuting the *Rio Rancho* case, one of the biggest problems we ran into in that prosecution was that in New York State, New York State has a very strong land regulatory scheme. And they require the developer to submit their advertising to New York State.

The developer did that. The AMREP Co. and Rio Rancho submitted their advertising, but nothing was done. Nothing. The advertising went on. It was fraudulent for 15 years, and it was used for 15 years, and there were no substantive changes made that had any effect on the

consumer. But the company was able to say to the consumer: We have submitted every piece of advertising to the State for your protection.

And I am very concerned. If that same situation is going to be the factor when you are submitting it to HUD, that you are going to ask for a lot of people to have to review this advertising, really not knowing enough facts upon which to make any effective changes in it.

And there you are going to create the bureaucracy. So, I think that you should get away from having HUD reviewing advertising, because it is going to be used against HUD and convince the consumer that he is protected, when in fact he is not.

So, I would oppose submitting the advertising to HUD. I think it is not efficient. It will be costly, and it will not be beneficial ultimately to the consumer.

Chairman ASHLEY. You would keep that within the jurisdiction of the FTC?

Ms. HYNES. No; there are two separate things. Should HUD be able to issue regulations to say you can and you can't say this in advertising? Yes.

Should advertising be physically submitted to HUD for a review? No; because then you get into the situation of having the developer or the land company say: It has all been submitted for your protection, and you are protected, because HUD has taken a look at this.

So, I say let them regulate it, but don't let them review it. It is not cost-efficient, and it doesn't help the consumer in the long run.

Chairman ASHLEY. What about the property report? We hear from some quarters that this doesn't really provide much help to a purchase, because that purchaser is drowned in information that he or she does not understand very well. I wonder if you have a judgment as to whether or not the proposed regulations do enough to simplify the information that is required to be of some positive help?

Ms. HALLORAN. Yes; we think the proposed regulations are pretty good, as a matter of fact. There is a certain point beyond which information on purchase of land can't be made simpler. There are just a lot of complex facts that you should know before you purchase land.

And I think OILSR is now doing a pretty good job of trying to write their regulations so that these property reports will be as understandable and clear and comprehensible to the average person as possible. And I think they are also pretty complete.

Chairman ASHLEY. Do you think that the installment sales contract should be banned or that it should be modified or that consumers simply be warned of the pitfalls apparent in that type of sales contract?

Ms. HALLORAN. I don't think just warning them will do the job, and I can't really see how practically such a warning could be administered. I think the installment contract is inherently—well, in fact, in some of the cases, the FTC has brought, they have described the current installment contract arrangement as an unfair trade practice: that is, in a situation where the consumer gets no refund if they default on payments. That I think is an important minimum. I think the installment contract is structured so that the consumer does have no rights and no right to a refund is, in fact, inherently unfair.

Chairman ASHLEY. Well, that is what I suggested this morning that might be a modification along the lines that the State of Ohio has followed. At least, that is my understanding in the land contract.

Ms. HALLORAN. It is our understanding that the State of Ohio does do this, and it is very unusual in that regard and is to be commended for it.

Chairman ASHLEY. I was surprised Ohio did it. It is one they slipped through the legislature.

Ms. HYNES. Mr. Chairman, the situation you described this morning about the 1929 situation where all of the provisions in the contract really were against the seller and in favor—I mean, against the person who was purchasing the land and in favor of the one who was selling it, is really the situation that pertains today in the contracts.

Chairman ASHLEY. Indeed.

Ms. ALLAN. One of the other problems——

Chairman ASHLEY. I was just going to say that there is a possibility of modifying the provisions of an installment contract so that that form of financial tool can be used.

But obviously, on a sounder basis—I mean, we are really going pretty far in the eyes of the honest land developer when we say we need 15 to 30 days rescission right, and no installment contracts. I mean that honest developer—and I suspect that they probably outnumber the dishonest ones—is probably paying a fearful price for the fraternity that he is running with and he happens to be operating in.

Ms. ALLAN. One of the things——

Chairman ASHLEY. All I am saying is: If we could be sophisticated enough in our legislative efforts that the sound, the sensible, the properly motivated land developer that wants to operate in an honest fashion could be accorded legislative treatment that wouldn't really presuppose that he is of the breed that we have been discussing in our hearings today.

That is pretty hard to do, but it does seem to me that there is that kind of concern that we should try to be responsive to.

Ms. ALLAN. We found that the developers who have a real product to sell, in fact, do modify the use of the installment contract to conform with the quality of that product, so that, for instance, the Deltona Corp., which is one of the ones we studied, sells contracts of varying durations, so if the purchaser wants to use his land within 2 years, the Deltona Corp. sells it on a 2-year contract and promises all improvements at the end of 2 years and turns the land over and does that for a 4-year and a 6-year and an 8-year period, which is a way of—an internal modification which we found pretty good.

The same thing with DART Industries: we found they actually wanted to get the land used. They wanted people to come to it. They want people to live on it, and they do the same thing.

On the other hand, we found that in the few States that have laws which regulate installment sales, all of those laws exclude installment land contracts. They apply to appliance contracts, every other kind of installment contract, but not land, and we think that perhaps if these laws could be modified to include the land contract, maybe that would go a long way toward helping the problem.

Ms. HALLORAN. There is a way of paying for land on time, which is perfectly legitimate and everyone knows about it. It is known as mortgage. If installment contracts could allow a person to have equity the way you do in a mortgage, it would be a far better instrument.

Chairman ASHLEY. What is required in the registration statement? I am a little unclear on that.

Ms. HALLORAN. That is probably a better question to ask HUD, but it is a lot of information which the examiner uses to see whether the property report is true.

Chairman ASHLEY. I see. So, there is a real purpose to be served by this registration statement, in your judgment?

Ms. HALLORAN. Yes. I think it is an open question, however, whether all of the material now required in the registration statement is really useful and necessary. They do fill drawers and drawers at HUD, and I think in the proposed regulations HUD is making an effort to try to cut down on some of the paperwork and perhaps that could go further.

Chairman ASHLEY. Congressman Minish's bill contains a provision permitting rescission at any time during 3 years, if certain conditions aren't met, such as if the contract was signed on the same day the contract was offered and the developer provides financing, and so forth. The industry, and again, this is presumably the honest participants in the industry, have stated that this provision would simply dry up financing.

I wondered if you agreed with that and whether you think the proposal is valuable.

Ms. HALLORAN. I imagine it would dry up financing in some cases and not in other cases. Banks who do make loans to businesses to spend money on something where they think there is a reasonable assurance that the company would be able to make money back—in other words, if the risk is reasonable, a bank will make a loan.

I would think that a legitimate, honest developer operating on a reasonable scale ought to be able to obtain bank loans to finance basic services and so forth to obtain the capital he needs, in effect, an installment contract.

The subdivider is borrowing the money from the consumer to pay for improvement and to build the subdivision. Why should the consumer have to assume this risk? This doesn't seem fair to me, particularly when the consumer is not necessarily aware of the fact that he is playing this role.

Chairman ASHLEY. Do you know how many cases have been prosecuted in this general area? The complaint has come to us that there has not been much in the way of Government prosecution, and that HUD does not prepare its cases well.

Ms. HALLORAN. Perhaps also Ms. Hynes could comment on that, but the Federal Trade Commission has brought, I believe, less than a dozen cases, the SEC a couple.

Chairman ASHLEY. Well, if there are 3,000 complaints a year, which I think was your testimony, and if my complaint mail is any indication, there are more than just a few. There are 3,000 that indicate there is some legitimacy to the beef.

Ms. HALLORAN. I would think so. I would think, in fact, that based on our research it is quite possible that a prosecution similar to the one against Rio Rancho could be brought against quite a number of the companies we studied. This hasn't happened. Partly it is a question of resources; partly it may also be a question of the way efforts are directed and resources are directed.

Chairman ASHLEY. That is very discouraging to me, frankly, because I have to wonder how advantageous it is to consider sweeping changes in the law when we haven't bothered to prosecute on the basis of the law that is on the books.

I mean, how do we have any knowledge or judgment as to how the industry and the bad players in the industry would have responded if they were put on notice, properly put on notice, not just by one case self-generated by a charming and delightful and obviously assiduous assistant U.S. attorney, but by HUD referring cases with the insistence that prompt prosecutions be brought.

I just wonder how the industry would have responded over the past 10 years had there been a vigorous enforcement effort and a real commitment to stopping these practices.

Ms. HALLORAN. I think that is a very legitimate comment; however I would say that both are needed. Enforcement is a very expensive one by one process, and while there is an important deterrent power to it, the companies know that the Government can afford to bring in only so many cases a year. I think there also needs to be substantive protections that have a much broader impact.

Chairman ASHLEY. Well, we will never know, but what we do know is that the changes in the law that are being suggested are going to apply to the innocent, to the responsible and to the honest participants in the industry as well as the dishonest ones, and they are being in some respect unfairly burdened not only by the conduct of others in their industry who aren't honest, but by the failure of the bureaucrats to properly enforce the law. Had the law been enforced, the need for corrective legislation would be less.

Ms. HYNES. Well, I am not sure about that. I think that the lesson in the *Rio Rancho* case was that one—let us take some of the very specific highlights of the proposals here—the cooling-off period.

If an honest developer has a good product to sell, if somebody gets 2 weeks to think about it, presumably, he will still be as enthusiastic and want to buy that property 2 weeks later.

Chairman ASHLEY. I would say that's fine from your standpoint and mine, but if we were in the private sector running one of those companies and trying to do it honestly, we would find that this created uncertainties that carried over into their ability to finance their product. I mean, we are introducing additional uncertainties.

Certainly it may well be in the public interest, but to say rather blithely that the honest operator simply isn't going to be impacted by the changes that are proposed, strikes me as being—going maybe a step beyond the realm of reality.

Ms. HYNES. I am not saying there is no impact. I am saying that on balance the impact is not so terrible that it would warrant not passing the legislation. I think that while there might be uncertainty for 14 days, if that is the period that we focus on, and take the shorter period of time, that there is more to be gained by that 2 weeks of uncertainty and in trying to extend the statute of limitations for fraud cases where it is really a fraudulent situation, and you are not talking about the honest——

Chairman ASHLEY. But you can't have it both ways, Ms. Hynes. If we are not going to enforce, then we are asking the honest operator to suffer the uncertainties and the changes in his operation which are not changes for the better, for no reason whatever.

I mean, if we are not going to enforce, then there has been no purpose in adding these burdens on the honest operator.

Ms. HYNES. Well, I agree with vigorous enforcement. But I think there are some loopholes that need to be plugged, that would not harm

the honest operator and would benefit the consumer. I mean, there are loopholes. We have certainly learned the lessons of where they are, not all of them, but a good number of them.

Chairman ASHLEY. Well, I am at a bit of a quandary on that. I suspect from your standpoint there is every reason to accept that as being persuasive. But I think it is very difficult to be able to reach a sound judgment on a piece of legislation that has not been enforced. And now we come in and say, well, we can improve the law.

It just doesn't make any sense to me in many respects.

Ms. HYNES. Well, I think—you know, you can look at the theory of whether you look back and see whether the fraud has been committed or whether you have preventive legislation—and I think in this area, when you are talking about SEC and the Interstate Land Sales Act, which was fashioned after the SEC statute, that you are very much talking about preventive legislation, in terms of trying to deal with the situation before the horse is out of the barn and not deal with the situation looking back and saying, now, what can we do and should we have effective enforcement.

Yes, we should. But I certainly think that we should also focus on preventing these situations from happening again in a balanced way, and in a way that is not going to be overly burdensome to a legitimate operator. And I think that some of these proposals would not be really opposed by the legitimate operators. I don't think it would have a great deal of effect on some legitimate operators.

I would be encouraged—I mean, I would be interested to hear from some of the developers who don't rely on the tactics that the less reputable ones relied on. I think the impact of these proposals would not be very substantial on them.

Chairman ASHLEY. Well, I will tell you what I will do. I will send you their testimony, and it will be soon, because we intend to hear from them within the next day or so.

Ms. ALLAN. Could I add one thing to what Ms. Hynes said? In the case of the subdivisions that we studied, where a company was prosecuted, be it by the Federal Trade Commission or the SEC or the district attorney of Pueblo County, in most cases, except for the criminal case, the remedy that resulted from the prosecutions, the remedies were very much what is proposed by the Minish bill: Money was put in escrow, the company had to provide the funds for the services that it had promised and not put in, advertising had to be changed to conform to the reality.

So, in fact, the result of those cases was just to create for a specific subdivision what the Minish bill would create for the whole industry, which would be good.

Chairman ASHLEY. Well, that is a pretty good point. You're stipulating in advance that there probably won't be much enforcement, so you just write the conditions into the law that take that into account. But you do the same thing when you are talking about the bureaucracy and the fact that they could not be trusted to review advertising. Because obviously you are saying that gives the sales pitch fellow an opportunity to say: Well, we have submitted to HUD the advertising. And you are saying is: Yeah. And you know where that advertising is? It is what you are saying is: Yeah. And you know where that advertising is? It is in a file drawer some place, and somebody is out for a coffee break.

Well, you have been very helpful in your testimony, and I mean that. And I always play devil's advocate for at least 2 or 3 minutes.

The subcommittee will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 3:15, the hearing was adjourned, to reconvene at 10 a.m. on Wednesday, August 2, 1978.]

THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AMENDMENTS

WEDNESDAY, AUGUST 2, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT,
Washington, D.C.

The subcommittee met at 10:10 a.m. in room 2212 of the Rayburn House Office Building, Hon. Thomas L. Ashley (chairman of the subcommittee) presiding.

Present: Representatives Ashley, Gonzalez, AuCoin, Brown, and Kelly.

Chairman ASHLEY. The subcommittee will come to order.

The hearings on the Interstate Land Sales Full Disclosure Act will continue this morning. During this session we will hear from the Honorable Toney Anaya, attorney general of New Mexico; and Mr. James Barnes, deputy attorney general of the State of Nevada, representing Attorney General Robert List. And we will also hear, following that, from Mr. Herman Smith, vice president of the National Association of Home Builders; David D. Roberts, vice chairman of the legislative committee, National Association of Realtors, accompanied by our old friend, Al Abrahams, vice president for Government affairs; and Mr. J. B. Belin, Jr., president of the American Land Development Association.

I have a slight problem this morning, gentlemen, in that a number of members will be somewhat delayed in getting here. But they will, as their other committee responsibilities permit them, join us.

I have a funeral at 11, so I am not going to be able to be with you all morning. I will say to all of the witnesses that I read your statements last night, each and every one in their entirety. While I may not be here to put questions to you and discuss some of the points raised in your testimony, you can be sure that I will direct questions to you in writing and will, hopefully, receive responses in a timely fashion so that they may be a part of the record.

I think we will proceed, then, with the testimony of the distinguished attorney general of New Mexico, the Honorable Toney Anaya.

STATEMENT OF HON. TONEY ANAYA, ATTORNEY GENERAL OF THE STATE OF NEW MEXICO, ACCOMPANIED BY HON. JOE CANEPA, ASSISTANT ATTORNEY GENERAL

Mr. ANAYA. Mr. Chairman, thank you very much.

I am Toney Anaya, the attorney general of the State of New Mexico, appearing here in my official capacity.

For the record, I would also like to introduce one of my staff members, Assistant Attorney General Joe Canepa, who works in the area of land fraud.

Mr. Chairman, I would like to submit my entire statement for the record, as well as a resolution that was adopted by the National Association of Attorneys General in June of this year, endorsing some of the legislation.

Chairman ASHLEY. That will be done.

Mr. ANAYA. Thank you very much, Mr. Chairman.

Mr. Chairman, I just will highlight my statement.

Land fraud is a national problem, with its victims increasing by the day. The victims of fraudulent land schemes are scattered throughout the country, even though much of the land itself is in New Mexico. We have estimated in New Mexico, Mr. Chairman, that we have over a million and a half subdivided acres, and in the past 15 years we have estimated that approximately $1 billion in subdivided land sales have been made in our State.

Mr. Chairman, of the acreage in New Mexico, we estimate that roughly about a half a million subdivided lots in New Mexico are presently registered with the Office of Interstate Land Sales Registration and, Mr. Chairman, no one can really estimate how many unregistered subdivided lots there are in our State. Just taking the registered lots alone, we estimate that if they were all fully developed and a family of four moved into a subdivided lot, that our population in New Mexico would almost triple overnight. This is a preposterous proposition in itself, but, nonetheless, new subdivisions are being carved out almost daily.

I think if investors really recognized the extent of the land that is already subdivided there, I do not think that very many investors would be too anxious to buy land in New Mexico. Most of this land, Mr. Chairman, is in remote areas; it is very dry with sparse vegetation, not even fit for cattle-grazing in most cases.

Chairman ASHLEY. Let me interrupt you, Mr. Anaya, and ask you why your State legislature tolerates a situation of that kind?

Mr. ANAYA. Mr. Chairman, unfortunately—and this is an indictment on my State legislature——

Chairman ASHLEY. Well, we will not let the word get back to the them. [Laughter.]

Mr. ANAYA. I am sure that it will, and it has. But it is no secret. I have made this statement back home. Our State legislature has, in the past, been very heavily lobbied by the real estate industry. The real estate industry is a very large and powerful lobby in the State, and because of that lobbying, the State legislature has not come to grips with the problem. In fact, a law which was passed 3 years ago gives us some protection, but it was adopted only after a great deal of compromising and a great deal of backroom negotiation. But even the act that we presently have is a very weak, one, with hardly any sanctions at all.

Frankly, one of the reasons that I am here today is to plead with this subcommittee and plead with the Congress to give us some Federal legislation.

Chairman ASHLEY. A legislative body that is not subject to pressure of any kind. I can see your point. [Laughter.]

Mr. ANAYA. Mr. Chairman, I would hope that some of the pressures could be diminished here and watered down a little bit.

Chairman ASHLEY. I will tell you this: There is only one on this panel before you that is subject to any pressure at all. [Laughter.]

Mr. ANAYA. Hopefully, Mr. Chairman, as the pressures get away a little bit from the local front, we can perhaps dissipate some of its effects.

Mr. Chairman, there is one subdivision in New Mexico which is probably the largest subdivision in the Nation, and yet, after only 15 years of land sales, it now has less than 2,000 residents and is only 1 percent developed, with 99 percent of the land having no resale market whatsoever, and much of it being described as a negative investment.

This kind of development has led to literally thousands and thousands of complaints to my office. Most of the complainants are elderly individuals living in the East who purchase land as an investment or for retirement and then, after some 8 or 10 years of making regular monthly payments, they find out that really the land is not suitable for development, that the land is not really the dream that they had hoped for.

Chairman ASHLEY. Is this subdividing going on today?

Mr. ANAYA. Mr. Chairman, it is going on daily. We have been able to bring a number of actions through my office which have slowed down the progression of illegal subdivisions, but it is still going on. There is a great deal of subdivided land that was subdivided years ago that is still being marketed here.

In fact, just in the past couple of weeks, we brought an almost 300-count indictment against one subdivider from Baltimore, Md., who was selling land in New Mexico to individuals in the Washington, D.C., area and enticing them to buy the land by claiming that it had oil and gas deposits on it, and by using all kinds of schemes.

Some of the land, Mr. Chairman, will not be in actual development until about the year 3000, and yet people are being sold land with the thought that they might be able to retire on it. Unless they plan on being over 1,000 years old, Mr. Chairman, it is obvious that they would have no hopes of ever being able to realize their dream.

The types of schemes and techniques that are used in land fraud are unlimited. It occurs not only in the sale of the raw land, but in the enticing of investors into the land companies and in the financing and the sales operations.

Most of the misrepresentations that my office has proceeded against have involved misrepresentations concerning, among other things, clear titles, location of lots, availability of potable water, existence or promised development of utilities that never occurred, oil and gas discoveries, investment potential, hidden costs, hidden building limitations, and almost any kind of a gimmick or a method of trickery to try to sell the land.

We have even had examples where salesmen would take the prospective purchasers out to a lot where there would be a hole in the ground with a bucket of water at the bottom of the hole, and they would drop stones down into the bucket of water, trying to show that the water table was just a few feet below the land. Free trips, that individuals found out were not free unless they purchased land;

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and many, many other devices, Mr. Chairman, that were being used to entice unknowing consumers into purchasing this land.

Our present New Mexico statutes, as I mentioned to you earlier, are totally inadequate in dealing with these kinds of developments, and, in fact, there is some pressure from business communities locally. My office received considerable pressure a year and a half ago when we filed a major action against the biggest subdivider in the State and one of the biggest—if not the biggest—in the Nation.

I received considerable pressure from the business community that, in effect, translated itself to a simple statement: "These subdivision lots are being sold to people out of State, so why should you be concerned? It is really consumers in other States back east, primarily, that are being taken. It is good for the economy of New Mexico. So, why should you, Mr. Attorney General, be concerned about trying to put a stop to this kind of activity?"

Chairman ASHLEY. I think what I will do is to recess at this time. We have a vote on the floor. It is going to take us just a very few minutes to accomplish this, and then we will be back and you can pick up at this point.

This is an important area of your testimony, and I would just as soon forbear it at this juncture. And we will resume just as quickly as we get back.

[Brief recess.]

Mr. GONZALEZ [presiding]. The subcommittee will please come to order.

At the time that the subcommittee recessed for the vote, I believe Attorney General Anaya was testifying.

I also understand that you have a time factor or deadline. And, if you wish, you could proceed as you see accordingly and would suit your purposes best; and that is, you can summarize your statement, or you can proceed as you are, whatever suits your purposes, in view of the fact that I understand you have a time problem.

Mr. ANAYA. Thank you, Mr. Chairman.

Mr. Chairman, I had pretty well gone through most of the problems that land fraud creates in the State of New Mexico, and, as I indicated, it is really not a problem for New Mexico or New Mexicans as much as it is a problem, really, for the constituencies of the members of this subcommittee, because most of the land that is being sold is being sold in the Midwest and in the East.

Mr. Chairman, in the last few pages of my prepared testimony, I have made a number of recommendations that I feel should be taken by the Congress to try to give us some tools at the local level to deal with the land fraud problems in our respective States.

I would call the committee's attention to those recommendations and would basically point out that most of the provisions are contained in either one or both of the House bills that are before this committee.

I heartily endorse those provisions and particularly, would point to one provision that is contained in one of the House bills and not in the other, and that is the question of giving the State attorneys general the ability to sue, acting as parens patriae on behalf of citizens within respective States. This is not a novel approach, Mr. Chairman. The Congress gave the State attorneys general this same power under

the antitrust statutes. We are currently implementing that and using that authority at the State level very successfully, and I feel that this is the kind of tool that could be added very easily and very effectively to try to bring the question of land fraud under control in our respective States.

Mr. Chairman, one final point with respect to the specific bills that are before this committee. The Senate bill, S. 3084, section 715 of that bill, I understand, is the section that tries to attack the problem of land fraud. As we have reviewed that particular proposal, Mr. Chairman, we find that it is totally inadequate. In fact, it looks very much like a subdivider's bill, and it would further weaken the already limited enforcement powers that the Federal agencies have. Certainly it would not contribute anything at all to solving the question of land fraud.

Mr. Chairman, the areas that my office has been concentrating on lately, and one that the committee should be aware of, is the extent to which organized crime elements have found their way into land fraud. It is a very lucrative proposition, and it certainly is an area with which we will continue to have problems with organized crime elements if we do not get the necessary tools to combat them.

I would urge this committee and this Congress to enact the House bills that are presently before it, and to give us the parens patriae ability and the tools that we need to try to protect consumers, not only in our respective States, but consumers throughout the Nation.

In conclusion, Mr. Chairman, as I mentioned earlier, many in my own State would question why I should be concerned about protecting consumers in other States, because the land that is beng sold is being sold to your constituency. But I feel as long as there is any illegal activity within our State, Mr. Chairman, that we should be greatly concerned about it and try to put a stop to it.

Mr. Chairman, I have tried to just briefly highlight the contents of my prepared testimony. I would be happy to try to respond to any questions.

[Mr. Anaya's prepared statement and a resolution adopted at the 1978 annual meeting of the National Association of Attorneys General, St. Paul, Minn., June 18–21, 1978, follow:]

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TONEY ANAYA
ATTORNEY GENERAL

SHIRLEY SCARAFIOTTI
DIRECTOR OF ADMINISTRATION

TESTIMONY OF

TONEY ANAYA,

ATTORNEY GENERAL OF NEW MEXICO,

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

CONCERNING

THE INTERSTATE LAND SALES

FULL DISCLOSURE ACT

ON

AUGUST 2, 1978

Thank you for the opportunity to testify concerning the proposed amendments to the Interstate Land Sales Full Disclosure Act. I commend your efforts, reflected by H.R. 12574 and 11265, to protect purchasers of subdivided land in the interstate market and to combat fraudulent land sales practices.

EXTENT OF PROBLEM

Land fraud is a national problem, and unfortunately, its victims are increasing by the day. Although the land sold is usually located in the "retirement" and "recreational" states of the sun

belt, such as New Mexico, the victims of fraudulent land schemes are scattered throughout the country. In at least eight states, land fraud is the number one consumer protection problem and it is high on the list in many other states.

A large part of the nation's subdivided land is located in New Mexico. We have over 1.5 million subdivided acres. Over a billion dollars in subdivided land sales have been made in my state alone within the last fifteen years. Almost a half million subdivided lots in New Mexico are now registered with the Office of Interstate Land Sales Registration. No one knows how many additional unregistered subdivided lots there are. If a family of four were to move on to each of the registered subdivided lots alone, New Mexico's present population would almost triple. The impact on New Mexico could be disastrous. The arid, desert character of most of the land subdivided for sale and the limited water resources available clearly preclude the development of even a small portion of these lots for full use and enjoyment by purchasers. Nevertheless, new subdivisions are being carved out daily.

Much of this subdivided land is in remote areas of New Mexico and consists of dry land with sparse vegetation that is, in some cases, not even fit for cattle grazing. One major subdivision in such an area includes over four hundred square miles with 172,000 subdivided lots. The subdivision itself is larger than Manhattan and may be the largest subdivision in the nation. After 15 years of land sales to predominately eastern and midwestern purchasers, the subdivision now has only 1,790 residents and is only 1% developed. The purchasers of the remaining 99% own land for which there is no resale market. It has been

described as a "negative investment," given the overall cost of taxes and developer imposed assessments.

This type of subdivision has generated thousands of complaints of fraudulent conduct to my consumer protection division. The saddest commentary is that the majority of those complaints are from elderly persons living in the east who have purchased the land primarily as an investment or for retirement. After ten years of monthly real estate contract payments, many have come to the cruel realization that the land they have purchased has no value and can never be used for their retirement.

New Mexico now has thousands of miles of bulldozed roads crisscrossing the desert in neatly gridded formations leading nowhere, which are abandoned and unused except as landing strips for drug smuggling pilots. The thousands of undeveloped lots which front such roads are typically owned by out-of-state purchasers who have never seen the land but who were shown master building plans for wonderful new cities and golf courses, and colorful charts and graphs showing ever increasing land values, all of which have never come to pass. In one major New Mexico subdivision, it was projected that actual development would not reach most of the subdivided lots until after the year 3000. Such a "long-term" investment potential is of little consolation to a purchaser sixty-five years old who was promised a buildable home site for retirement within five years. Frankly, it is of little consolation to anyone who plans to live to be less than one thousand years old.

Land fraud has many faces. The types of schemes and techniques used to sell land are unlimited. The fraud occurs not only in the sale of the raw land, but also in the attracting of investors in the land company itself and in the financing of the sales operations. Misrepresentation of the land purchased, is, however, the common denominator. My office has filed lawsuits involving a wide variety of misrepresentations concerning, among other things: clear title, location of lots, availability of potable water, existence or promised development of utilities, oil and gas discoveries, investment potential, hidden costs necessary for utilization or access, hidden building limitations - the list is endless. So also is the list of gimmicks and methods of trickery used to sell subdivided land. These include everything from dropping stones down a dry well shaft with a bucket of water at the bottom, to bait and switch tactics, and free trips to visit the land which suddenly become "free" only if you decide to purchase the land you are to see.

WEAK LAWS

Tougher state and federal land laws are needed if the problem of land fraud is not to become worse. A recent national study which examined New Mexico land subdivision laws described them as "procedural, giving only the appearance of regulation." The Inform study entitled "Promised Lands" characterized the subdivision activity in New Mexico as "development out of control." I cannot agree more.

Present state and federal laws offer only minimal protection for

purchasers who are victimized by land fraud. They do not give law enforcement agencies sufficient statutory tools to seek redress for the land fraud victims. Criminal actions taken by my office and other law enforcement agencies may have succeeded in punishing the wrongdoers but in most cases the punishment did not fit the crime--the only results have been short jail terms, suspended sentences, or corporate fines which are written off as minimal costs of doing business. Such results have little effect on the problems caused by the illegal subdivision and do absolutely nothing to compensate the victims of land fraud--the consumer/purchaser

I see little hope for tougher state laws in New Mexico. The presently existing weak provisions were enacted only after years of struggles, compromises, and concessions to subdividers by the state legislature. The same forces that defeated stronger provisions are still very much alive and well in our state, and, unfortunately, the national scope of the problem does not lend itself to solution on the state level.

PENDING FEDERAL AMENDMENTS

Thus, meaningful relief must come through federal action. I am encouraged by the proposed amendments in both House Bills H.R. 12574 and H.R. 11265. They both address the central question of granting more meaningful remedies to the victims of land fraud. The two crucial points in those bills are: (1) effective remedies for lot purchasers, and (2) authorization for state attorneys general to act on behalf of such purchasers under the federal law.

The most significant problem in the existing law is the lack of effective remedies. The Office of Interstate Land Sales Registration has limited enforcement powers and the present Act provides almost no meaningful consumer remedies. Many of the lot purchasers involved in the situations which I described earlier are without effective redress under the present Act against the developer from whom they bought their land. Their only remedy under the Act is a suit, which can only be filed on a limited basis for limited monetary damages. There are several steps which should be taken to correct this.

First, the current Act requires that facts which are material to the consumer's decision whether to purchase must be disclosed in the Statement of Record and Property Report filed with the Office of Interstate Land Sales Registration. The Act is violated if material misrepresentations of fact are made in the Statement of Record or the Property Report. Unfortunately, developers commonly disclose one thing in the Property Report and Statement of Record, and something completely different in their advertisements and oral representations to purchasers, which are not now covered by the Act. The developer should be required to include in his Statement of Record copies of all printed materials used in advertising, transcripts of all television and radio advertisements, and accurate summaries of all verbal representations made by a developer to promote the purchase or lease of his lot. The developer would, therefore, be held responsible, and be subject to the Act's penalties, for misrepresentations not only in the

Property Report, but also in all advertisements and oral representations to purchasers. This would effectively end the abuse of inconsistent disclosures and statements by developers and their agents.

Second, purchasers must be able to sue developers for specific performance on promises which he or his agents have made. Purchasers are now limited to seeking monetary damages which are often inadequate.

Third, developers must be required to establish an escrow fund to insure completion of water, sewage, and electrical facilities. The majority of the consumer complaints received by my office relating to land sales arise from the failure of developers to provide promised utility services. The current federal law and the New Mexico subdivision laws require neither escrowing nor the posting of any type of performance bond by developers who promise to provide utilities in their subdivisions. There is no requirement that water, waste disposal, or other basic services be guaranteed and no recourse is provided for consumers who are promised but do not receive these amenities. The imposition of an escrow requirement on developers who do promise such amenities would be a very important step forward in regulation of subdivision activity and prevention of land fraud in New Mexico and other states.

Fourth, purchasers should be able to revoke their contracts if the developer fails to keep specific promises to provide such essential services. Purchasers have no such recourse under either New Mexico or federal land laws now, and revocation is

often the only meaningful remedy in such circumstances.

Fifth, a purchaser who sues on his own behalf is not authorized under the present Act to recover his reasonable costs incurred in connection with such a suit for attorney's fees, appraisal costs, and travel expenses to and from the lot. These costs should be recoverable in a successful action. They can be substantial in bringing and maintaining any action with respect to land, especially when the purchaser does not reside near the land. Such a provision would obviously provide an incentive to subdividers to abide by the law and not make material misrepresentations.

Finally, state attorneys general need additional tools to help enforce federal law. All of the above measures would afford better protection to lot purchasers. The fact remains, however, that the individual purchaser usually experiences great difficulty in bringing a private lawsuit against a land developer. My office has handled several major cases against large subdividers and they are exceedingly complicated and time-consuming. It is very unlikely that individual lot purchasers, especially those who live far from the land involved, could afford to maintain such private actions. Attorney's fees and travel expenses alone would almost certainly be prohibitive. Even if these items could be recovered, it is unlikely that an attorney would handle such a case on a contingent fee basis. For this reason, state attorneys general should be authorized to act parens patriae for such

purchasers under the Act. The granting of such parens patriae power is not a novel approach. State attorneys general are now authorized by section 301 of the Clayton Act to proceed under the federal anti-trust laws on behalf of citizens of their states and have done so successfully since 1976.

An attorney general, acting parens patriae, should be empowered to sue for injunctive relief and monetary damages on behalf of all affected citizens of his state. Such an action would not only make it easier for purchasers to obtain redress, but it would be the most efficient way of handling litigation with large numbers of purchasers. It would also provide for more extensive enforcement of the Act throughout the United States and thereby encourage compliance by subdividers. And, it would greatly assist attorneys general in those states with weak or non-existent land subdivision laws as it would give them additional statutory authority for protecting their citizens from land fraud.

I urge you, therefore, to grant parens patriae jurisdiction to state attorneys general so that we can act effectively on behalf of purchasers who become victims of land fraud and assist in the enforcement of this important federal land law.

CONCLUSION

I support your efforts to amend the "Interstate Land Sales Full

Disclosure Act" in the two House bills before you. The measures which I have discussed are contained in one or both of these bills and would go far to alleviate many of land fraud problems that now exist. I would urge you to select the best of both House bills, add whatever additional strengthening provisions you must, and report out a new, combined proposal. The other bill you are considering, Senate Bill S 3084, contains none of these provisions. I cannot support it for that reason. It is a land developer's bill that would serve only to further weaken the already limited enforcement powers of the Office of Interstate Land Sales Registration by exempting certain interstate land sales now governed by the Act.

In closing, Mr. Chairman, I have been requested by the National Association of Attorneys General to request that you include in the hearing record on these bills a copy of a resolution adopted by the Association in June 1978 on this subject. I submit this resolution to you and respectfully ask that it be included in the record.

I thank you for the opportunity to testify and I will be glad to answer any questions which you have.

RESOLUTION

AS ADOPTED BY THE
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
1978 ANNUAL MEETING
JUNE 18-21, 1978
ST. PAUL RADISSON HOTEL
ST. PAUL, MINNESOTA

INTERSTATE LAND SALES FULL DISCLOSURE ACT,
H.R. ~~10999~~ 12574

WHEREAS, fraudulent practices in the interstate land sales industry have become a problem of serious concern to consumers; and

WHEREAS, existing federal law has not adequately protected consumers who purchase land from interstate developments; and

WHEREAS, state Attorneys General have played a key role in law enforcement in land fraud matters.

THEREFORE, BE IT RESOLVED, by the National Association of Attorneys General that:

1. We endorse in principle the concept of strengthening federal law which would curb fraudulent and abusive practices in the interstate land sales industry as in H.R. ~~10999~~ 12577 and in similar legislation; and

2. We endorse the inclusion of a parens patriae section in such legislation to authorize state Attorneys General to bring civil actions against developers on behalf of citizens of the state who have purchased land; and

3. The Washington Counsel is authorized to communicate the views of the National Association of Attorneys General to the appropriate committees of the Congress.

Mr. GONZALEZ. As I understand it, Mr. Barnes has not testified, as yet.

Mr. BARNES. That is correct, Mr. Chairman.

Mr. GONZALEZ. So that if you do have this time factor, perhaps it would be best to go on ahead and ask questions of Mr. Anaya.

I have two questions, really.

One, I also sit on the other subcommittee that had hearings on this same—as a matter of fact, the bill we have here is the vehicle that came out of that subcommittee, and we also had other attorneys general from other States. And if I recollect well, there was some reluctance on the part of the State officials to admit that there is some limitation and that therefore it is incumbent upon the Federal Government to provide laws and rules and regulations.

I couldn't ever quite get the pattern, though, as to why there was that much inability on the part of the State-level officials. Given this situation two suggestions that have come out including the approach you endorsed which is contained in the Minish bill with respect to the jurisdictional ability of the State attorneys general to sue.

As I understand it, a provision in the Minish bill we are considering does not provide for aggregate damages or any particular method to assess the type of damages alleged, and, therefore, it would seem that it would be left up to assess damages individually, case by case.

Now, how helpful will that be? Is that really helpful, or is it necessary?

Mr. ANAYA. Mr. Chairman, let me just briefly comment on a couple of the other points that the chairman has raised in terms of the reluctance by States to move into this area.

As I alluded to earlier in my testimony, since New Mexico is probably the State with the single most subdivided land in the entire Nation, land that is being sold out of State, there is a great lobbying force in the real estate industry that has exercised its muscle in the State legislature and, unfortunately, I think, because of what the sales have meant to the economy of New Mexico, that has also drawn some constituency or some following in our State legislature. And combined, this has meant we have had very weak legislation at the State level.

There is also a second problem, even to the extent that our present State statutes give local counties some supervision, some authority over subdivisions, there is a great deal of lack of expertise at the local level in terms of dealing with subdividers. And, in fact, many subdividers even refuse to check in with the appropriate county officials.

So, we do have to look at some other authority to try to get to particularly the subdividers who are dealing in interstate sales.

Mr. Chairman, in terms of the ability of State attorneys general to come in and sue, there is another reason why this would be important, particularly in a State like New Mexico. We have not been able to, even though there exists some Federal ability now for the feds to come in and sue some of the subdividers, we have not been able to document one single case where the local U.S. attorney's office has ever prosecuted anyone or sought to enforce any of the provisions of the act. This again, I think, highlights the need to try to not only find additional authority but place additional authority in the hands of the State attorneys general.

I feel that the authority that is being granted by the provisions in the Minish bill parallel the provisions that we presently have under antitrust statutes, and I feel that it would certainly be adequate to initiate actions on behalf of individuals within our respective States.

I am not sure that I completely understand the concern from the question of the chairman, but I feel that the provisions are satisfactory to permit me, as a State attorney general, to bring actions on behalf of consumers in my State.

Mr. GONZALEZ. How much of a track record do we have of experience under this doctrine in the case of antitrust? Is that not a recent Federal enactment?

Mr. ANAYA. Mr. Chairman, the legislation was enacted in 1976. It was funded last year, last October. My office, for example, got one of the first grants to initiate an antitrust unit. We have now been in operation for some 8 or 9 months.

One of the decisions, the so-called *Illinois Brick* decision, that made it to the supreme court has now perhaps left some of the powers under that particular provision in shambles, and there is legislation presently pending in the Senate, hopefully, to be able to correct that.

But the general concept will be, I feel, extremely valuable in permitting the State attorneys general to use Federal statutes in Federal courts on behalf of State consumers.

And also, an equally important provision is forcing, in effect, the Federal agencies to cooperate with the local law enforcement agencies. I feel this will be extremely valuable, not only in these areas, but other areas, to permit a State attorney general to enforce Federal laws in a Federal court on behalf of his constituency.

Mr. GONZALEZ. Thank you very much.

I just was wondering, the ongoing arguments I heard when I last visited New Mexico was that Texas had brought up at least the southeastern one-third of New Mexico.

Mr. ANAYA. Mr. Chairman, one thing I can say about your constituency: They were a lot brighter than some of the others who have bought—they have bought up all of the land with the oil and gas. Other constituents are hoping to do the same thing, but have not been so successful.

Mr. GONZALEZ. Thank you very much.

Mr. Kelly?

Mr. KELLY. I thank you, Mr. Chairman.

Gentlemen, let me ask you this.

Aren't you really in your testimony saying that the need for the Federal law is to protect the mail order land purchase, the purchase by people from out of State, and that you are not really suggesting that the Federal Government attempt to police what are legitimately intrastate sales?

Mr. ANAYA. Mr. Kelly, that is basically correct, although the sales techniques are not strictly limited to a mail order type operation, but my concern is primarily addressed to interstate sales, legitimate interstate sales.

In New Mexico we refer to them as the ma-and-pa subdivisions. I think the ma-and-pa subdivisions, the intrastate subdivisions, if they are truly intrastate sales, then I believe those, the State of New Mexico and local authorities should be prepared to try to police.

Mr. KELLY. Well, let me ask you this. Don't you think that a legitimate criteria for determining whether or not it is an intrastate as opposed to interstate sales is if they advertise only in local newspapers and if they do not solicit by mail or telephone on an interstate basis, so that when advertising in local papers can be used as a criteria for establishing it as an interstate sale, that is not the kind of recommendation you have, is it?

Mr. ANAYA. Mr. Chairman, the whole impact, I suppose, would be on the solicitation—how do the subdividers go about soliciting, and where do they solicit. It is probably a little bit difficult to limit advertising strictly to the four boundaries of the State of New Mexico because even our local newspapers, for example, are sold in Texas, Colorado, Arizona, and Nevada and maybe in other States, so that if you get an advertisement in one of our local newspapers, that newspaper is sold in Texas. Conceivably, a court would uphold that as being involved in interstate commerce, unless it was more clearly defined.

Mr. KELLY. But that is not really a legitimate concern, because I don't want to slight the Albuquerque press, but they don't get a pretty wide national circulation, do they?

Mr. ANAYA. Mr. Chairman, I am glad you made the statement and not me. [Laughter.]

I don't think we would find the Albuquerque newspapers would have the kind of circulation that the New York Times does.

Mr. KELLY. And for instance, if the Albuquerque papers would suddenly start and do something funny just to accommodate some sort of a land promotion deal on an interstate basis, that would not be the normal publication of the local newspaper.

Mr. ANAYA. I believe that any restrictions or limitations of this type I could certainly, personally, as attorney general, live with in terms of trying to distinguish between intrastate and interstate. I believe it would be important to give someone in an administrative capacity, HUD, for example, the ability to try to distinguish what is intrastate and interstate.

I found that with each limitation that Congress or the State legislature places, there is always some subdivider that is going to try to find some way to get out from under.

Mr. KELLY. All right, let me ask you this.

A personal inspection, requiring personal inspection goes a long way toward alleviating the really serious fraud situation, doesn't it?

Mr. ANAYA. Yes; it does.

Mr. KELLY. All right. Let me ask you something else.

Is there not a legitimate market for unimproved land? I mean, aren't there some people that want unimproved land because they can't afford improved land; they don't want the paved roads and sewers running out to the property because they can buy 5 acres of land, if it is unimproved, and they may not be able to buy 1 lot if it is.

Mr. ANAYA. I am sure that there is a legitimate market for unimproved lots.

Mr. KELLY. I want you to know I am really enjoying this elevation and status that you have bestowed on me.

Mr. ANAYA. I fully recognize the position of the Congressman, and I was addressing my remarks through the chairman.

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There is a legitimate market for unimproved land. I think the key would be, the purchaser of that unimproved land know exactly what he or she was purchasing.

The general impression that I was brought up with and have only changed in the last 2 or 3 years was that any piece of real estate was a good investment, any piece anywhere, and that is not true. In New Mexico, much of the land, as I referred to earlier in my statement, is a negative investment. Some of the land that was worth $12 an acre 10 years ago is still worth $12 an acre today, even in spite of inflation.

So I think the key is, does the purchaser in Florida or New York City or Texas or wherever, does that purchaser know the full value of that land and what its potential value is, or is that person being sold a piece of real estate, unimproved real estate with the misrepresentations that somehow he or she is going to have a substantial investment.

Mr. KELLY. But if someone knew he was buying a lot on a dirt road, I am betting that for political considerations you are not going to announce that everybody that lives on a dirt road is a dummy.

Mr. ANAYA. Mr. Chairman, that would destroy me politically because I live on a dirt road. [Laughter.]

Mr. KELLY. I just thought there might be some people in New Mexico on dirt roads.

But you mentioned earlier about the lobbyists and the special interest pressures and so forth, but would you believe that there is another group of lobbyists and special interests that are real hot to go on sewers and all kinds of engineering and reports and studies and all of this other stuff that costs money and runs up the price of real estate?

Mr. ANAYA. Congressman, there is no question but that the consumer protection movement can be carried to such an extreme that the consumer is the one who ultimately winds up suffering, and I think we have to strike some kind of a balance between both extremes, and I think that that is basically what I would be asking this committee to do.

Mr. KELLY. Well, you don't think this committee should mandate that everybody has got to be living on a municipal sewer system, for instance?

Mr. ANAYA. No, I don't, Mr. Chairman.

Mr. KELLY. I mean, being from New Mexico, I thought you might be able to appreciate the limitations that kind of a system would have.

Mr. ANAYA. Again, I think the key would be in terms of the representations that are being made in the sale of whatever land.

Mr. KELLY. As long as the people knew what they were buying, that is really the criteria we are trying to get at so that people aren't hornswaggled into believing they are going to be hooked up to a sewer when there isn't one for 75 miles.

Mr. ANAYA. The big concern, Mr. Chairman, would be one of full disclosure and remedies in the event that those disclosures were not complied with.

Mr. KELLY. Thank you, Mr. Chairman.

Mr. GONZALEZ. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Do the land sale abuses that you are familiar with involve residents of your neighboring States or primarily neighboring States or do they involve residents of States like New York, New Jersey, and so forth, which are some distance from New Mexico.

Mr. ANAYA. Congressman, most of the land subdivisions that we have proceeded against have been involving residents from the east coast and the Midwest; very few involve purchases by New Mexicans.

Arizonans can purchase their own worthless land, if they so wish. [Laughter.]

And they are very much aware of that.

Most of the sales are being made to Midwest and Eastern States.

Mr. BROWN. You, of course, support this legislation. It almost sounds as though you are more concerned about residents of other States than you are about residents of the same State but in a more remote place from the development, because, obviously, this act is not going to protect a New Mexican resident from a bad sale in a remote part of New Mexico.

Mr. ANAYA. Mr. Chairman, I am concerned, as attorney general—I am concerned with any illegal activities that occur within the four boundaries of the State of New Mexico.

I have likened it in local testimony to when I was being pressured, as I testified earlier, to not bring a lawsuit against a major subdivider who had been making sales out of State, and I was being pressured not to bring the lawsuit because it was going to hurt the local tax base and the local economy, and just think of all these millions of dollars that we are bringing in fraudulently from out of State.

I likened it at that time to another problem that I have been in Washington testifying on, the subject of narcotics smuggling from Mexico. If we want to use the two examples, your argument to the community that was suggesting I not proceed against illegal subdividers, their argument would be likened to my not proceeding against narcotics smugglers who are bringing in narcotics from Mexico into New Mexico and dispensing it throughout the Nation. It really wasn't New Mexicans that it was being sold to; it was people in other States.

I think I have to be concerned about any illegal activity in the State of New Mexico that affects anybody.

Mr. BROWN. But this illegal activity that you are referring to, would not be illegal unless it involved a nonresident of the State of New Mexico. But, you said that your laws in New Mexico, insofar as they protect residents of New Mexico, are inadequate.

Mr. ANAYA. Mr. Chairman, I probably should not have used the word "illegal" in that particular phrase. The fraudulent, even though at this point they may not be prohibited, or we may not have the remedies to go against the individuals involved—the fraud that is being perpetrated on consumers is there, whether it is intrastate or interstate.

Mr. BROWN. But there is no protection from fraud if you are a resident of New Mexico and you are not engaged in interstate land sales, because you have no law on the books in New Mexico, apparently, that would be comparable to the Interstate Land Sales Act.

Mr. ANAYA. We do have legislation on the books which I feel is totally inadequate at the present time to deal with the large-scale fraudulent practices. Were we able to distinguish between interstate and intrastate, and given the parens patriae powers that we are asking

for, combined with existing statutes, and we have had to go beyond subdivision laws—we have had to use our securities laws, our unfair trade practices laws and other statutes—given all of these tools together with the additional Federal authority, I feel that we could bring land fraud under control in our State.

Mr. BROWN. Under section 301 of the Clayton Act, you can bring an action on behalf of any individual. It doesn't have to be a class right.

Mr. ANAYA. That is correct, Mr. Chairman.

Mr. BROWN. In other words, the provision in the Minish bill is comparable to section 301 of the Clayton Act, as far as standing to sue.

Mr. ANAYA. That is correct. I understand that they parallel very closely.

Mr. BROWN. Have you looked at the Nelson bill in the Senate?

Mr. ANAYA. Mr. Chairman, yes, I have.

Mr. BROWN. That bill, of course, provides the 100-mile exemption provided there has been onsite inspection.

Don't most of the abuses occur because there is not onsite inspection?

Mr. ANAYA. I believe that the two principal reasons for the abuses are, first of all, the lack of onsite inspection and, secondly, the representations that are made even with onsite inspection in terms of future developments or future amenities and things of this nature. So the onsite inspection would cure a large number of the problems but it still would not take care of the misrepresentations.

Mr. BROWN. Thank you, sir.

Mr. KELLY. I have just one additional question, Mr. Chairman, if I may.

Mr. GONZALEZ. Mr. Kelly.

Mr. KELLY. There is no reason why New Mexico could not have whatever laws are appropriate to handle purely intrastate lands sales.

Mr. ANAYA. There is no legal reason why we shouldn't or couldn't.

Mr. KELLY. And if you don't have them, it is just because you have, in your wisdom, decided not to impose them.

Mr. ANAYA. Mr. Chairman, I would not characterize it in the same way. I believe the reason, as I indicated earlier, that we don't have tougher laws now has been because of the strong lobbying efforts at the local level.

I have not been any too bashful to come to the Congress before to ask for authority in other areas where we need it, where the States have failed to take care of the problem. And I suggest that is what I am doing today.

Mr. KELLY. Then, to really focus this thing, what you are saying is that because the State of New Mexico has not done as you think they should do in this area, then you think the Federal Government, through the device of a strained "interstate" definition, we should start monitoring the activity in New Mexico.

Mr. ANAYA. No, Mr. Chairman, that is not it at all.

What I am suggesting is that, under the existing statutes, it gives HUD particularly—and other Federal agencies—some authority in the area; that, first of all, they are not doing their job. And one of the reasons they are not doing their job is because they don't have the necessary authority to do the job.

And second, to the extent that the authority can be extended to permit State attorneys general to exercise that authority in court on behalf

of its own citizens, I think the two combined would go a great ways toward protecting consumers in other States and in New Mexico.

Mr. KELLY. Then, really, the extension that you are seeking is to give local enforcement an opportunity to enforce basically, Federal law in the area of land sales fraud.

Mr. ANAYA. There are two thing I am seeking.

One is additional authority for Federal agencies, for HUD.

And second, to extend that authority to the State attorney general.

Mr. KELLY. But not to strain the definition of "interstate"?

Mr. ANAYA. Mr. Chairman, I am not suggesting that at all, and I would hope that in my earlier responses I pointed out that personally I could support and would be in favor of an intrastate-interstate distinction.

Mr. KELLY. I thank you.

Mr. GONZALEZ. If I could pursue just one aspect—because, in large measure, the reason we are having these hearings, and had the other hearings of the other subcommittee, was because of the experience of its chairman, Mr. Minish, in New Jersey, where he had a considerable number of his constituents involved right across the State line in Pennsylvania. They did have, in some cases, a chance to go physically, personally to visit, but were in no way protected by knowing the full circumstances and limitations. Although the pitch was that sewage, drainage, and other facilities would be available, they found, after purchase, that they were far from being available, and probably never would be, because of some other mandatory health requirements.

I think you said in your statement, just a while ago, in answer to the question by Mr. Brown, you did say, though, that it would be desirable to have onsite, personal inspection or viewing of the site; but that, in itself would not preclude some of the things that have come to the attention of the subcommittee, such as in the case of New Jersey purchasers.

Mr. ANAYA. Mr. Chairman, in my prepared statement that I did not read in its entirety—in my prepared statement, I made, among other recommendations, two that I think touch on this point. One recommendation was that the law should be amended to require the developer to include in his statement of record copies of all printed materials that would be used in advertising, transcripts of all television and radio advertising, and accurate summaries of all verbal representations which are made by the developer or his salesmen in promoting the business.

Second, Mr. Chairman, we have recommended that developers be required to establish an escrow fund to insure the completion of any of the amenities that they themselves represent they are going to have—not that they should have all the amenities that we would want them to have, just that they insure that they develop those amenities that they claim in the representations that they are going to provide whether it be water, sewage, golf courses, shopping centers, whatever, electrical facilities.

And this is particularly—it would be applicable to those subdividers who, in essence, are carving out new cities. They make all of these kinds of representations that they are going to have running water, and a sewer system, and a golf course, and they sell all the land, and then they are gone and nothing happens.

So I think the combination of more disclosure and the escrow fund, I think would definitely solve that kind of a problem, Mr. Chairman.

Mr. GONZALEZ. Very good.

I want to thank you very much, on behalf of the subcommittee, for the time and trouble you have taken, and your sacrifice in coming all the way over here.

Your testimony is very valuable. You made a very good presentation and we are very grateful to you, Mr. Anaya.

Mr. ANAYA. Mr. Chairman, thank you very much, we have tried to help the subcommittee staff in the last several months, and we will continue being available and will be glad to appear any time the subcommittee would desire.

Mr. GONZALEZ. Thank you very much.

We have a vote pending, and those were the second bells that just rang. So we will suspend briefly for about 5 minutes while we go over and record our vote, and come back, and then we will hear Deputy Attorney General Barnes.

[Brief recess.]

Mr. GONZALEZ. The subcommittee will come to order. We will proceed with the hearings and recognize Deputy Attorney General Barnes.

And again, Mr. Barnes, you have a prepared statement. We are very grateful to you for the time you have taken, and for your own attorney general. You may proceed as you see best. You may wish to present a summary of your written presentation, which will be in the record intact; or you may proceed by reading your statement. It is strictly up to you.

STATEMENT OF HON. JAMES I. BARNES III, DEPUTY ATTORNEY GENERAL OF THE STATE OF NEVADA

Mr. BARNES. Thank you, Mr. Chairman and distinguished Congressmen.

As you have indicated, I have submitted a prepared statement. I don't think that I will go through that word-for-word, but there are a few points I would like to make, and I will be fairly brief today.

First of all, I want to say that I am here representing Attorney General Robert List, and I do thank you very much for affording me the opportunity to appear here today and to discuss with you proposed amendments to the Interstate Land Sales Full Disclosure Act.

Let me make it clear at the very outset that I favor two major actions being taken by Congress.

One is strengthening the Interstate Land Sales Full Disclosure Act, which would include giving the State attorneys general the authority to enforce the Federal law on behalf of the citizens of their States; and also, having this Interstate Land Sales Full Disclosure Act focus on what I think is the major problem—and that is, the large subdividers.

We find, in our experience, that the mom-and-pop subdividers, as Mr. Anaya termed it, is not really the problem. It is the large subdivider who comes in and subdivides 50,000 acres, primarly sells it to out-of-State people, and makes all sorts of promises as to investment potential, as to the improvements, and the public services and utilities that will be put onto the property, and then the purchaser finds out sometime—it is several years down the road—that actually these prom-

ises haven't been fulfilled and there was no intention in the first place that they would be fulfilled.

Now in some cases, it is a case of the subdivider actually, in good faith, thinking he will be able to make the improvements, and then it turns out that he doesn't have the money when the time comes to put them in.

And in other cases, the developer has no intention of putting these improvements in, in the first place.

Mr. Anaya also made mention of one of the proposed portions of the legislation that I would strongly favor, and that is the establishment of an escrow account which would require the developer to, "up front," so to speak, put all of the money into an account necessary to eventually effectuate each and every promise that he does make at the time he sells the property.

And under these circumstances, if the developer, in good faith, felt that he was going to be able to make these, he would not be later embarrassed and unable to fulfill his promises; and, on the other hand, if the individual developer actually never intended to make the improvements, of course he would be discouraged from even registering his land and being able to sell it.

So I think that is one of the most important points that I see in the proposed legislation.

There are a few other things that I think are also important. Mr. Anaya made mention of these, in his written statement, but he did not discuss—he only discussed two of them. One was the escrow account, and the other was the requirement of having the developer place in his statement of record printed copies of all of the printed materials that he will use, or copies of the printed materials that he will use in his advertising, and also transcripts of his radio and television advertisements, and also stating a summary of the sort of oral representations which will be made by the developer and his salesmen.

So that, in the event that there is some problem as to the representations that are made either through advertising or the salesmen, these will be stated in the statement of record, as opposed to the way it is now where the developer is not required to put any of these materials into the statement of record. He can put one thing into the statement of record which is entirely different, or even perhaps diametrically opposed to what actually ends up in his sales brochures and on the lips of his salesmen.

Now this is, again, another one of the pillars of this legislation that I think the Nevada attorney general's office would be greatly in favor of.

A third item is the provision which would allow purchasers to be able to sue developers for specific performance on any promises which he or his agents have made.

This contrasts with the situation which is now present. And that is, that purchasers are only permitted to seek monetary damages. And this is often inaedquate.

Fourth, I think that purchasers should be able to revoke their contracts if the developer fails to keep promises to provide the essential services. This is also something that is lacking now, but we would like to see this included in the new legislation.

A fifth point, which Mr. Anaya had made in his written statement, and with which we also concur, is that a purchaser should be permitted to recover his attorney's fees, appraisal cost, and travel expenses to and from the lot which he incurs as a result of lawsuits which he may bring against the developer. At the present time, as you know, this is not permitted. And often, lawsuits are made prohibitive by the fact that the attorneys' fees and the cost of traveling from New York and Nevada to prosecute the lawsuit eat up any judgment which might be eventually realized.

The single most important part, in my view, of the legislation is the parens patriae section which would authorize State attorneys general to sue on behalf of their individual citizens in Federal courts throughout the country to enforce the Federal law.

The present situation is that if a purchaser wants to sue a developer individually, the cost is often prohibitive. It is a complicated lawsuit. Most attorneys don't want to get involved in it because the recovery on an individual lot is not going to be enough to justify the kind of work they are going to have to put in, and to adequately compensate them in their fees.

So there is a problem, from that standpoint.

And then, under the Federal Rules of Civil Procedure, or the State rules, which provide for a class action, this sort of situation really isn't very easy either, because of the procedural obstacles to bringing class actions, such as the notice requirements, and all of the other things which are well known, and which the Congress discussed when they enacted the antitrust parens patriae legislation.

I think the same items, the same factors that applied to the antitrust area also apply to the land sales area—although it is true that a lot costs so much more than some of the consumer items that would be bought in the antitrust area.

Where you have price fixing, you still have lots costing—the market is running about $4,000 to $5,000, perhaps, so any kind of recovery is not going to be anything really substantial.

So you do have the same considerations. We would strongly urge that that portion of the legislation be enacted.

Of the three bills that are being considered here, Nevada would favor H.R. 12574 and H.R. 11265, or portions of both. Essentially, there are good points in each of them, and we would like to see them combined, and have those portions which do strengthen the present legislation culled from both of them and put together into a final version of the legislation.

We don't favor S. 3084 because, as far as I can tell, all that essentially does is weaken the existing legislation, which I feel is already probably weaker than it should be.

There are two other points I would like to mention—and I think it is appropriate to mention this, because I would also like to urge you to consider two things.

One thing is in the legislation, which is very important, and that is: Doing away with the 5-acre exemption. Currently, under the Interstate Land Sales Full Disclosure Act, there is an exemption for all lots 5 acres or more in size. And at least in Nevada, where land is very inexpensivee—specially the type that is sold, the desert, mountainous l d, it is very easy for the developer to put together large parcels that ld be in excess of the 5 acres, and then he is exempt from the act.

We have had one lawsuit where a developer was purchasing land, and purchased over 50,000 acres, and he purchased it at $30 an acre. So you can see that he can put it together into 40-acre parcels, which he did, and still be pretty close to the market—to where the market is and was at that time.

And in fact, 40-acre parcels in Nevada can run for the comparable price to what a small lot might run in Florida or New Jersey.

So if the act is going to help Nevada and other Western States that are similarly situated, we are going to have to do away with that 5-acre limitation.

Now I know that the legislation does contain a provision which would propose a 40-acre exemption, and that is a step in the right direction, but I would urge you to do away with size exemptions altogether, because I do not think that it is really relevant to the legislation whether it is an 80-acre parcel or 50 acres, or whether it is a 40-acre parcel. The important thing is whether or not the developer is selling the land honestly.

So that is one point. The other point is that I would like to see Congress consider the type of land sales act which is in effect in California at the present time, which is a fair, just, and equitable act.

This, in my view, is the best of all of the types of land sales acts which are now in existence. This is one in which the legislature delegates to an administrative body the duty to determine whether or not the offering, on the whole, is fair, just, and equitable.

In the event that it is not, then the developer is not issued a license. And I think if we are ever going to wipe out the problems that we have, some day this sort of legislation is going to have to be enacted.

Now Nevada has seen fit not to introduce this type of legislation. I would hope—and I would doubt that it will, any time in the near future—but I would hope that the Federal Government might be able to institute this type of legislation in the near future.

I thank you very much for allowing me to appear here today and to discuss with you some of the ideas that we in Nevada have.

If you have any questions, I will be glad to answer them.

[Text resumes on p. 188.]

[Mr. Barnes' prepared statement follows along with the referred to exhibits. Exhibit A: Supreme Court of Nevada decision entitled *Landex, Inc., et al.* v. *State of Nevada, et al.;* and exhibit B: "The Regulation of Land Sales in Virginia," a paper by Thomas L. Stringfield.]

MEMORANDUM

TO: All Members of the Subcommittee on Housing and Community Development of the United States House of Representatives

FROM: James I. Barnes, III, Deputy Attorney General, State of Nevada

RE: Revisions to the Interstate Land Sales Full Disclosure Act

I. The Land Sales Industry in Nevada

In the period 1970 - 1973, Nevada was the primary marketing state in the union for the land sales industry. At that time, Nevada was visited by approximately twenty (20) million tourists a year. It was estimated, by the Office of Interstate Land Sales Registration, that twenty-five percent (25%) of all the subdivision lots sold under the Interstate Land Sales Act were sold within Nevada. There were in excess of 4,000 land salesmen in Nevada. Many large companies were operating in Nevada including GAC, Horizon, Cavanaugh Communities Corp. (Rotonda), and AMREP. All or most of these subdividers were subsequently sued by the Federal Trade Commission or the Office of Interstate Land Sales Registration. Most of these companies entered into consent orders as a result of this litigation.

One of the largest land sales frauds in the nation during the 1970's occurred in the state of Nevada. This involved a subdivision (Lake Havasu Estates of Arizona) that purportedly met the requirements of the Office of Interstate Land Sales Registration.

Nevada's Land Sales Act, Chapter 119 of the Nevada Revised Statutes, became effective July 1, 1971. This act was weak, with no "teeth." Effective July 1, 1973, the Act was strengthened considerably.

Currently, Nevada is visited by approximately thirty (30) million tourists annually. Given the re-emergence of the right conditions, Nevada could again become an excellent market for land sales. Nevada has experienced living with no state land sales regulatory program, and it has experienced living with a weak land sales regulatory program. Although the present Act is fairly strong, it leaves a lot to be desired from a regulatory standpoint, and attempts by the executive department to strengthen the Act at the last two legislative sessions were rebuffed. At the last legislative session, a serious attempt was made to weaken the Act. What will happen to the Act in future legislative sessions is open to speculation. I urge you, on behalf of the Nevada Attorney General's office and the Nevada Real Estate Division, to take measures to strengthen the Interstate Land Sales Act in order to provide additional protection to the citizens of the state of Nevada and to its many visitors.

II. Nevada's View of Reform of the Interstate Land Sales Act

Two major things are important to Nevada: (1) that the Interstate Land Sales Act be very strong, and (2) that the Act be focused on the problem developers, who generally are the larger developers.

Traditionally in Nevada, the land sales industry has tended not to prey upon residents of the State, but it has instead tended to prey upon tourists.

Nevada's state Land Sales Act (Chapter 119 of the Nevada Revised Statutes) is adequate when dealing with sales made only to local people, but it is inadequate when dealing with sales made to out-of-staters. For this reason, it is important to Nevada that

the Interstate Land Sales Act be very strong.

III. Some Problem Areas In Nevada's Land Sales Act

(1) It provides for no subpoena power outside the state.

(2) The Act provides for only a three (3) day "cooling off period" - this is not long enough for many tourists. By the time the tourist arrives home, his three day period may have expired.

(3) The Act provides for an exemption for parcels 40 acres or larger in size. Such parcels are subject to none of the requirements of the act, except that the advertising proposed to be utilized in offering the parcels for sale must receive the prior approval of the State Real Estate Division prior to being so utilized.

The Act provides for a complete exemption for parcels 80 acres or larger in size. Such parcels are subject to none of the requirements of the Act, not even the advertising pre-approval requirements.

Desert land in Nevada can be so inexpensive that a subdivider can divide land into large parcels and still sell it at prices comparable to or less than a small lot in an Eastern state.

(4) The Act contains no fluid recovery provision. In a recent Nevada Supreme Court decision entitled Landex, Inc., et al. vs. State of Nevada, et al., (a copy of which is attached hereto as Exhibit "A") a trial court judgment ordering the offering of rescission to some 900 purchasers was reversed based upon the fact that none of the purchasers had testified

at the trial and proffered evidence that he had relied on the misrepresentations made by the developer and no purchaser had presented testimony that he had been damaged by the misrepresentations of the developer.

An informative discussion of Nevada's Land Sales Act is found in an article written by the present District Attorney of Elko County, Nevada, Thomas L. Stringfield, which is entitled "The Regulation of Land Sales in Nevada" (a copy of this article is attached hereto as Exhibit "B").

IV. Nevada's Position Regarding Some Portions of the Proposed Legislation

There are several comments that should be made regarding Nevada's position on certain portions of the proposed legislation:

(1) Both the Minish bill and the Administration's bill propose changing the definition of subdivision from its current one, that being any division of more than fifty (50) lots constituting a subdivision. The Minish bill would make any division containing more than forty (40) lots a subdivision. The Administration's bill would make a "subdivision" more than 100 lots.

Nevada's position is that generally most problems are occasioned by the large developers. Nevada would defer to the judgment of the Office of Interstate Land Sales Registration in this matter. Incidently, in Nevada a "subdivision" consists of thirty-five (35) or more lots.

(2) The Minish bill proposes to change the Interstate Land Sales Act lot size exemption from its current 5 acres to 40 acres.

Nevada would support this amendment. In Nevada desert areas, large parcels can sell for prices comparable to, or less than, the price of a small lot in an Eastern state. The current five (5) acres exemption provides developers with an easy method to avoid the provisions of the Interstate Land Sales Act.

(3) Requirement that developer place into escrow funds sufficient to complete all promised improvements -

Nevada favors such a requirement - full disclosure is not enough. People seem to tend to believe that developers will fulfill promises. People apparently think that the government has approved a subdivision by issuing a property report.

Nevada's Act requires that "adequate financial arrangements" be made for all promised improvements - Nevada has implemented this phrase to mean a letter of credit, third party bond, 100% cash in escrow, or an escrow account that accumulates funds out of the purchaser's down payment and monthly installment payments, with the developer being prohibited from removing funds from the escrow account until the improvements are completed.

(4) Nevada would oppose any amendment which would exempt subdivision lots sold within one hundred (100) miles of the purchaser's residence. Nevada wants the regulation of large developers strengthened, whether or not such developers sell lots to purchasers who reside within 100 miles of his subdivision.

(5) Nevada would support a lengthening of the right of rescission period (which is currently 3 days). The 30 day period proposed in the Minish bill is favored, however, even the 14 day period proposed in the Administration's bill would be a

welcome improvement.

A lengthening of the right of rescission period would be particularly helpful in sales made to tourists, as are most sales in Nevada.

(6) Nevada favors that portion of the Minish bill which would give the purchaser three (3) years within which to rescind the sales contract under certain conditions.

(7) Nevada favors that portion of the Minish bill which would extend the maximum statute of limitations under Section 1412 to seven (7) years.

Many of the promises made by the developers' salesmen concern events which are to take place in the distant future Generally speaking, larger statutes of limitations are desirable so that the consumer will be better able to ascertain whether promises have been, or are likely to be, fulfilled, while he is still able to take legal action in the event that the promises are, in fact, not fulfilled.

(8) Nevada would favor the provision found in both the Administration's bill and in the Minish bill that would increase civil remedies to allow a plaintiff to recover attorneys' fees, appraisal fees and travel fees to and from the lot incurred in connection with a suit brought against a developer.

(9) Finally, Nevada would be in favor of the passage of the parens patriae right to sue portion of the Minish bill.

Simply stated, it is difficult and costly for an individual purchaser to bring his own, personal lawsuit against a developer who has defrauded him. There are obstacles to bringing a class action. The parens patriae device would allow the various

state Attorneys General to utilize the powers of the state to assert the legal rights of the citizens of their respective states in a practical way.

V. Conclusion

The preceding pages contain examples of the type of reforms to the Interstate Land Sales Act which would be favored by the Nevada Attorney General's office and the Nevada Real Estate Division. Generally speaking, any reform which would strengthen the Act or would enable the Office of Interstate Land Sales Registration to focus on what apparently is the most serious problem area - that of the large subdivision and those who sell it - would be supported by both offices.

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANDEX, INC., a foreign corporation, incorporated under the laws of the State of Arizona, FRANK E. GLINDMEIER, et al.,

Appellants,

vs.

THE STATE OF NEVADA, ex rel. ROBERT LIST, Attorney General, and NEVADA REAL ESTATE DIVISION, DEPARTMENT OF COMMERCE, ex rel. R. E. HANSEN, Real Estate Administrator,

Respondents.

No. 9053

Appeal from judgments imposing civil penalties, granting injunctive relief, and ordering restitution. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

Affirmed in part; reversed in part.

Vargas, Bartlett, and Dixon, and James S. Beasley, Reno, for Appellants

Robert List, Attorney General, and James I. Barnes, III, Deputy, Carson City, for Respondents

O P I N I O N

By the Court, MANOUKIAN, J.:

On May 2, 1974, acting under Nevada's misleading advertising legislation, NRS 207.171, et seq., and Nevada Rules of Civil Procedure, Rule 65, et seq., governing injunctions, and incidentally pursuant to NRS 119, our licensing and regulation of land sales laws, respondents commenced this action in district court against appellant Landex, Inc., (hereinafter "Landex"), and Frank Glindmeier, individually, president and sales manager of Landex. The complaint

alleged three causes of action. The first cause of action requested monetary civil penalties against Landex and Glindmeier, pursuant to NRS 207.174 for false and misleading advertising and requested the issuance of an injunction pursuant to NRS 207.176 enjoining appellant Landex from continuing its deceptive practices. The second cause of action sought to enjoin Landex from using advertising material in its land sales business which had not received the prior approval of the Nevada Department of Commerce, through its Real Estate Division (hereinafter "Division"), in accordance with NRS 119.120(1)(c) and 119.180(7). In its third cause of action, the State sought to enjoin Landex from selling real estate through "registered representatives," a proscribed practice (see NRS 119.180), rather than through licensed real estate salesmen or brokers, as required by NRS 645.210 and 645.230.

Prior to this litigation, Landex successfully sought, through the Division, an exemption from all effects of Chapter 119 of the Nevada Revised Statutes, our land sales legislation, with the exception that all advertising used in the sale of Mountain Meadow Ranches (hereinafter "MMR") must be submitted to and approved by the Division under NRS 119.120(1)(c).

The precise authority of this proceeding is contained in NRS 207.171, 207.174, and 207.176[1].

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[1] These statutes in relevant part provide:

NRS 207.171 "It is unlawful for any person, firm, corporation or association or any agent or employee thereof to use, publish or by any other manner or means, including but not limited to solicitation or . . door-to-door contacts any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase . . any title or interest in any real . . . property . . . or to enter into any obligation or transaction relating thereto . . . . "

NRS 207.174, "Any person, firm, corporation or association or any other organization which violates any provision of NRS 207.171 . . . is liable for a civil penalty not to

Incident to the first cause of action, the trial court found that on March 26, 1974, appellants, through their various agents, had made representations which "were and are false or deceptive or misleading, or tended to mislead within the meaning of NRS 207.170 et seq." The court further found that "said false, misleading, or deceptive statements were made to twenty prospective purchasers," and that Glindmeier "was directly responsible for the form and use of such false, misleading, or deceptive statements." Incidental to these findings, Landex was ordered to pay a sum of $25,000 for twenty violations of NRS 207.170, and appellant Glindmeier was ordered to pay $2,500 for the same twenty violations. Additionally, appellants were permanently enjoined from making any further representations of the nature determined to be misleading and were ordered to offer restitution to all those persons who purchased a parcel of the MMR subdivision after March 26, 1974.

With respect to the second and third causes of action, appellants were permanently enjoined from utilizing any unapproved advertising and from utilizing registered representatives for purposes of selling the subdivision's property.

This appeal is taken only from those portions of the judgment relating to the first cause of action. Appellants contend the trial court erred (1) in its finding that

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exceed $2,500 for each violation, which shall be recovered in a civil action brought in the name of the State of Nevada by the attorney general . . . in a court of competent jurisdiction. As used in this section, the term, "each violation" includes, as a single violation a continuous or repetitive violation arising out of the same act.

NRS 207.176 "The attorney general . . . may bring an action in any court of competent jurisdiction in the name of the State of Nevada on his own complaint or on the complaint, of any board officer, person, corporation or association to enjoin any violation or proposed violation of the provisions of NRS 207.171 to 207.177, inclusive."

Glindmeier violated NRS 207.170, claiming the evidence is insufficient; (2) in concluding that the doctrines of res judicata and collateral estoppel did not apply to preclude respondents' relief; (3) in ordering Landex to make restitution to all purchasers of "MMR" after March 26, 1974; and (4) in holding that appellants had committed twenty violations of NRS 207.170.

1. Substantial Evidence.

Appellant Glindmeier contends that he, as president of Landex, could not be held responsible for unauthorized statements made by individual sales representatives and that even if it were shown that Glindmeier was directly responsible for the alleged misrepresentations, the Washoe District Court was barred by the doctrines of res judicata and collateral estoppel from finding that the statements made by the Landex personnel were deceiving and misleading. The latter questions will be discussed infra.

As to appellant Glindmeier's first claim, this Court's review of a trial court's determinations of factual questions is limited. In Beverly Enterprises v. Globe Land Corp., 90 Nev. 363, 526 P.2d 1179 (1974), we stated:

> Where a question of fact has been determined by the trial court, this court will not reverse unless the judgment is clearly erroneous and not based on substantial evidence. NRCP 52(a); Kockos v. Bank of Nevada, 90 Nev. 140, 520 P.2d 1359 1974 Fletcher v. Fletcher, 89 Nev. 540, 516 P.2d 103 (1973).

Id. at 365, 526 P.2d at 1179.

The record shows that appellant Glindmeier exercised direct supervision of the sales personnel and their promotional presentations. He may not, therefore, escape culpability by contending that Landex alone is liable. See, NRS 207.171 regarding agent and employee liability; see also, Jory v. Bennight, 91 Nev. 763, 542 P.2d 1400 (1975). In addition to the other substantial evidence, we find persuasive the fact of Glindmeier's testimony that he per-

sonally instructed his sales personnel as to what would comprise their sales presentations and also drafted the podium speeches which were given during the sales presentations. Appellants contend that the sales personnel "volunteered" statements which were not contained in the prepared speeches or materials. The record does not support this contention.

Several specific representations made to the prospective purchasers on May 26, 1974, which were found to be misrepresentative of the actual subdivision are that: less than one percent of the total land in Nevada is available for sale to the public; "MMR" consists of flat land with a few rolling hills; there were springs and wells throughout the subdivision; all water found in the subdivision was good water; costs of trips from the purchasers' homes to purchase as well as on a subsequent trip to determine if they desired to retain the property would entitle the purchaser to a federal income tax deduction; all of the registered representatives in the Landex sales room on March 26, 1974, were approved for their selling activities and were highly qualified in all phases of investment; and, that parcels in the subdivision could be resubdivided by the purchasers.

Evidence to establish violations of NRS 207.171 is not that quantum necessary to prove a victim's claim of fraud. To prove false advertising under our statute, the State need only establish that the defendants made statements they knew or should have known were untrue or misleading in order to effect the sale. Actual deception is unnecessary to create liability under NRS 207.173. Cf. Lubbe v. Barba, 91 Nev. 596, 540 P.2d 115 (1975). The standard for untrue or misleading statements is the likelihood that the public will be misled. See, Double Eagle Lubricants, Incorporated v. F.T.C., 360 F.2d 268 (10th Cir. 1965). Our review of the record reveals substantial evidence

supportive of the trial court's determinations under NRS 207.171 and further respecting Glindmeier's individual liability. Additionally, the trial court was justified in entering a permanent injunction enjoining Landex from further pursuit of such prohibited activities.

2. Res Judicata and Collateral Estoppel.

Appellants' second claim stems from a decision of the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, rendered prior to the within litigation on March 15, 1974. In that action, the district attorney of Elko County sought to enjoin the sale of land in "MMR" incident to Chapter 278 of the Nevada Revised Statutes, opposing Landex's claim of exemption from that Chapter's application. Incidental to the primary claims, the district attorney alleged that Landex was in violation of NRS 207.171, by virtue of an alleged representation by a corporate agent to the effect that the marketed "open space" land had a reservation of water rights in Landex. The Elko trial court in a relevant part of its decision concluded:

> 5. The court has observed from the promotional speeches filed with the Real Estate Commission by the Defendant, that the "Sales Pitch" is that land is becoming scarce; that land is a prudent investment, and in many cases in the past has resulted in huge profits for the land owner. As for example, land on the Las Vegas Strip. The buyers are invited to purchase as a speculative investment. There is nothing unlawful about this approach as long as there is a full disclosure. (Emphasis added.)

Appellant argues that as a result of the Elko County District Court's determinations, the Washoe County District Court was precluded by the doctrines of res judicata and collateral estoppel from finding that the representations made by the sales representatives of Landex were false or misleading.

In Paradise Palms v. Paradise Homes, 89 Nev. 27, 505 P.2d 596 (1973), this Court, quoting from the landmark case of Bernhard v. Bank of America, Nat. Trust & Sav. Ass'n, 122 P.2d 892 (Cal. 1942), stated,

> 'The doctrine of res judicata precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction. Any issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action' . . .
>
> 'In determining the validity of a plea of res judicata three questions are pertinent: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?'

Id. at 30-31, 505 P.2d at 598-99.

Respondents concede the finality of the prior adjudication; however, they contend that they were not in privity with the Elko County district attorney and that the issues litigated in this Washoe County proceeding were different from those litigated and decided in the Elko County action. From the record before us, we are constrained to agree with respondents that the issues tried in the Elko proceeding are markedly dissimilar from those now before us. The Elko case involved a different form of advertising than the form of podium speeches and other personal contact. We find it unnecessary to discuss the privity question.

Furthermore, the Elko County decision as to the tendency of the questioned statement to mislead the public was qualified by the language "as long as there is a full disclosure." The issue litigated there focused on whether there was, in fact, enough of a disclosure so as to fully inform prospective purchasers. Moreover, the representations were of a different type and nature, were made subsequent to the Elko decision, and were made in Reno, not Elko. The doctrine of res judicata proscribes the hearing of issues determined by a court of competent jurisdiction in a prior proceeding between the same parties regarding the same cause of action. Markoff v. New York Life Ins. Co., 92 Nev.

268, 549 P.2d 330 (1976). The doctrine of collateral estoppel operates to preclude the parties or their privies from relitigating issues previously litigated and actually determined in the prior proceeding. State v. Kallio, 92 Nev. 665, 557 P.2d 705 (1976); Clark v. Clark, 80 Nev. 52, 389 P.2d 69 (1964). The trial court committed no error in ruling the defenses of res judicata and collateral estoppel inapplicable.

3. Restitution.

Restitution was not one of the remedies specifically alleged or prayed for by respondents in their complaint. It is appellant's contention that assuming arguendo the complaint was sufficient to allow restitution, on the facts of this case an award of restitution was improper. We agree.

In support of their claimed entitlement to restitution, respondents rely heavily on People v. Superior Court of Los Angeles County ("Jayhill"), 507 P.2d 1400 (Cal. 1973). At the time Jayhill was decided, the California Business and Professions Code provided that false or misleading advertising "may be enjoined" in an action by the attorney general but was silent as to the power of the trial court to order restitution in such a proceeding. The California statutes involved are similar to NRS 207.171, et seq. In considering the propriety of the attorney general seeking restitution on behalf of defrauded purchasers, the California Supreme Court stated,

> At the time the complaint was filed Business and Professions Code Section 17535 provided that false or misleading advertising "may be enjoined in an action by the Attorney General, but was silent as to the power of the trial court to order restitution in such a proceeding On the other hand the statute did not restrict the court's general equity jurisdiction "in so many words, or by necessary and inescapable inference." In the absence of such a restriction a court of equity may exercise the full range of its inherent powers in order to accomplish complete justice between the parties, restoring if necessary the status quo ante as

> nearly as may be achieved. In particular, in an action by the Attorney General under section 17535 a trial court has the inherent power to order as a form of ancillary relief, that the defendants make or offer to make restitution to the customers found to have been defrauded. (Citations omitted; emphasis added.)

Id. at 1402. See also, Annot., 55 ALR 3d 198 and Annot., 59 ALR 3d 1222.

Appellants concede, and we recognize, that a court has the inherent power, ancillary to its general equity jurisdiction, to order restitution in an appropriate case, see, Securities & Exchange Com'n v. Golconda Mining Co., 327 F.Supp. 257 (S.D. N.Y. 1971); however, they contend that the State must prove that persons were actually defrauded and suffered injury as a result of the misrepresentations made. Respondents contend that they need only prove that a violation of NRS 207.171 has occurred, without more, and cite NRS 207.173 which provides in part, "it is sufficient . . . that any statement referred to in NRS 207.171 has a tendency to deceive or mislead the public because of its false or deceptive or misleading character even though no member of the public is actually deceived or misled by such statement." We are constrained to agree with appellant Landex's argument. In People v. Superior Court of Ventura County, 552 P.2d 760 (Cal. 1976), the California Supreme Court, dealing with an action brought by a district attorney under legislation similar to NRS 207.171 et seq., stated:

> Both complaints seek restitution to the investors . . . .The People . . . are still required to prove that restitution is appropriate even though civil penalties may also be appropriate in the absence of such proof. (Citations omitted; emphasis added.)

Id. at 763. See also, Kugler v. Romain, 279 A.2d 640 (N. J. 1971).

The comparatively limited proof required to establish false or deceptive advertising contrasts sharply with that necessary to prove actionable fraud. To establish fraud there must be proven:

> [1] A false representation made by the defendant, [2] knowledge or belief on the part of the defendant that the representation is false--or, that he has not a sufficient basis of information to make it, [3] an intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation, [4] justifiable reliance upon the representation on the part of the plaintiff in taking action or refraining from it, and [5] damage to the plaintiff, resulting from such reliance . . . .

Lubbe, supra, at 599, 540 P.2d at 117; accord, Ach v. Finkelstein, 70 Cal.Rptr. 472 (1968). Viewing the question most favorably to respondents, the first three elements have been proven; however, we find no evidence on elements four and five. Under our decision today, as to false advertising, no purchaser need be produced, or even exist. However, relative to the proposition of actionable fraud, the record does not reveal who, if any, of the some nine hundred purchasers were recipients of the deceptive advertising. Not a single purchaser of a "MMR" parcel was produced at trial, and there is not a shred of evidence showing reliance upon the false, deceptive, or misleading presentations. Similarly, no evidence was proffered showing that all buyers were similarly situated, and, therefore, what amounts are owed to each. Because of like evidentiary voids we do not know whether reliance by the purchasers is provable, as some purchasers may have known, as a result of their knowledge and experience, that the representations were false or misleading. Even more fundamentally, no purchaser or representative of a class was joined as a party to the proceeding, and for this reason alone restitution was not an available remedy. More precisely, the court was without the power to enter a judgment ordering an offer of restitution or, correspondingly, reconveyances. Compare, United States v. Parkinson, 240 F.2d 918 (9th Cir. 1956); see also, Kugler, supra (by reason of a price unconscionability common to all transactions, all of the sales contracts were held invalid and unenforceable); Jayhill, supra (holding that as a form of ancillary relief to the

attorney general suit, a court may award restitution to all purchasers shown to have been defrauded).

Although Nevada is a "notice pleading" state, our practice is not so liberal as to permit recovery in these circumstances. The court below erred in ordering restitution.

4. Twenty Violations of NRS 207.170.

Appellants next challenge the award of civil penalties, contending that the wording of NRS 207.170 "clearly establishes that it is the act of publication and not the extent of that advertising which determines whether one violation, or a number of violations, of false advertising has been committed." They argue that here only one violation of NRS 207.171 occurred, referring to NRS 207.174 which states in part: "As used in this section, the term 'each violation' includes, as a single violation, a continuous or repetitive violation arising out of the same act." The "same act" language requires that there be separate acts involved before a person can be charged with more than one violation of NRS 207.171.

In the instant case, the court found that the statements complained of were made, initially, by a person giving a podium speech to a group of approximately twenty persons in a Reno "hospitality room." It was further established that immediately thereafter various sales representatives of Landex approached each potential investor individually and made certain misrepresentations used as a partial basis of the complaint. It is essentially appellants' contention that since the alleged misrepresentations were made to the group, there is only one violation. We do not agree.

In Jayhill, supra, the court interpreted similar statutory language and determined the number of violations by the number of victims. There, the defendant made twenty-five separate misrepresentations to each customer in their door-to-door sales of encyclopedias. The Jayhill court imposed the maximum penalty of $2,500 for each violation and

THE REGULATION OF LAND SALES IN NEVADA

With the enactment of Chapter 119 of the NRS in 1971, Nevada joined most of her sister states and the federal government in efforts to protect consumers from disreputable subdivision developers. Nevada has long been a target for dishonest land sale tactics because of our state's ability to attract vacationers from every part of the country. Visitors to Nevada arrive with cash and are usually in a "gambling mood". In addition, such visitors rarely have time to even look at any property they purchase much less to fully investigate the persons with whom they are dealing or to understand the contractual terms which they are agreeing to. Indeed, it was as much to protect the state's reputation for fair play as to protect victimized consumers that motivated the enactment of Ch. 119 into law.

Although Ch. 119 has been on the books for the last five years, there has been a dearth of resulting case law interpreting its provisions. The Nevada Real Estate Division (NRED), which is charged with enforcing Ch. 119, has recently won an important case against Landex, Inc., in the Second Judicial District. However, that case will soon be appealed to the Nevada Supreme Court. Because the present writer foresees a sharp increase in litigation pursuant to the enforcement of Nevada's attempt to regulate land sales practices, the following article is offered as a basic introduction to the scope of Ch. 119.

"fair, just and equitable" level. Here there are no specific grounds for the denial of a subdivision license, rather the legislative body delegates to an administrative body the duty to determine whether or not a potential offering of subdivided land is "fair, just and equitable". California arrived at this level, as concerns subdivisions located outside of that State, also in 1963.[4/] The usual method of accomplishing this third level of regulation is simply to define the sales of land, located out-of-state, as being a "security" and subject to security regulations.[5/]

During the 1960's many states, and the federal government, expressed an interest in enacting legislation to protect consumers from the alleged deceitful sales practices taking place in the land sales business. In 1966 the Uniform Land Sales Practices Act (henceforth Uniform Act) was suggested by the National Conference of Commissioners on Uniform State Laws.[6/] The Uniform Act has since been enacted by eight states and can be categorized within the second, or "permit" level of regulation.[7/]

In 1968 the United States Congress enacted the Interstate Land Sales Act (ILSA)[8/] which is the least ambitious of any recent attempt to regulate land sales activities. The

4/ Ca. B. & P. §§ 10249.1, 10238.4.
5/ In addition to California, see Tenn. Code Annotated §§ 1602(5 1613; and Ohio Revised Code §§ 1707.01(B), 1707.33
6/ Uniform Laws Annotated, vol. 7, p. 604. See also footnote No. 12 infra.
7/ See the comment following § 7, on p. 616 of the Uniform Act. The eight enacting states are listed in footnote No. 12.
8/ 15 USC §§ 1701 - 1720.

only effective requirement contained in the ILSA is that of demanding that a property report be shown to purchasers before completion of the contract. As such the ILSA should be placed on the first, or "mandatory disclosure", level of regulation. It should be noted that during committee debates on the ILSA in Congress, there was expressed a recognition that mere disclosure would be insufficient protection for consumers. However, it was felt that additional regulation would be best accomplished by the states on an individual basis.[9] Since 1968 the Office of Interstate Land Sales Regulation (OILSR), a subordinate agency of the Department of Housing and Urban Development (HUD), has been continuously criticized for failing to fully enforce the requirements of the ILSA.[10] In fact, the Federal Trade Commission (FTC) has probably taken a more active role to protect consumers from dishonest subdividers than has OILSR.[11] Also, interviews by the present writer with California and NRED officials indicate their continued dissatisfaction with OILSR's efforts.

It was at this point in the history of land sales regulation (1971) that Nevada enacted Ch. 119. The Nevada Legislature had a number of alternatives, such as determining which level of regulation it desired to effectuate and from which,

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9/ "Hearings on S 2672." Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Congress, First Session, (1967). See also 6 Univ. of Michigan Journal of Law Reform 511, (Winter, 1973).

10/ 7 Urban Lawyer 215, 222 (September, 1975), and 6 Univ. of Michigan Journal of Law Reform 511, 515, (Winter, 1973).

11/ 12 Huston, L. R. 708 (March, 1975).

if any, earlier foreign statutes to draw from. Basically, it chose the second level or the "permit" type of regulation, rejecting the more ambitious "fair, just and equitable" level. It also, at least by implication, rejected the Uniform Act, preferring to fashion a unique statutory scheme by relying on portions of all the sources mentioned above. So while Ch. 119 may be unique as a whole, most of its language can be traced to prior foreign legislation.12/

Scope of Ch. 119

What follows is an overview of Ch. 119 which is meant to serve as an introduction to Nevada's statutory scheme of land sales regulation.

Definitions

NRS 119.140 defines a "developer" as an owner of subdivided land who offers it for sale. Also, NRS 119.175 states

12/ The following cross-referencing chart has been prepared in order to make researching efforts more efficient. In the first column at the far left is that NRS Section of Ch. 119 which is to be cross-indexed. The second column contains corresponding section numbers of the Interstate Land Sales Act (15 USC §_____). The third column contains corresponding section numbers of California's Subdivided Lands Act (California Business and Professional Code §_____). The fourth column contains corresponding section numbers of the 1966 Uniform Land Sales Practices Act as published in Uniform Laws Annotated, vol. 7, p. 604. This fourth column is particularly helpful because each section of the Uniform Act is followed by an explanatory comment, references to any "source" statutes used in the preparation of the Uniform Act, and references to statutes of those states which have adopted

the scope of responsibility of a developer for the acts of his subordinates in terms of respondeat superior rather than strict liability. NRS 119.060 defines an "offer" as "every inducement, solicitation or attempt to bring about a sale". "Sale", is defined by NRS 119.100 as any conveyance of "an interest in any portion of a subdivision when undertaken for profit". "Purchaser" is defined by NRS 119.080 as any person who "acquires or attempts to acquire an interest in any portion of a subdivision".

There is nothing particularly novel about the above definitions and all can be traced to earlier foreign statutes (see chart at footnote No. 12). The definition of the term "subdivision", however, is clearly unique in part. It is unique not because of what it adds but because of what it lacks. NRS 119.110 defines a "subdivision" as follows:

> "Subdivision" means any land or tract of land in another state, in this state or in a foreign country from which a sale is attempted, which is divided or proposed

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the Uniform Act. As of 1975 the following States have adopted the Uniform Act, sometimes with minor modifications:

Adopting State	Statutory Citation
Alaska	AS §§ 34.55.004 to 34.55.046
Connecticut	CGSA §§ 20-329a to 20-329m
Florida	FSA §§ 478.011 to 478.33
Hawaii	HRS §§ 484-1 to 484-22
Kansas	KSA §§ 58-3301 to 58-3323
Montana	RCM 1947 §§ 67-2117 to 67-2136
South Carolina	Code 1962 §§ 57-551 to 57-571
Utah	UCA 1953 §§ 57-11-1 to 57-11-21

Although there are several instances where the Nevada statutes were taken verbatim from one of these other sources, usually they are not exact equivalents. As a result, each corresponding statute should be carefully compared with

to be divided over any period into 35 or more lots, parcels, units or interests, including but not limited to undivided interests, which are offered, known, designated or advertised as a common unit by a common name or as a part of a common promotional plan of advertising and sale."

While the language is not identical, NRS 119.110 can be clearly traced to the ILSA (15 USC 1701(3)), the Uniform Act § 1(6)) and California (Ca. B. & P. § 11000) definitions of the

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Ch. 119 before relying on the case law of that corresponding statute.

NRS	ILSA	California	Uniform Act
§ 119.020	§ 1701(6)	§ 11013; 11013.3	§
.030	1701(5)		
.040	1701(4)		1(5)
.060	1701(10)		1(2)
.070	1701(2)		1(3)
.080	1701(9)		1(4)
.090	1701(5)		
.100			1(1)
.110	1701(3)	11000	1(6)
.120	1702	11000.1	3; 10(e)(f)
.140	1705	11010	5
.150	1714(b)	11014	7
.160(1)	1704(d); 1706(e)	11014	8(a),(b)
(2)	1703(a)(2)	11018	7
(3)	1706(a)	11018.3	8(c)
(4)	1706(b)		8(c)
.170	1707(b); 1716		6(b)
.175			16(c)
.180(1)		10237.7[a]	10(b)
(4)	1703(a)(1); 1707(a)	11018.1	4(2)
(5)	1703(b)	11028	16
(6)	1703(b)	11028	16
.210		11022	
.220	1709		16
.230(1)		11013.2(a)	
(2)		11013.2(b)	
(3)		11013.1	
.240	1718	11001	10(a)
.250	1714(a)		10(c),(d)
.260	1710	11019	12
.280	1706(d),(e); 1714(c)		11(b)
.300	1714(d)		11(c)
.330	1717	11023; 11029.1	15

a/ This section applies only to subdivided lands located outside of the State of California.

word "subdivision". What makes Nevada's definition unique is that it lacks the key phrase "whether contiguous or not . . ." which all other definitions usually contain.[13/] The ordinary meaning given to the word "subdivision" is the dividing of the same thing, Cowell v. Clark (1940) 99 p. 2d 594, 596. Under the rules of statutory construction the absence of such a key phrase raises a presumption that the legislature meant not to adopt it, expressly or by implication, (see Sutherland Statutory Construction, § 51.02.vol. 2A). This presumption is particularly strengthened when one considers the fact that the Nevada Legislature rejected an amendment which would have inserted that specific phrase into NRS 119.110, (see S. B. No. 512, Committee on Commerce and Labor, April 10, 1975, § 12).

The resulting problem is this. Suppose a developer chose to subdivide several noncontiguous areas of land, none of which creates 35 or more parcels; would he be exempt from the regulation of Ch. 119 because of the definition given by NRS 119.110? Considering the fact that most developers purchase land only immediately prior to their subdivision plans it becomes clear that NRS 119.110 offers an opportunity for developers to circumvent Ch. 119.

The suggestion has been made that such circumstances would not escape regulation because of the language "advertised . .

13/ Although California's definition of a "subdivision" also lacks this key phrase (Ca. B. & P. § 11000), the California Real Estate Commissioner has been able to promulgate a regulation to escape the holding of Cowell v. Clark. See Title 10, California Administrative Code § 2003.

as part of a common promotional plan . . .". Such language first appears in statutory form in the Uniform Act (§ 1(6)) and is explained by a comment which follows thereto:

> "A subdivider who offers land located in several different areas or states will be subject to this Act if the land is disposed of pursuant to a common promotional plan. Although each case must be examined independently, normally a common promotional plan is one which utilizes common advertising and sales methods to the extent that the offering begins to take on the character of a fungible."

It seems clear to the present writer that almost any attempt to keep separate and to retain some identity to the advertising methods used for each "less than 35 parcel" subdivision would create a trialable legal issue. Nor does it seem difficult to imagine a developer, appraised beforehand, of being capable of offering the various parcels in such a way that such offerings do not "take on the character of a fungible". It should be noted that neither the NRED nor their legal counsel necessarily agrees with the present writer's viewpoint on this subject.

There are two other possible methods which may be attempted in order to avoid the definition of a subdivision as set forth by NRS 119.110. Both of these methods are aimed at the "35 or more lots" qualification and will be discussed only briefly. First is the method which will be labeled the "internal granting" method. Under this method one of several partners (but less than 35) will purchase a tract of land from which they wish to create a subdivision. The first partner will grant to all the partners equal portions of this original land. Each partner will then repeat the same process, thereby granting to the same partners an equal piece of his portion. Obviously, this process could

continue ad infinitum. While the "internal granting" method lacks the ingenuity of the "partition" method (described below) there has not yet been any Appellate decisions on the subject. However, the California Real Estate Commissioner has successfully challenged this process at the trial court level.[14/] The final possible method of circumventing the NRS 119.110 definition of a "subdivision" is known as the "partition" method. Under this method several persons (i.e., 10) purchase a tract of land (i.e., 340 acres) as tenants in common. These persons then seek judicial partition, (i.e., 10 tracts of land of 34 acres each). Each of these persons then subdivides his parcel into 34 lots and each claims to be exempt from the NRS 119.110 definition on the grounds that the original division was a governmental act, not a private one. Such a method was specifically held to be a "subdivision" and circumvention was denied in Pratt v. Adams (1964) 229 C. A. 2d 602, 11 ALR 2d 524.

In addition it should be noted that both methods would be vulnerable to whatever effectiveness is contained in the phrase "common promotional plan" described above.

Exemptions

Assuming that the subdivision has not escaped the scope of Ch. 119 because of the definition given by NRS 119.110, a developer may still avoid regulation by applying to the NRED for one of the exemptions provided by NRS 119.120. Some of the

14/ In support of the California Real Estate Commissioner see California ACO, vol. 7, p. 66 (1956).

more important exemptions will be briefly mentioned. NRS 119.120(1)(b) grants a total exemption if every parcel within the subdivision is 80 acres or larger. NRS 119.120(1)(c) grants a partial exemption where the smallest parcel is over 40 acres in size. However, the developer must still comply with the advertising standards as set forth by NRS 119.180, (discussed infra). Various subsections exempt most residential types of subdivisions.

NRS 119.120(2) offers the developer a total exemption if he can prove that he is selling real estate "which is free and clear of all liens, encumbrances and adverse claims and every purchaser or his or her spouse has personally inspected the lot which he purchased . . .". This "free and clear" exemption is either met or the NRED will treat the subdivision as being covered by a "blanket encumbrance", which is defined by NRS 119.020. A subdivision covered with a blanket encumbrance cannot be sold unless certain financial arrangements are taken, pursuant to NRS 119.230, so as to insure that the developer will be capable of fulfilling his contractual duties.

Chapter 119 Licensing Requirements

As stated earlier, Nevada has a "permit" type of regulatory scheme, whereby a developer must meet certain specific requirements or he cannot legitimately commence selling, (see NRS 119.130). In order to receive a "license" a developer must first file an application as prescribed by NRS 119.140,

which is also known as a "statement of record". The Rules and Regulations of the Nevada Real Estate Division, Adopted Under Ch. 119 (henceforth "Rules and Regulations") provide a more detailed description of the application requirements. NRS 119.150 empowers the NRED to fully investigate all applications and to perform an on-site inspection if necessary.

NRS 119.160(2) is significant because it sets forth those grounds upon which the NRED shall deny a license. These grounds were taken almost verbatim from the California B. & P. Code § 11018, and they are listed below:

> (a) Failure to comply with any of the provisions in this chapter or the rules and regulations of the division pertaining thereto.
>
> (b) The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.
>
> (c) Inability to deliver title or other interest contracted for.
>
> (d) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering.
>
> (e) Inability to demonstrate that adequate financial arrangements have been made for any community, recreational or other facilities included in the offering.
>
> (f) Failure to make a showing that the parcels can be used for the purpose for which they are offered.
>
> (g) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto.
>
> (h) Agreements or bylaws to provide for management or other services pertaining to common facilities in the offering, which fail to comply with the regulations of the division.
>
> (i) Failure to emonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

In order to enforce Ch. 119 licensing requirements, the NRED is armed with two potent remedies. First, the NRED may go to a District Court and seek injunctive relief against any violation of "any provision" of Ch. 119 (see NRS 119.250). Second the NRED may, on its own initiative, issue a "Cease and Desist Order" against any unlicensed persons "engaging in activities for which they are not licensed under this Chapter", (see NRS 119.260).

Chapter 119 Disclosure Requirements

Like most states which have enacted a "permit" type of regulatory scheme, Nevada has retained the "mandatory disclosure" requirements of the first level. While Nevada imitated California's subdivision "licensing" statutes, it looked to the Interstate Land Sales Act when it drafted its "disclosure" requirements. Disclosure is accomplished by the showing to prospective purchasers of a "property report", which contains the same information required by the NRS 119.140 "statement of record". This showing prior to contract signing is required by NRS 119.180(4). NRS 119.180(5) and (6) state the rights of a purchaser to rescind where he has not seen the property report; which are either three days from the signing of a contract where the property report was not shown to the purchaser three days in advance of such signing or three days after being shown the property report where it was not shown until after the signing.

An alternative remedy, in addition to recision, or in lieu thereof if the three-day time limit has passed, is contained

in NRS 119.220. This section provides an action for damages where there exists a misrepresentation within the statement of record or the property report. NRS 119.220 was taken almost verbatim from the ILSA 15 USC § 1709. This civil remedy contains only three of the five elements of common law deceit; -- misrepresentation, reliance and damages. The statute does not require that the defendant have knowledge of his misrepresentation or that he intended to induce the plaintiff with such misrepresentation. It should also be noted that NRS 119.220(5) effectively precludes pumitive damages.

Prior Approval of Advertising

For better or for worse, Nevada has been one of the most advanced states in the area of requiring prior approval of subdivision advertising. While California demands such prior approval of out-of-state subdivisions,[15/] it has no corresponding statutory requirement for subdivisions located within that State.[16/] Both the California Real Estate Commissioner and OILSR are given the authority to stop the continued use of misleading advertising,[17/] but neither can prevent the initial "flood" of such material.[18/] The Uniform Act allows the administrative agency

15/ Ca B. & P. Code §§ 10249.1, 10237.7.
16/ However, the California Real Estate Commissioner has accomplished the same result through a regulation, without any "specific" statutory authority; see Title 10, California Administrative Code § 2819.85.
17/ Ca. B. & P. Code § 11019; 15 USC 1714.
18/ This lack of a "preventive" remedy has been a target of consumer protection advocates. See 7 Urban Lawyer 215.

the authority to demand prior approval of subdivision advertising if it deems it necessary.[19/] However, Nevada has the only statute, NRS 119.180(1)(a), which absolutely demands prior approval of subdivision advertising of lands located in-state. That section reads as follows:

> 1. No subdivision or lot, parcel or unit in any subdivision shall be sold:
>
> (a) Until the division has approved a written plan or the methods proposed to be employed for the procurement of prospective purchasers, the sale to purchasers and the retention of purchasers after sale, which plan or methods shall describe with particularity:
>
> (1) The form and content of advertising to be used;
>
> (2) The nature of the offer of gifts or other free benefits to be extended;
>
> (3) The nature of promotional meetings involving any person or act described in this paragraph;
>
> (4) The contracts, agreements and other papers to be employed in the sale of such property; and
>
> (5) Such other reasonable details as may be required by the division. The written plan, or the methods proposed, may be filed as a part of the application under NRS 119.140 and shall constitute and be treated as a part thereof.

Nevada leadership in this area is further evidenced by the fact that the advertising guidelines adopted by HUD (24 CFR § 1715.15) were based upon NRED guidelines contained in

19/ Uniform Act § 10(b).

the Rules and Regulations, (Section VI of the March 25, 1975 publication).

The requirement that subdividers submit their advertising for prior approval was an issue in the Landex trial. That trial court (Dept. 7, Second Judicial District) held that NRS 119.180(1)(a) was constitutionally valid. In addition, District Judge Peter Breen reprimanded the defendant and his attorneys for their refusal to comply with that statute. In his Decision dated September 29, 1975, on page 5, Judge Breen states:

> ". . . Rather than seek a review of the actions of the Real Estate Division through orderly and proper legal channels, the attorneys and their defendants decided, as it were, to take the matter into their own hands, unilaterally overruling the Real Estate Division's efforts to enforce Nevada's statutes. How can we expect the average citizen to obey our laws if the substantial businessman and his attorney are allowed to select what rules and decisions they will and will not follow? . . ."

As indicated earlier, that decision is expected to be appealed to the Nevada Supreme Court.

Registered Representative Issue

NRS 119.180(1)(b) authorizes a developer to employ persons not licensed under Ch. 645 (Real Estate Brokers and Salesmen) to sell subdivision parcels. Absent that section such use of registered representatives would be prohibited by law, (see NRS 645.240). In 1973 the Nevada Legislature amended NRS 119.180(2) so as to end the registered representative exception on January 1, 1975. Several registered representatives brought suit challenging the constitutionality of the 1973

amendment. The trial court (Dept. No. X, Eighth Judicial District) ordered summary judgment for the State of Nevada, however, it was reversed by the Supreme Court on grounds that some evidenciary hearing was necessary. The issues are once again before the same trial court and in the meantime the NRED is enjoined from enforcing the 1973 amendment against the named defendants.

State's Right to Sue for Restitution

On the face of Ch. 119, there is no indication that the Nevada Legislature intended that the NRED should have the right to sue for restitution so as to allow victimized purchasers a return on their money. Even without such express authority, the majority rule is that a state, once in court, can request "complete relief", including restitution for victimized consumers.[20/] In any case, Nevada's position appears to be clear because of NRS 645.215(1) and (2) which read:

> 645.215 Real estate division may investigate certain transactions relating to unimproved land, subdivisions; injunction in event of fraud, deceit, false advertising.
>
> (1) If the real estate division has reason to believe that fraud, deceit or false advertising is being, has been or is to be pertetrated in connection with the proposed or completed sale, purchase, rental, lease or exchange of any vacant or unimproved land or subdivision outside the corporate limits of any city, it may investigate

20/ See Mitchell v. Robert De Mario Jewelry, Inc., (1968) 361 US 288, 4 LEd 2d 323; 805 Ct. 332; and 55 ALR 3d 198,200. For the minority rule see Commonwealth v. Pennsylvania APSCO Systems (1973) 10 Pa. Commonwealth 138, 309 A2d 184.

> the circumstances of such sale, purchase, rental, lease or exchange.
>
> (2) If such investigation reveals any evidence of fraud, deceit or false advertising which has influenced or induced or may influence or induce the sale, purchase, rental, lease or exchange, the real estate division shall advise the attorney general or the district attorney of the county in which the land or subdivision is located. The district attorney or, upon the request of the administrator, the attorney general shall cause appropriate legal action to be taken to enjoin any further sale, purchase, rental, lease or exchange until the fraud, deceit or false advertising is eliminated and restitution has been made for any loss. [Emphasis added]

It should also be noted that an order for restitution was requested and granted by the Landex trial court.

Observations

Consumer protection is very much in fashion these days, yet periodically one must stand back and ask if any good is really being accomplished. Since the implementation of Ch. 119 in 1971 the NRED has prosecuted only one case to a final judgment (Landex) and there are no cases presently being prosecuted. A number of out-of-court agreements have been reached between NRED and subdividers suspected of violating Ch. 119, but NRED officials are disenchanted with the results. It is the present writer's impression, from discussions with NRED officials that additional lawsuits will soon be forthcoming. If such lawsuits can be completed as successfully as was the Landex trial court decision, then it is felt that some real headway will have been made in protecting consumers from unscrupulous subdividers. Needless to say, any decision by the Supreme Court on the Landex case will be crucial.

Another aspect of Ch. 119 implementation is the fact that the number of active subdivisions in the State of Nevada has been halved since 1971. It is hoped that this is because disreputable subdividers are unable to comply with Ch. 119 requirements. However, there is the distinct danger that even reputable subdividers are being precluded from their occupation because of the sheer bulk of the state and federal filing requirements. One remedy to this problem of duplicate filing is suggested by NRS 119.120(4) which allows the OILSR application to be utilized to the extent that the same information is required by Ch. 119. At present, however, the differences between the two applications are too great and the NRED does not accept even such partial duplicate filing. At one time it was hoped that OILSR would accept state filings, which are usually more extensive in scope, but little progress has been made here either.21/

One of the most promising answers to the problem of duplicate filing lies in the Uniform Act which has been adopted by eight states (see footnote No. 12). Section 20 of that Act states:

> "This Act shall be so construed as to effectuate its general purpose to make uniform law of those states which enact it."

Why Nevada rejected the Uniform Act is not clear to the present writer, since it appears to effect the same results as the more

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21/ At present the following state filings are being accepted by OILSR in lieu of the federal application: California, Florida, Hawaii and New York. See 24 CFR § 1710.26.

complicated statutory scheme of Ch. 119. In any case, if additional states adopt the Uniform Act it may be possible to formulate a single method of filing. It is suggested here that the Nevada Legislature might do well to reconsider substituting the Uniform Act for Ch. 119, particularly because of this goal of uniformity which deals directly with the nationwide problem of subdivision sales practices.

Finally, there is the problem that licensing implies approval. Both HUD and Nevada property reports have large print disclaiming any such effect, nevertheless it is felt that the air of approval is still there.[22/] The Uniform Act, Ch. 119 and ILSA all prohibit any such representation of governmental approval.[23/] However, it has been the present writer's personal experience that these statutes are violated with impunity. One subdivider has even been quoted as having found the property report to be an excellent medium for advertising.[24/] Any harm done to consumers by this "implied approval" will only be offset by an aggressive enforcement of Ch. 119 by the NRED, and particularly by the successful completion of the Landex case before the Nevada Supreme Court.

22/ 6 Univ. of Michigan Journal of Law Reform 511,521 (Winter, 1973).
23/ ILSA (15 USC 1716), Ch. 119 (NRS 119.170), Uniform Act (§ 6(b))
24/ "Consumer Protection in Land Development Sales" by Ron Walsh, 44 Conn. Bar Journal 403 (1970).

Mr. GONZALEZ. Thank you very much, Mr. Barnes. You have been, in my opinion, a most valuable witness. And you, yourself, I think give the reason why, in your prepared statement. And that is: You come from a State that, as you picture it, was considered the chief State involved in that type of interstate land transaction.

You have also come from a State where you had no legislation to speak of, statewide; then you had a weak provision; and then you had strengthening factors. But also, I think you report that current efforts are to weaken that law.

Mr. BARNES. That is correct.

Mr. GONZALEZ. So it reflects a very valuable experience track record that we should welcome, and perhaps follow through with specific questions subsequent to these hearings.

And so I, for one, would ask unanimous consent that we keep the record open on these hearings for that purpose, subsequent to your appearance.

We may wish to submit some questions to you, which you would reply to at your convenience for the record.

Mr. KELLY. Mr. Chairman, reserving the right to object, I would certainly have no objection, if I could have some assurance that when the questions go out and the answers come back, that each member of this subcommittee have delivered to his office a copy of both.

Mr. GONZALEZ. Well, I assume that this has been the case in the past—that is, if they are done expeditiously and within time, before the transcript is closed. Well, of course it becomes part of the record, and that is available to us as soon as it is printed up and available.

Mr. KELLY. Well, I understand, Mr. Chairman. But while the record is still open, I think that each member of the subcommittee ought to note this, because otherwise it could very well go into the record, and we would not be aware of it until it was down the tube. And I think this is fine, for us to get any pertinent information, but I think every member ought to know it, if it is going to be done outside of the duly constituted hearings.

Mr. GONZALEZ. Well, when I said "keep the record open," I meant within the normal, traditional period of time, as we always have in the case of subcommittee hearings.

Mr. KELLY. Well, further reserving the right to object, can we get the assurance of the chairman that if the questions go out or answers come back, that each member of the subcommittee would get a copy of them?

Mr. GONZALEZ. Well, as I say and repeat, this has been my understanding from time immemorial here, that when we have requested submitting questions for the record to be answered by the witness, it is implied or understood that it would have to be within the limitations that printing of the record and the return of the transcript would imply.

That is, the witness himself has to have an opportunity to review them and answer them, and have ample opportunity to answer for the record. So it would be no more than the traditional request.

Mr. KELLY. Well, Mr. Chairman, further reserving the right to object, if we are going to keep the record open, without my objection it is going to be on the basis that if questions go to the witness, that I know they went, and what they were. And if he sends answers back,

I know that they came back before I see them in the record for the first time.

Because otherwise, there can be a lot going into what will constitute the "committee record," without the members knowing about it. And I don't know whether it has been going on in the past, but if it hasn't been happening this way, I suggest that it should.

Mr. GONZALEZ. Well, as far as my experience is concerned here, this has almost universally been done on almost every committee level that I have served on. But with the understanding, of course, that it would be within a reasonable time that the member would submit the questions.

We have done this with the Chairman of the Federal Reserve Board, and the like, and what I can't answer for you is whether or not every member of the subcommittee was given the specific questions asked by the particular member who requested that at the time.

But I do know that the individual member requesting it would get the answers before the record was printed.

Mr. KELLY. Mr. Chairman, further reserving the right to object—I am not trying to cause this thing to get more monumental than it is, but what I am suggesting is that if some individual member has a question for the witness or the deputy attorney general of Nevada, that there would be no reason why he could not ask that. There would be no reason why he could not take his questions and answers and submit them to the subcommittee for insertion into the record.

I have not question about that. But at least, at some time, each subcommittee member would have an opportunity to know what the questions were, and what the answers were, before it constitutes a part of the record.

And so this is the predicate for my objection to keeping the record open, with the idea that the record could be built out in Nevada where we would not have an opportunity to know what is coming and going.

Mr. GONZALEZ. I can assure the gentleman that that fear is groundless, and there would be no reason why——

Mr. KELLY. No objection, Mr. Chairman.

Mr. GONZALEZ. I thank the gentleman.

They have rung the second set of bells and we have to go over and record our votes. So we will suspend temporarily for about 5 minutes and get that chance and return.

[Recess.]

Mr. GONZALEZ. The subcommittee will come to order and we will proceed with Mr. Barnes.

I noticed that Attorney General Anaya referred to the presence of, and he seemed to be impressed by the extent of it but we did not follow by asking him specific questions, the presence of organized crime in the fraudulent land sales incidents.

Has that been the experience in Nevada to any substantial degree?

Mr. BARNES. Not to any substantial degree. We have had rumors that the financing for one of the developers was related to—the company was related to organized crime but other than that, that is the only thing that I have heard.

We have not gotten too much of that in Nevada.

Mr. GONZALEZ. You don't have any record of any substantial presence or visible substantial presence of such a thing as organized crime?

Mr. BARNES. Not really. The closest thing to that other than this financing would be that there has been involvement of an individual named Leonard Rosen, who is a financial consultant for a company called Preferred Equities Corp., which is one of the biggest subdivisions we have going right now. And he is, I understand, being investigated by the Federal Government for these offshore tax shelters and I have heard rumors, but other than that, no solid information.

Mr. GONZALEZ. I wonder if you could give us a little bit more of an explanation, a little bit more detail on the Nevada law requiring adequate financial arrangements for all of the promised improvements.

Mr. BARNES. The adequate financial arrangements have been interpreted and implemented in basically four different things.

One would be 100 percent escrowing of funds for all promised improvements at the outset of the licensing of the development. The second would be a third-party bond of some sort for the full amount of the improvements, so that we would not let the developer himself issue a bond, but if a bonding company would do it, that would be acceptable.

Third, we have also had a policy of allowing a letter of credit for the amount of the improvements.

And the fourth one is an escrow account that is made up of percentage payments of the downpayment and the monthly payments which are made by the purchaser into an account which is frozen until such time as the account reaches the full amount of the improvements. The developer can't touch it until that point.

Mr. GONZALEZ. On this third-party bond, does your experience in Nevada show that they are almost nonexistent or are they available?

Mr. BARNES. They are almost nonexistent. Most bonding companies won't undertake something like that.

Mr. GONZALEZ. Does this requirement apply to all developers, regardless of size?

Mr. BARNES. Yes. My understanding is that the real estate division applies that to all developers, regardless of what size they are.

Mr. GONZALEZ. Does the record show that this practice has limited or impaired activity in the sale of land?

Mr. BARNES. That is very hard to say because you never know why someone—well, first of all, you don't know if someone doesn't register, oftentimes, and if you do know that, you don't know why they didn't.

I know the land sales industry, basically, has been impaired substantially since 1973, when we first got our strong Land Sales Act.

Whether that is due to the requirements that are now placed upon developers prior to being licensed, or whether it is something due to the economy, I don't really know. But I would assume that it probably has dissuaded some developers who would have come in if they did not have to make these adequate financial arrangements. And, hopefully, it has been ones who would have caused problems if they had been licensed.

Mr. GONZALEZ. Who determines the adequacy?

Mr. BARNES. That is determined by the administrator of the State real estate division.

Mr. GONZALEZ. In your opinion, do you think that that could be done as easily or as expeditiously or satisfactorily on the Federal level as it can on the State level?

Mr. BARNES. I would doubt that that would be true for purely intrastate developments. Probably the people in the State itself would be more able to adequately determine that. However, for the large developments which are sold throughout the United States, I think probably the Federal agency could do it better than we could in Nevada or New Mexico could in their State.

Mr. GONZALEZ. I think that the experience some of us have had with the present Federal law would indicate the difficulty there.

Now as I understand it, the Nevada act has an exemption for real estate sold free and clear of all liens and which has been inspected by the purchaser.

What, if any, is your experience under that provision regarding continuing land sales abuses?

Mr. BARNES. That is one of the provisions that we are most unhappy about in our own law because it doesn't prohibit the developer from later encumbering the property and it doesn't mean that just because it is free and clear, that there aren't other problems that the developer is not going to promise that there is a river on the property when there isn't, in fact, or that he is going to put in certain public utilities when he, in fact, won't.

So that is one of the things that we would like to see taken out of our own law. However, I doubt that the State legislature would go along with it.

Mr. GONZALEZ. With respect to the parens patriae doctrine and its inclusion in the Minish bill and its applicability to interstate land sales transactions, the fear has been expressed by some associations and individuals that this would give rise to unnecessary lawsuits and would proliferate frivolous or harassment lawsuits by the State attorneys general.

It is true that the Federal presence in the case of antitrust, as was brought out earlier, is of recent date. But I would like to know, since you endorse the idea also in your statement, I would like to know your thinking is on that.

Mr. BARNES. Well, I know that when the discussions were held on the antitrust parens patriae provision, this same objection was raised and there were some statements on that by then Attorney General Miller after that act was actually signed into law. I think I would pretty much agree. He was at the time the Virginia attorney general, by the way, and I think I would pretty much agree with what he said, and that was that it never makes good political sense to bring a frivolous lawsuit.

People at that time, opponents of the parens patriae portion of the bill, said that attorneys general throughout the country would use these things for politically motivated reasons and that there really wouldn't be any basis for that.

It is my experience that it always hurts you more politically to file a lawsuit that is not justified in fact that it does to not file it in the first place.

So I think that really this is something that is probably raised by people who are concerned about the beneficial effect that this would have for the people of the State, and the very unbeneficial effect I think it would have for the unscrupulous developers.

I don't think it is a valid objection.

Mr. GONZALEZ. I believe the biggest problem that I have seen since the enactment of the Interstate Land Sales Act, such as it is now, is that it unwittingly has come to hamstring, and to a certain extent, hurt, a homebuilder or a developer who happens to be wholly intrastate who has no intention or desire to advertise interstate or even sell on an interstate basis. And yet, this has been the problem in my area because of some peculiar circumstances.

For example, it is a very active military base area and so we have a lot, if not most, of the retirees living traditionally in the San Antonio area. We have had cases where a homebuilder and developer attempt to sell to a locally stationed officer in the armed services and finds himself under the jurisdiction of the Interstate Land Sales Act, and therefore, facing such things as payment of a $20,000 fee and other impediments where the individual purchasing, has originally had a domicile or home base somewhere outside of the State. But, in the meanwhile, he may have determined that he would like to retire in the San Antonio area, and naturally, is soliciting the purchase of the property by personal inspection and purely through local advertising.

Yet, the interstate portions of the law have been very much present and created some difficult situations. HUD has interpreted the law in strict accordance and insists on the coverage and the payment of a pretty expensive filing fee; $20,000, I think, is pretty expensive for the developer.

What is your experience with the law, with the Federal law in Nevada? Has it been concentrating mostly on cases of that nature where it is purely a local operator and not the big interstate operator?

Mr. BARNES. I can't think of a single instance that I know of in Nevada where that has happened, where they have gone into a situation such as you have described. I just can't think of one.

I do agree that that isn't what I would consider a proper application or should not be a proper application of the law. But I just can't think of an occasion like that in Nevada.

Mr. GONZALEZ. Well, I am still arguing with HUD because I could not help but agree with this particular individual, who isn't even really in my own district, because I have been redistricted and I have the core or the heart or the inner city of San Antonio and I don't have all of the city.

And the home that he built is just outside of my district, And, nevertheless, because of my position on the committee, he appealed to me, and I'm still trying to argue this. Because I agree with your judgment, but this is not the judgment thus far by the administrators in HUD.

I am hoping to convince somebody, but that is where we are.

Thank you very much.

Mr. Kelly?

Mr. KELLY. Thank you, Mr. Chairman.

In your testimony, I got the impression that you kind of used the criteria of size as being some sort of an evidence. I must have misunderstood. You didn't intend that, did you?

Mr. BARNES. No, I did not mean to intend that that necessarily followed. But in our experience, it is usually the large developers who cause us the problems.

Now not every large developer does.

Mr. KELLY. Well, that is because they are involved in interstate commerce and not because they are big. So that if you have a big

developer that is legitimately an intrastate operator, then you would not expect the law to apply to him just because he is big?

Mr. BARNES. No, I wouldn't. But I will say that even when we were talking about intrastate—no, I would agree with that. Right. Most of the problems are only the interstate. That is correct.

Mr. KELLY. On this business about putting money up front, wouldn't you agree with me that that is a super suggestion, because then there is no worry.

I mean I understood that to be your testimony.

Mr. BARNES. I think that that is one of the best solutions.

Mr. KELLY. Except for the fact that you are just almost making it necessary for everybody in business to be big or to be solvent. And usually, to be solvent is to be big. And that means that every little businessman is out. And this is a fairly typical development these days. We damn business for being big and then kill everybody that isn't. And then we wind up hating big business and all the little business is dead. We have to quit if we don't believe in the free enterprise system.

Mr. BARNES. That is a problem and I know that it probably is difficult for some of the smaller developments to put all of the money in up front.

There, of course, are alternatives. I could say the way we have it now, we do have this letter of credit and third-party bond and this escrow account.

However, the escrow account, that takes in a portion of the monthly payments.

Mr. KELLY. Well, let me ask you this: Couldn't it be done within—we've gotten by for 200 years without absolutely protecting everybody. Couldn't we maybe get by with just one more 200 years. If we would, for instance, start slamming the jailhouse door on some of these crooks, and that means not passing more laws but just prosecuting the ones we have. And then another situation that we would require these people to specify what they were going to do and then require them to put on the literature that the money to do this is not available and you are depending exclusively on the word of the developer that it will ever be done.

It is kind of like the warning on a cigarette package. And because what this would do, it would open up competition and that would benefit the consumer because when you start reducing, as you have testified here this morning, the number of developers that are in the land developing business, that just, in itself, causes the price of land to go up.

And also, putting this money up front is very expensive because you could be talking about money being held up for a couple of years or more. And with money going at 9, 10, 15 percent, that is heavy and the guy we are protecting is getting so much protection, he can't afford it.

Would there be some limitation on your suggestion in the area that I have suggested by my remarks?

Mr. BARNES. Well, first of all, Mr. Kelly, I do agree with you totally on your point of enforcement, because I think that that has been one of the biggest problems that even the current act, there have been a lot of complaints about it not being properly enforced by OILSR, and I have seen that myself. I have seen cases where we have had trouble,

or one case where we have had trouble with the Federal authorities in trying to really get them to do anything.

They eventually did, but it took a long time.

So that is one of the big problems. But I do feel that if the developer is going to make all of these promises. I think he should be required to put up something to show that he really means it.

I mean I don't think he has to make these promises. If he can't put up the money, fine, but he can say, here is the land, and tell them basically what the situation is and not make the promises.

Mr. KELLY. If we turn you loose on the world, all of these two-faced companies are going out of business. Do you agree? I mean because what do they promise? Happiness ever after, besides white teeth.

But it would seem to me as though the purchaser, by law, is warned that, look, there isn't a dime in this world other than what is posted in this box. This is all of the money that this person has put up. There are no bonds, there is nothing. This is the only money that is actually in escrow to pay for what he is promising you. And you are relying on his word.

Now if you do that, you can get skinned. And if you put a warning like that on there and then people just simply want to trust this person, why should we just simply limit competition, impose costs on everybody else in order to protect someone that has a fraud wish.

Mr. BARNES. Well, one of the problems, and I do see the problems for the small developer in putting the money into an escrow account, but one of the problems that we have with the property report, and everything that the property report says, is that, for one thing, people oftentimes don't read it. For another thing, even if they do read it, they are assured by the salesman that it doesn't count.

Mr. KELLY. But if you require that it be printed in half-inch red and then it says, don't believe the salesman or anything to keep from doing things that are really hurting the American consumer because the increase in the cost of land is one of the heavy problems about the increase in the cost of homes in America.

Is that so?

Mr. BARNES. That is so.

Mr. KELLY. So all of this—I mean everyone is wondering why that is. Well, this is why it is. Because we just keep protecting people until they are not going to be able to afford it.

All right. I thank you for your interest on that. On this business about the political lawsuit, isn't it a real possibility that an enterprising attorney general, just before election, could file a suit and get the blast in the paper and then by the time the fact that the suit is no good emanates from all of the smoke and blaze, the election would be over and that would be a beneficial use for political purposes of a bad law.

Mr. BARNES. Mr. Kelly, that is always a possibility. However, I think that the bill provides that in the case that the attorney general brings a suit which is not well founded or has acted in bad faith, wantonly, and so forth, that the court may, and I am quoting from the bill, the Minish bill, H.R. 12574—it says, "the court may, in its discretion, award reasonable attorney's fees to prevailing defendant upon the finding that the State attorney general has acted in bad faith, vexatiously or for oppressive reasons."

So, I think that is one safeguard that is in the legislation right now, and I doubt very seriously that most attorneys general would do it in the first place. But that is a safeguard.

Mr. KELLY. Well, let me ask you this: You and I agree that there are precious few crooks that have the jailhouse doors slammed behind them in this area because they have so much money and so many lawyers. That I think if you will check the record, there are even fewer attorneys general that they slam the jailhouse door on.

And I think there are probably a few here, there, and yon that probably should have just that very thing happen to them. And courts just aren't really noted for their activity about putting the attorneys general in jail.

I have another question.

Mr. GONZALEZ. Mr. Kelly, I hate to limit, but I must. We have got to vacate this room in less than an hour, and we have three remaining witnesses that have been here all morning long. And so I would suggest that you submit your questions for the record and permit Mr. Barnes to answer for the record.

And we will proceed. Mr. AuCoin has also come back to the subcommittee and he may wish to ask a question or two.

Mr. KELLY. Mr. Chairman, we will just from this point on invoke the 5-minute rule?

Mr. GONZALEZ. Well, it has been more than 5 minutes. I have been careful to make sure that I received no more time than what you have received thus far. But I don't want you to feel it is an arbitrary cutoff. But we do have this limitation staring us in the face and we want to be fair to the three witnesses that have traveled many miles and have been waiting here patiently, and we are caught with the use of this temporary facility in a limited way.

Mr. AUCOIN. Mr. Chairman, I will give up my time so we can get to the next panel.

Mr. GONZALEZ. Would it be possible to submit the questions that you have for the record?

Mr. KELLY. I have just two more questions, Mr. Chairman. I think that it probably will take 1 minute. But I will submit them if that is your preference.

Mr. GONZALEZ. Why don't we go ahead and take them.

Mr. KELLY. All right, on this personal inspection, wouldn't it be reasonable to have that to include "or by a personal representative"? Especially where the lot to be purchased is valued at, say, less than $5,000? Because the cost of transportation to seek a lot could be prohibitive—a prohibitive additional expense imposed by the law, whether the person wants that protection or not.

Mr. BARNES. You are talking, now, about a presale?

Mr. KELLY. Yes.

Mr. BARNES. I think I would not have any problem with that, if it is a personal representative chosen by the purchaser. I wouldn't see any problem with that.

Mr. KELLY. And couldn't we use possibly some criteria such as the value of the land, rather than the size of the lot? For instance, when you got into this business about the 40 acres, that if you say that the land is going to have to be valued at more than $1,000 an acre, then you

are not going to have many people that are buying $40,000 worth of lots, even if it is 40 acres, in interstate sales.

Mr. BARNES. So you could have an exemption for, say, 40 acres where the land is valued at $1,000 an acre.

Mr. KELLY. That would just about wind up that traffic in Nevada, wouldn't it?

Mr. BARNES. Yes, that would do it.

Mr. KELLY. Thank you, Mr. Chairman.

Mr. GONZALEZ. Thank you, Mr. Kelly.

I have three questions that I would like to submit for the record.

[The following are written questions from Congressman Gonzalez to Mr. Barnes, along with the answers of Mr. Barnes:]

QUESTIONS FROM CONGRESSMAN GONZALEZ TO JAMES BARNES

Question 1. Do you think Federal law should cover transactions where the vast majority of purchasers reside in the same state as the offered property and where advertising and promotion is essentially limited to that same state? What should be done where states provide *inadequate* protection? And what principles should be established that will help HUD identify adequate state standards?

Answer. Federal law should cover transactions in all states where the state protections are not equal to the Federal protections. It is irrelevant whether the vast majority of purchasers reside in the same state as the offered property or whether the advertising and promotion is essentially limited to the same state as the offered property. The state law and program should contain:

(a) a definition of "subdivision" that is at least equal to the standards set forth in the Federal definition of "subdivision";

(b) the state law should require the developer to deliver a disclosure statement to the purchaser and the information set forth in the disclosure statement should be at least that required in the Federal act;

(c) the standards for exemptions from the state act should be no broader than the exemption standards found in the Federal act;

(d) the state rescission period should be at least as lengthy as the rescission period in the Federal act;

(e) the state law must require that individuals who sell subdivision property must be licensed in that state as licensed real estate agents;

(f) the state law must have established standards for advertising at least equal to the Federal requirements and the state law should preferably require pre-approval;

(g) the penalties for violations of the act, such as failure to register, misrepresentation, etc. should be at least as stringent as the penalties contained within the federal act.

If the state law in question has substantive standards that go beyond mere full disclosure (which, of course, is all that is found in the Federal law) then there should be a presumption that the state law is adequate. In determining the adequacy of the state law the quality of the state employees administering the law should not be a standard, providing that the state has a civil service act and recruitment and examinations, etc. for the positions.

Question 2. The Senate bill would exempt all interstate sales within 100 miles of the purchaser's residence. What impact would that have on protecting consumers?

Answer. In the case of those states which have a land sales act, the exemption of all interstate sales within 100 miles of the purchaser's residence would probably have little impact on the protection afforded consumers. However, such an exemption would have a great impact on consumers who were purchasing land located in an exempt subdivision in a state which did not have an adequate land sales law. Therefore, such an exemption, if enacted, should not apply to those states which do not have an adequate land sales law.

Question 3. How common is the use of installment contracts for the purchase of land in your state? What would be the impact on the land sales industry if Federal law provided that a developer could only provide financing for the purchase of the lot if the contract included the protection specified in the Minish proposal whereby title is transferred to the purchaser within 30 days; formal foreclosure proceedings take place before loss of title; purchaser estab-

lishes equity in proportion to payments; and liquidated damages may not exceed the developer's proven damages?

Answer. The use of installment contracts for the purchase of land in Nevada is very common. The impact on the land sales industry, if Federal law did provide that a developer could only provide financing for the purchase of the lot if the contract included the protections specified in the Minish proposal whereby title is transferred to the purchaser within 30 days; formal foreclosure proceedings take place before loss of title; purchaser establishes equity in proportion to payments; and liquidated damages may not exceed the developer's proven damages, would be that the consumer would be greatly protected, however such provisions would increase the cost of doing business and would drive up the cost of individual lots.

Mr. GONZALEZ. We want to thank you again, very much, Mr. Barnes, for your very valuable contribution.

Mr. BARNES. Thank you, Mr. Chairman.

[Text resumes on p. 263.]

[The following correspondence was received from the office of the Honorable Frank J. Kelley, attorney general, State of Michigan, enclosing a submission "Comments on Proposed Interstate Land Sales Reform," with attached exhibits:]

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

August 9, 1978

Honorable Thomas L. Ashley
Chairman
Subcommittee on Housing and Community Developments
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Ashley:

This submission relates to the proposed "Interstate Land Sales Reform Act of 1978" and the impact on State regulation of sales of what may be loosely termed recreational land. Attorney General Kelley had hoped to appear before your Subcommittee on August 2, 1978, and offer testimony. Unfortunately, the press of business precluded his being able to appear. The combination of short notice and an airline strike prevented me from appearing in his stead.

I understand that not withstanding a series of roll call votes, the session was productive and much useful information was provided to you. I am advised that the record is still open and the enclosed submission will still be considered.

Once again, let me apologize for Michigan not being physically represented and offer my assistance should further hearings and information be needed.

Very truly yours,

FRANK J. KELLEY
Attorney General

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COMMENTS ON PROPOSED
INTERSTATE LAND SALES REFORM

The Michigan Legislature, in 1972, passed the "land sales act" 1972 PA 286, MCLA 565.801 et seq; MSA 26.1286(1) et seq, (Appendix A) which became effective October 1, 1973. Pursuant to the Act, supra, the Land Sales Division of the Department of Licensing and Regulation promulgated rules (Appendix B) to implement the legislation. Our law, from a disclosure standpoint, was patterned after the "Interstate Land Sales Full Disclosure Act" 15 USC 1701 et seq, and from an enforcement standpoint embodies many of the features of the proposed "Interstate Land Sales Reform Act of 1978", HR 12574. Prior to commenting on the proposed Act, a brief review of the land sales industry vis-a-vis the State of Michigan will provide helpful background.

Prior to the Federal Act, Michigan citizens enjoyed very little in the way of protection from out-of-state developers and virtually no protection, except the limited advantage of possibly viewing the land of in-state developers. A feeble attempt at regulation was attempted using the Real Estate License Law, 1919 PA 306, MCLA 451.201 et seq; MSA 19.791 et seq, as a vehicle. Both the efficacy and legality of this system where suspect and the usual horror stories of no title, misrepresentation and outright fraud abounded. Attorney General Kelley and a cadre of public interest groups and legitimate developers worked closely with the Legislature and provided the impetus for our present statute.

Michigan, without being parochial, is somewhat unique in that with our pleasant geography, four seasons recreation and relatively high standard of living, it is a development state as well as a market state. A breakdown of currently effective registrations reflect:

	TOTAL	IN-STATE	OUT-OF-STATE
Effective Registrations	326	242	84
Lots or parcels registered	119,189	29,051	90,138
Number of Developers	235	198	37
Average number of lots per registration	366	120	1,073
Average registrations per developer	1.39	1.22	2.27

We feel that because of our stringent registration requirements, many developers are not marketing in Michigan. Also, out-of-state developers are registering only a small portion of their total offering.

The complaint history, since enactment of our State law, reflects a relatively low number. While we could be tempted to attribute that fact to our stringent law and firm enforcement posture, factors such as the economy, energy crises and soft market conditions are of equal effect. The breakdown quantitatively is:

PERIOD	NO. OF COMPLAINTS	IN STATE	OUT STATE	CONSUMER	AGENCY INITIATED
10/74 - 9/75	109	72	37	48	61
10/75 - 9/76	117	93	24	50	67
10/76 - 9/77	107	73	34	65	42
10/77 - 6/13/78	68	41	27	40	28
TOTALS	401	279	122	203	198

It should be noted that one complaint may be from a property owners group while for reporting purposes, it would be treated as one complaint.

An analysis of the complaints breaks out as follows:

	TYPE OF COMPLAINT	10-1-75 thru 9-30-76	10-1-76 thru 9-30-77	10-1-77 thru 3-31-78	TOTAL
1.	Offering or advertising of unregistered lands	44	30	18	92
2.	Sale of unregistered lands	5	3	0	8
3.	Unable to obtain deed	5	9	3	17
4.	Unable to record deed	1	1	1	3
5.	Unpaid taxes	2	4	0	6
6.	Incompleted roads	3	2	0	5
7.	Inability to obtain water	0	0	0	0
8.	Inability to obtain electric	1	1	3	5
9.	Inability to obtain sewer	0	6	0	6
10.	Incompleted recreational facilities (amenities)	0	2	0	2
11.	Use of unapproved advertising by registered developer	2	3	4	9
12.	Misrepresentation or failure to disclose pertinent facts	18	18	9	45
13.	Failure to comply with rescission right	8	6	3	17
14.	Complaint relating to Property Owners Assoc.	1	0	1	2
15.	Use of unapproved contract	2	0	0	2

	TYPE OF COMPLAINT	PERIODS: 10-1-75 thru 9-30-76	10-1-76 thru 9-30-77	10-1-77 thru 3-31-78	TOTAL
16.	Unclassified	14	14	9	37
17.	Possible violation of other acts (referred)	2	4	0	6
18.	Non-compliance with annual renewal provisions	8	3	0	11
	TOTALS	116	106	51	
	GRAND TOTAL				273

Michigan then may be cited as an atypical example in that a good statute and a commitment to enforcement provide adequate protection for our citizens and those of other states who are contemplating purchasing recreational land in the "Wolverine State". Our success, in large measure, is attributable to the fine cooperation we have always received from our counterparts in the Office of Interstate Land Sales Registration. Requests for information have always been expeditiously responded to both at the central and regional office level. A spirit of cooperativeness between the states fostered in part by the good offices of the National Association of Attorneys General has been another effective tool in dealing with developers located far outside our individual borders.

Because of the interstate nature of the industry, it is incumbent upon the Federal Government to be in the fore front of protecting prospective purchasers without preempting those states that have effective regulatory systems. If every state was in Michigan's enviable position, then the need for a federal presence would be diminished.

Sadly, this is not the case. Regulations, which do not inhibit or strangle responsible development and a healthy land sales industry is needed. It appears the market is once again improving and sales activities are being intensified.

From that base, Attorney General Kelley would then generally endorse HR 12574 and urge its enactment. Following is a section by section review of the HR 12574 and a comparison to Michigan law:

SECTION 1702 - EXEMPTIONS

1702(a)(1) Michigan has a 25 lot threshold for registration with a limited exemption for up to 50 lots if fully platted, recorded and no amenities are promised or advertised.

1702(a)(2) Michigan does not have a "size" exemption; the proposed 40 acre requirement would provide adequate protection.

1701(3) A "housekeeping" change.

1702(a)(4) Michigan has a "court order exemption". This proposal, to capture sales pursuant to Bankruptcy Court orders, is extremely significant and fills a regulatory void. Because of the Federal posture of most bankruptcy proceedings, this change provides valuable and necessary protection. ATTORNEY GENERAL KELLEY STRONGLY SUPPORTS THIS PROVISION.

SECTION 1703 - PROHIBITION AND RIGHTS OF REVOCATION

Michigan provides for a 5 day "buyer remorse" period which begins on the date the consumer receives a legible and executed copy of the contract. The proposed legislation provides a 30 day period plus an additional 3 years in certain circumstances. Obviously, the longer a consumer

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to consider a decision, one of two events will occur; either procrastination until the end of the period or a reasoned decision based on the opportunity to make inquiries and gather the necessary facts. Hopefully, the latter will occur. The other changes to this section ease the burden of proof on a consumer seeking recession or the agency in an enforcement action.

SECTION 1705 - INFORMATION REQUIRED IN STATEMENT OF RECORD

Michigan employs a system of previewing and approving advertisements and promotional materials of all media. The contents thereof are compared with the Statement of Record for accuracy and veracity and an approval number assigned that appears in the ad. While such a system is administratively burdensome, it serves as a check in an area historically abused.

From an enforcement standpoint, having promotional material available is very desirable. While the Michigan system may be inappropriate at the National level, the ability to monitor what is being said by comparison with what is on file is very helpful. Additionally, should the developer deviate from what it filed, administrative remedies may be imposed.

SECTION 1708 - EFFECT ON STATE LAWS

THE PROPOSED LEGISLATION IS PREEMPTIVE IN NATURE AND NOT SUPPORTED BY ATTORNEY GENERAL KELLEY. STATE REGULATIONS SHOULD NOT BE PREEMPTED UNLESS THE INCONSISTENCY

PROVIDES A LESSER DEGREE OF PROTECTION TO THE PUBLIC INTEREST. ATTORNEY GENERAL KELLEY RECOMMENDS THIS SECTION BE AMENDED TO REFLECT THAT POSITION.

SECTION 1709 - DAMAGE AWARDS

The proposed legislation tracks the Michigan system. We provide for 6% interest on the amount of actual damages from the date of payment less any income the consumer may have received.

SECTION 1711 - STATUTE OF LIMITATIONS

The proposed legislation is consistent with the Michigan Statute except the maximum period is 6 years from the sale or lease.

SECTION 1714 - ADMINISTRATIVE REMEDIES

The proposed legislation is very similar to those remedies in our state law. The ability to issue a cease and desist order prior to hearing in extraordinary circumstances has proven to be very successful and urges developers to expeditiously proceed through the hearing process. The developer is protected from agency abuse of the device by the judicial review procedure.

(NEW) CIVIL PENALTIES

The Michigan Statute does not provide for civil penalties. Such a device is an effective deterrent to a potential violation.

SECTION 1717 - CRIMINAL PENALTIES

Michigan provides felony penalties of $25,000 or up to 10 years imprisonment for willfull fraudulent conduct; any other violation is a misdemeanor subjecting a violator to $2,000 or a maximum of 90 days imprisonment. Only two criminal prosecutions have been concluded.

SECTION 1718 - REGULATION OF ADVERTISING

This section is necessary to effectively deal with advertising and is consistent with the Michigan approach.

SECTION 1720 - PUBLIC EDUCATION

The best form of consumer protection is an informed consumer protecting themself. No matter how good a registration and disclosure system is devised, too often the government is involved in seeking remedial relief. An effective program to inform and educate the public is the catalyst for an effective program.

(NEW) "PARENS PATRIAE" RIGHT TO SUE

Attorney General Kelley favors "parens patriae" legislation as a tool that benefits the public as well as government at both the national and state level. The system sets forth an effective vehicle that safeguards a developer from multiple recoveries or vexatious actions while giving injured consumers a viable recourse. As

seen in the "Antitrust Improvements Act", a rash of irresponsible lawsuits has not resulted. You have probably been inundated by favorable comment by the Attorneys General and negative imput from the industry. Rather than rehash the pros of "parens patriae", suffice it to say Attorney General Kelley strongly endorses this section.

(NEW) IMPROVEMENTS DEALING WITH BASIC SERVICES

This provision is consistent with the Michigan statute and has proven to be effective. Performance or surity bonds are also acceptable alternatives to an escrow account. The same system is utilized for assurances that promised amenities will be provided and in place as promised to the purchaser.

All in all, HR 12574 represents a salutory effort to provide more protection to consumers without being unduly burdensome on developers. With the exception of the preemption issue, Attorney General Kelley enthusiastically endorses the bill. Conversely, S 3084 is in the nature of a "developers bill" and does little to enhance consumer protection in this area which has been subject to abuse. Many consumers buy this type of land for retirement or recreational purposes. They should be assured of reality and not "pie in the sky".

EXHIBIT A

LAND SALES ACT

ACT 286 OF 1972, AS AMENDED

PRINTED JUNE 1974

STATE OF MICHIGAN

Department of Licensing and Regulation
LAND SALES DIVISION
1008 S. Washington Ave. Lansing, Michigan 48926

NOTICE

The statutory provisions and rules contained in this booklet are *not to be considered the final authority on the current law*. While every effort has been made to insure the accuracy and completeness of this booklet, it is impossible to include changes in the law which occur after this booklet has been printed.

This booklet contains the law effective on June 1, 1974.

Revisions to the statutory provisions and rules contained in this booklet may be obtained from the Michigan Department of Licensing and Regulation, Land Sales Division, 1008 South Washington Avenue, Lansing, Michigan 48926.

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LAND SALES ACT

ACT 286 OF 1972

LAND SALES ACT

P.A. 1972, No. 286, Eff. Oct. 1, 1973

AN ACT to regulate the disposition of lots, parcels, units or interests in lands within real estate subdivision; to require registration; to protect the purchaser from unfair and deceptive trade practices; to provide for the filing of bonds and performance assurances; to regulate advertising, promotions and sales contracts; to provide for the payment of fees; and to provide penalties.

The People of the State of Michgian enact:

565.801 Short title

Sec. 1. This act shall be known and may be cited as the "land sales act".

565.802 Definitions

Sec. 2. As used in this act:

(a) "Advertising" means the publication or causing to be published of all material which has been prepared for public distribution by any means of communication. The term does not include stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities, prospectuses, applications for listing securities on stock exchanges, and the like; prospectuses, property reports, offering statements, or other documents required to be delivered to prospective purchaser by an agency of another state or the federal government; all communications addressed to and relating to the account of persons who have previously executed a contract for the purchase of the developer's lands, except where directed to the sale of additional lands.

(b) "Agent" means any person who represents, or acts for or on behalf of, a developer in disposing of subdivided lands or lots in a subdivision, and includes a real estate broker as defined in Act No. 306 of the Public Acts of 1919, as amended, being sections 451.201 to 451.219 of the Michigan Compiled Laws, but does not include an attorney at law whose representation of another person consists solely of rendering legal services.

(c) "Blanket encumbrance" means a trust deed or mortgage or mechanics lien or any other lien or financial encumbrance, securing or evidencing money debt and affecting lands to be subdivided or affecting more than 1 lot, parcel, unit, or interest of subdivided land; or an agreement affecting more than 1 lot, parcel, unit, or interest by which the developer holds the subdivision under an option, contract to purchase, or trust agreement, except a lien or other encumbrance arising as a result of the imposition of a tax assessment by a public authority so long as no portion thereof is past due.

(d) "Contiguous land" means any additional subdivided land adjacent to or adjoining the subdivided land included in any earlier subdivision for which a certificate of registration has been issued and which is offered under the same common subdivision name and the same common promotional plan of advertising and disposition.

(e) "Department" means the department of licensing and regulation.

(f) "Developer" means a person, or his agent, who, directly or indirectly, offers subdivided land for disposition, or who advertises subdivided land for disposition.

(g) "Director" means the director of the department of licensing and regulation or any person designated by him to act in his place.

(h) "Disposition" means a sale, lease, option, assignment, award by lottery or as a prize, or any offer or solicitation of an offer to do any of the foregoing concerning a subdivision or any part of a subdivision.

(i) "Notice" means a communication by mail from the department. Notice to developers shall be deemed complete when mailed certified return receipt requested to the developer's address currently on file with the department.

(j) "Offer" means every inducement, solicitation, or encouragement of a person to acquire a lot, unit, parcel, or interest in subdivided land.

(k) "Option" means, and is limited to, an offer to sell or to purchase respecting which a consideration of not more than 15% of the total purchase price is exchanged to guarantee that the offer will not be withdrawn or revoked for an agreed period of time.

(l) "Person" means an individual, corporation, government or governmental division or agency, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(m) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(n) "Subdivision" and "subdivided land" means any land, wherever located, improved or unimproved, which is divided or proposed to be divided for the purpose of disposition into 25 or more lots, parcels, units, or interests, and includes any portion thereof. Subdivided lands include land located outside this state which is promoted by mail, telephone calls, solicitation, or advertisements within or directed into this state. The terms include any land, whether contiguous or not, if 25 or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale where subdivided land is offered for disposition by a single developer or a group of developers acting in concert. If the land is contiguous or is known, designated, or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

565.803 Subdivisions, disposition of lots, partial, units, or interests

Sec. 3. The disposition of lots, parcels, units or interests in land from subdivisions is subject to regulation and control pursuant to this act which is to be administered by the department.

565.804 Offers and dispositions of interests in land, inapplicability

Sec. 4. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, this act does not apply to offers or dispositions of an interest in land:

(a) By a purchaser of subdivided lands for his own account in a single or isolated transaction.

(b) If fewer than 25 separate lots, parcels, units, or interests in subdivided lands are offered or to be offered after September 30, 1973.

(c) On which lot, parcel or unit there is a commercial or industrial building, shopping center, dwelling unit, or apartment, or as to which there is a legal obligation on the part of the seller or his assignee or agent to construct such a building within 2 years from date of sale, lease, option, assignment, award by lottery, or as a prize.

(d) For cemetery lots or interests.

(e) A subdivision as to which the plan of sale is to dispose to 10 or fewer persons.

(f) To any person who acquires such lots for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial, or industrial buildings for the purpose of resale; or constructing commercial or industrial buildings for his own use; or the lease of such lots to persons engaged in such business.

(g) Pursuant to court order.

(h) Securities currently registered or securities transactions exempted by order of the corporation and securities bureau of the department of commerce.

(i) By a person electing to make offers or dispositions under any 2 or more different exemptions.

(j) A campground developed pursuant to Act No. 171 of the Public Acts of 1970, being sections 325.651 to 325.665 of the Michigan Compiled Laws or a mobile home park developed pursuant to Act No. 243 of the Public Acts of 1959, as amended, being sections 125.1001 to 125.1097 of the Michigan Compiled Laws.

(k) In a subdivision which has fewer than 50 lots, parcels, units or interests and which has been fully recorded under Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 through 560.293 of the Michigan Compiled Laws, in the office of the registrar of deeds and in which no amenities are promised or advertised. Nothing in this subsection shall limit the application of section 27 to a developer or agent of a developer.

565.805 Excluded dispositions

Sec. 5. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, the provisions of this act do not apply to:

(a) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate.

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute.

(c) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interest are regulated as securities by the United States or by an agency of this state.

(d) Condominiums located in Michigan and regulated by the corporation and securities bureau of the department of commerce.

(e) Offers or dispositions of an interest in lands by a Michigan state agency, city, village, township, county, or any other governmental unit, or United States governmental unit, body or subdivision.

565.806 Registration; property reports; unfair acts; voidability of contracts; rescission; form of contract; third parties

Sec. 6. Unless the subdivided lands or the transaction is exempt by this act:

(a) A person may not offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this act.

(b) A person may not dispose of any interest in subdivided lands unless a current property report is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the property report prior to the disposition.

(c) A person may not engage in any unfair or deceptive act or practice in the conduct of and disposition of subdivided lands. Disposition of subdivided lands by option on an option or by assignment of less than the total options held by the seller, is presumed to be an unfair and deceptive practice. Disposition by instrument purporting to be an option is presumed unfair and deceptive if the stated consideration for the purported option exceeds 15% of the purchase price of the subdivided land or if the option does not separately state the purchase price.

(d) Any contract or agreement for the disposition of a lot, parcel, unit or interest in a subdivision covered by this act, where the property report has not been given to the purchaser in advance of the time of his signing, is voidable at the discretion of the purchaser. In addition, the purchaser has an unconditional right to rescind any contract, agreement or other evidence of indebtedness between the purchaser and the developer, or revoke any offer within 5 days from the date the purchaser actually receives a legible copy of the signed contract, agreement, or other evidence of indebtedness or offer and the property report as provided in this act. Predating of a document does not defeat the time in which the right to rescind may be exercised. The burden of proof the document was not predated is upon the developer. An act of the developer in assigning or pledging a contract or agreement shall not waive the purchaser's right to void or rescind the contract or agreement as provided by this subsection. Each contract or agreement shall be prominently labeled and captioned that it is a document taken in connection with a sale or other disposition of lands under this act.

Each contract or agreement for the disposition of a lot, parcel, unit, or interest in a subdivision shall prominently contain upon its face the following notice printed in at least 8 point type which shall be at least 4 point bold type larger than the body of the document stating:

NOTICE TO PURCHASER

YOU ARE ENTITLED TO CANCEL THIS AGREEMENT AT ANY TIME IF YOU HAVE NOT RECEIVED THE PROPERTY REPORT IN ADVANCE OF YOUR SIGNING OF THIS AGREEMENT. IN ADDITION, YOU ARE ENTITLED TO CANCEL THIS AGREEMENT FOR ANY REASON WITHIN 5 DAYS FROM THE DAY YOU ACTUALLY RECEIVE A LEGIBLE COPY OF THIS DOCUMENT.

The contract or agreement shall contain sufficient space upon its face in immediate conjunction with the above notice for the signature of each person obligated under the instrument acknowledging that the person has read the notice. A third party who is unrelated to the developer may, in connection with the purchase of, or the making of a loan secured by such contracts or agreements, rely on a document furnished by the developer, and signed by a purchaser acknowledging receipt of a property report in advance of signing a contract or agreement.

Rescission occurs when the purchaser gives written notice to the developer at the address stated in the contract or agreement. Notice of rescission if given by mail is effective when it is deposited in a mailbox properly addressed and postage prepaid. A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or agreement.

(e) No act of a purchaser shall be effective to waive the right to rescind as provided in this section. However, the right of rescission terminates 5 years after the date the purchaser signs the contract or agreement.

565.807 Application, filing, forms, execution, contents; registration fee, payment

Sec. 7. Before subdivided lands are offered for disposition, the developer shall file with the department an application upon forms to be supplied by the department. A registration fee shall accompany the application. The application may be filed before a plat has been recorded as provided for in section 172 of Act No. 288 of the Public Acts of 1967, being section 560.172 of the Michigan Compiled Laws, provided the plat has received final approval of the preliminary plat under section 120, as amended, of that act. The application shall be filed as prescribed by the department's rules. The application shall be signed by an authorized agent of the applicant and include, but is not limited to, the following documents and information:

(a) An irrevocable appointment of the department to receive service of any lawful process in any civil proceeding arising under this act against the developer or his agent.

(b) The applicant's name and address, and the forms, date, and jurisdiction of the organization; and the address of each of its resident agents, officers, and directors in the state; the name, address, and principal occupation for the past 5 years of every director and officer and each owner of 10% or more of the shares of the applicant and any person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant and the subdivided lands as of a specified date within 30 days of the filing of the application.

(c) A legal description of, based on a survey by a professional land surveyor, and a statement of the total area included in the subdivision, and a statement of the topography thereof, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements.

(d) The states or jurisdictions in which an application for registration or similar document has been filed and any order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court.

(e) A statement, in a form acceptable to the department, of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto with data as to recording.

(f) Copies of the instruments by which the interest in the subdivided lands was acquired or proof of marketable title to subdivided lands.

(g) Copies of instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rents, or leases at which it is proposed to dispose of the lots, units, parcels, or interests in the subdivisions.

(h) Copies of instruments creating, altering, or removing easements, restrictions, or other encumbrances affecting the subdivided lands.

(i) A statement of the present condition of access to the subdivision, the availability of sewage disposal facilities and other public utilities, including water, electricity, gas, and telephone facilities, in the subdivision, the proximity in miles of the subdivision to nearby municipalities and the nature of any improvements to be installed and by whom they are to be installed and paid for and an estimated schedule for completion, together with a statement as to the provisions for improvement maintenance.

(j) A statement of the current zoning and any existing tax and existing or proposed special assessments which affect the subdivided lands.

(k) If there is a blanket encumbrance against any subdivision or portion thereof, a description of the encumbrance and a statement of the consequences for an individual purchaser of a failure by the persons bound to fulfill obligations under the instrument creating the encumbrance and the steps, if any, taken to protect the purchaser in such eventuality.

(l) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication.

(m) Such financial statements of the developer as the department may require.

(n) The proposed property report.

(o) A statement that the developer has or has not been subject to any injunction or administrative order entered within the past 10 years restraining a false or misleading promotional plan involving land dispositions.

(p) Such other information and such other documents and certifications as the department may require as being reasonably necessary or appropriate for the protection of purchasers.

565.808 Property report, form, contents

Sec. 8. The property report shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material conditions relating to noise, health, safety, and welfare which affect the subdivision and are known to the developer. The proposed property report submitted to the department shall be in a form prescribed by its rules and shall include the following:

(a) The name and principal address of the developer.

(b) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering.

(c) The significant terms of any encumbrances, easements, liens, and restrictions, including the current zoning classification and the name and address of the governmental office where a complete current copy of the zoning ordinances may be inspected, affecting the subdivided lands and each lot, unit, parcel, or interest and a statement of all existing taxes and existing or proposed special assessments which affect the subdivided lands.

(d) A statement of the use for which the property is offered.

(e) Information concerning existing or proposed improvements, including streets, water supply levels, drainage control systems, irrigation systems, sewage disposal systems, and customary utilities and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any lot, unit, parcel, or interest in subdivided lands.

(f) Such additional information as may be required by the department to assure full and fair disclosure to prospective purchasers.

565.809 Prohibited uses of property reports

Sec. 9. The property report shall not be used for any promotional purposes. A person may not advertise or represent that the department approved or recommends the subdivided lands or disposition thereof. A portion of the property report may not be underscored, italicized or printed in larger or heavier or different color type than the remainder of the statement unless the department requires it.

565.810 Alteration or amendment of proposed property reports, approval, incorporation in reports; advertising and disposition pending approval

Sec. 10. The department may require the developer to alter or amend the proposed property report in order to assure full and fair disclosure to prospective purchasers and a change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without prior written approval of the department nor without approval of appropriate amendment of the property report. A property report is not current unless all amendments are incorporated. The department may allow, in writing, continued advertising and disposition pending approval of amendment.

565.811 Consolidation of subsequent registrations with prior registrations, same promotional plan, amendment of property report; effect of failure to timely reject consolidation of registration

Sec. 11. If the developer registers additional subdivided lands to be offered for sale, he may consolidate the subsequent registration with any earlier registration under this act offering subdivided lands for sale under the same promotional plan, and the property report shall be amended to include the additional lands so registered. The consolidation of registration of additional subdivided lands shall be deemed registered after 30 days unless a rejection is entered issuing a specific statement of the deficiencies within 30 days thereof or a delay agreed upon.

565.812 Material changes in information contained in application for registration, reporting

Sec. 12. The developer shall report immediately any material changes in the information contained in the application for registration.

565.813 Conditions for registration, enumeration, examination to determine compliance with conditions

Sec. 13. Upon receipt of an application for registration in proper form, the department shall initiate an examination to determine compliance with the following conditions for registration:

(a) The developer can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and when

appropriate, that release clauses, conveyances in trust or other safeguards have been provided.

(b) There is reasonable assurance that all proposed improvements will be completed as represented.

(c) The advertising material and the general promotional plan are not false or misleading and comply with department rules and afford full and fair disclosure.

(d) The developer has not, or if a corporation, its officers, directors and principals have not, been convicted of a crime involving lands dispositions or any aspect of land sales business in this state, the United States or any other state or foreign country within the past 10 years.

(e) The property report requirements of this act have been satisfied.

565.814 Notice of filing of application for registration; orders of registration or rejection; amendments of applications; certificates of registration; property reports

Issuance of notice; time for entry of orders; failure to timely reject, effect; filing dates of amendments to applications

Sec. 14. (1) Upon receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the department shall enter an order registering the subdivided lands or rejecting the registration with notice of specific deficiencies therein. If an order of rejection is not entered within 60 days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay. If any amendment to the application for registration is filed prior to the time when the land shall be deemed registered, the application shall be deemed to have been filed when the amendment was filed except that an amendment filed with the consent of the department or filed pursuant to an order of the department shall be treated as being filed as of the date of the filing of the original application for registration.

Issuance of certificate of registration and approval of form of property report, grounds

(2) If the department affirmatively determines, upon inquiry and examination, that the requirements of this act and the rules promulgated pursuant to the act have been met, it shall issue a certificate of registration registering the subdivided lands and approve the form of the property report.

Correction of application for registration; rejection of registration

(3) If the department determines upon inquiry and examination that any of the requirements of this act or the rules promulgated pursuant to this act have not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days from receipt of notice unless extended in writing by the department. If the requirements are not met within the time allowed, the department may enter an order rejecting the registration which shall include the findings of fact upon which the order is based.

Changes, amendments to certificates of registration, suspension of certificate of registration; reports of material changes; registration of amendments

(4) If at any time subsequent to the issuance of the certificate of registration, a change occurs affecting any material fact required to be contained in the application, the developer shall file an amendment thereto within 30 days. Upon receipt of any amendment or report of material change, if the department determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, it may suspend the certificate of registration until such time as the amendment shall be deemed registered. The amendment shall be deemed to be registered after 30 days unless a rejection is entered or a delay agreed upon.

Untrue statements or omissions in applications, suspension of registration after notice and opportunity for hearing; cessation of suspension

(5) If it appears to the department at any time that an application, for which there has been issued a certificate of registration, includes any untrue statement of a material fact or omits to state any material fact required by this act or necessary to make the statements not misleading or deceptive, after notice and after an opportunity for hearing at a time fixed by the department within 20 days after the notice, the department may issue an order suspending the registration. When the application has been amended in accordance with the order, the department shall so declare and thereupon the order shall cease to be effective.

Compliance with subdivision control act, necessity

(6) The department shall not issue a certificate of registration if it is determined that the offering is for a subdivision of land until the developer complies with the provisions of Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 to 560.293 of the Compiled Laws of 1948, if the director determines that the subdivision is required to conform to that act.

565.815 Developers' reports, form, contents, time of filing; renewals of certificates of registration

Sec. 15. (1) Within 30 days after each annual anniversary date of an order registering subdivided lands, the developer shall file a report in the form prescribed by the rules of the department. The report shall reflect any material changes in information contained in the original application for registration.

(2) The department may permit the filing of annual reports within 30 days after the annual anniversary date of the consolidated registration in lieu of the annual anniversary date of the original registration.

(3) A certificate of registration which has not been revoked or is not suspended shall be renewed annually upon compliance with this act.

565.816 Conditions for sales of units or interests within subdivision subject to blanket encumbrance

Sec. 16. The developer shall not sell lots, units, parcels, or interests within a subdivision subject to a blanket encumbrance unless 1 of the following conditions or the equivalent as determined by rules promulgated by the department is met:

(a) All sums paid or advanced by purchasers are placed in an escrow or other depository acceptable to the director until the fee title contracted for is delivered to the purchaser by deed together with complete release from all financial encumbrances; or the developer or the purchaser default and fail to perform under their contract of disposition and there is a final determination by a court of competent jurisdiction or the director as to the disbursement of such moneys or they be voluntarily returned to the contract purchaser.

(b) The fee title to the subdivision is placed in trust under an agreement or trust acceptable to the department until a proper release from each blanket encumbrance including all taxes is obtained and title contracted for is delivered to such purchaser.

(c) A bond, cash, certified check, or irrevocable bank letter of credit issued by a bank authorized to do business in the state is furnished the department in the name of the state for the benefit and protection of purchasers of the lots, units, parcels, or interest, in such amount and subject to terms as approved by the department. The bond shall be executed by a surety company authorized to do business in the state and which has given consent to be sued in this state. The bond or agreement accompanying the cash, certified check, or irrevocable bank letter of credit shall provide for the return of moneys paid or advanced by any purchaser, on account of purchase of any lot, unit, parcel, or interest if the title contracted for is not delivered and a full release from each blanket encumbrance is not obtained. If it is determined that the purchaser by reason of default or otherwise, is not entitled to the return of the moneys, or any portion thereof, then the bond, cash, certified check, or irrevocable bank letter of credit may be released by the department in the amount of moneys to which the purchaser of a lot, unit, parcel, or interest is not entitled.

(d) The blanket encumbrance shall contain provisions evidencing the subordination of the lieu of the blanket encumbrance to the rights of those persons purchasing from the developer or evidencing that the developer is able to secure releases from the blanket encumbrance with respect to the property.

565.817 Advertising material, submission for approval, orders, failure to timely reject; filing of amendments to applications for approval of advertising

Sec. 17. (1) All advertising material not accompanying the original application shall be submitted to the department for approval prior to its use in the state.

(2) Within 15 days from the date of receipt of the proposed advertising, the department shall enter an order approving or rejecting the advertising. If an order of rejection is not entered within 15 days from the date of receipt, the advertising shall be deemed approved unless the applicant has consented in writing to a delay. If any amendment to the application for approval of advertising is filed prior to the time when the land shall be deemed approved, the application shall be deemed to have been filed when the amendment was filed except that an amendment filed with the consent of the department, or filed pursuant to an order of the department, shall be treated as being filed as of the date of the filing of the original application.

565.818 Material used to induce prospective purchasers to visit the subdivision, contents; developer's participation in campaign, disclosure, assurances that obligations can be met

Sec. 18. The director may require that any material used by a developer or his agent to induce prospective purchasers to visit the subdivided land contain certain additional pertinent information. The information may include but is not limited to, terms and conditions of the offers and the nature and extent of the developer's participation in the campaign. The director may require reasonable assurances that such obligation incurred by a developer or its agents can be met.

565.819 Rules, promulgation, contents

Sec. 19. The department shall promulgate rules in accordance with and subject to Act. No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948. The rules shall include but need not be limited to:

(a) Provisions for advertising standards to assure full and fair disclosure.

(b) Provisions for escrow or trust or trust agreement or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for and full and fair disclosure in the property report informing the purchaser.

(c) Provisions for operating procedures.

(d) Provisions requiring instruments to be executed in recordable form.

(e) Provisions relating to apportionment of taxes.

(f) Other rules necessary and proper to accomplish the purpose of this act.

565.820 Investigations of subdivisions, necessity, extent, form, expenses, waiver

Sec. 20. The department shall investigate every subdivision offered for disposition in this state and may:

(a) Rely upon any relevant information concerning subdivided lands obtained from the federal housing administration, the United State veterans administration or any other federal agency having comparable duties in relation to subdivision of real estate.

(b) Accept registrations filed in other states or with the federal government and cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform property reports, advertising standards, rules and common administrative practices. If a statement of record has been filed with and the property report accepted by the federal office of interstate land sales, and department may accept a copy of that statement of record and property report as part of the disclosure requirements under this act and accept an addendum to the statement of record and property report which shall satisfy the additional requirements of this act.

(c) Require the applicant to submit reports prepared by registered or licensed engineers as to any hazard to which any subdivision offered for disposition is subject in the opinion of the department, or any other factor which affects the utility of lots, units, parcels or interests within the subdivision and require evidence of compliance to remove or minimize all hazards stated by competent engineering reports.

(d) Make an on site inspection of each subdivision prior to its registration and periodic on site inspections thereafter. The developer shall defray all actual and necessary expenses incurred by the inspector in the course of the inspection.

(e) Require the developer to deposit with the department the expenses to be incurred in any inspection or reinspection, in advance, based upon an estimate by the department of the expenses likely to be incurred.

(f) Where an on site inspection of any subdivision has been made under this act, an inspection of a subsequent application for registration of contiguous land may be waived and an inspection thereof shall be made at the time of the next succeeding on site inspection.

565.821 Contracts for disposition of subdivided land, contents

Sec. 21. Every contract for disposition of subdivided land shall state clearly the legal description of the lot, unit, parcel or interest disposed of and shall contain disclosures as required by the federal truth in lending act, Public Law 90-321, and the rules promulgated thereunder.

565.822 Penalty for failure to pay registration and inspection fees, amount, grounds for imposition, collection; suspension or revocation of registration, unpaid fees

Sec. 22. Any developer who fails to pay when due, after written notice by the department,

the registration and inspection fees provided in this act and continues to dispose of or offers to dispose of subdivided lands, is liable civilly in an action brought by the attorney general on behalf of the department for a penalty in an amount equal to treble the unpaid fees. The department may suspend or revoke a registration for which any application or inspection fee provided in this act is unpaid, after written notice by the department.

565.823 Investigations, authorization, extent, purpose, statements, oaths, subpoenas, proceedings

Sec. 23 (1) The department may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the department or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the department may apply to the circuit court of Ingham county for an order compelling compliance.

(4) Except as otherwise provided in this act, all proceedings under this act shall be in accordance with Act. No. 306 of the Public Acts of 1969, as amended.

565.824 Cease and desist orders and orders to take affirmative action, grounds for issuance; temporary cease and desist orders, notice, hearing

Sec. 24. (1) The department may issue an order requiring a person to cease and desist from the unlawful act and to take such affirmative action as in the judgment of the department will carry out the purposes of this act, if it determines, after notice and hearing, that a person has done any of the following:

(a) Violated any provision of this act.

(b) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of an interest in subdivided lands.

(c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the department.

(d) Disposed of any subdivided lands which have not been registered with the department.

(e) Violated any lawful order or rule of the department.

(2) If the department makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the department whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 30 days to determine whether or not it becomes permanent.

565.825 Revocation of registration, notice, hearing, grounds; findings of fact, necessity, statement of underlying facts; cease and desist order as alternative

Sec. 25. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the developer has done any of the following:

(a) Failed to comply with the terms of a cease and desist order.

(b) Been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in real estate transactions.

(c) Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers.

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(d) Failed faithfully to perform any stipulation or agreement made with the department as an inducement to grant any registration, to reinstate any registration or to approve any promotional plan or property report.

(e) Made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the department finds after notice and hearing that the developer is guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

565.826 Injunctions, grounds; receivers; conservators; bonds

Sec. 26. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this act or a rule or order hereunder, the department, with or without prior administrative proceedings, may bring an action in circuit court of Ingham county to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The department is not required to post a bond in any court proceedings.

565.827 Offenses, enumeration, penalties

Sec. 27. Every developer or agent of a developer who authorizes, directs, or aids in the publication, advertisement, distribution, or circularization of a false statement or misrepresentation, made with knowledge of its falsity, concerning a subdivision offered for disposition or who knowingly fails to comply with the terms of a final cease and desist order and every person with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a subdivision contains any written statement that is false or fraudulent, who issues, circulates, publishes, or distributes the same or causes the same to be issued, circulated, published, or distributed or who knowingly fails to comply with the terms of a final cease and desist order, is guilty of a felony and may be fined not more than $25,000.00, or imprisoned not more than 10 years, or both. Each violation constitutes a separate offense.

565.828 Other violation, penalties

Sec. 28. Any violation of this act other than as provided in section 27 is a misdemeanor and every violator may be fined not more than $2,000.00 or imprisoned for not more than 90 days, or both, for each offense.

565.829 Service of process, methods, nonresidents

Sec. 29. (1) In addition to the methods of service provided for in any other provision of law, service may be made by delivering a copy of the process to the office of the department if the plaintiff, which may be the department in a proceeding instituted by it, does both of the following:

(a) Sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address.

(b) Files its affidavit of compliance with this section in the case on or before the return day of the process or within such time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act, or any rule or order and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, the conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

565.830 Registration fee, time for payment, amount; annual renewal fee; inspection expenses, payment

Sec. 30. (1) Except as provided in subsection (2), a registration fee shall be paid with the application for registration and shall be set by rule which shall provide a basic fee of $250.00, plus an additional fee of not more than $50.00 for each 50 lots, units, parcels or interests included in the offering.

(2) A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration and shall be set by rule which shall provide a basic fee of $200.00, plus an additional fee of not more than $50.00 for each 50 lots, units, parcels or interests included in the offering.

(3) A fee shall not be charged for amendments to the property report as a result of

amendments to the initial filing, unless the department determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional lots with a prior registration.

(4) A fee not to exceed $25.00 shall be paid with each submission of advertising for approval.

(5) In addition to the payment of inspection expenses as provided in section 20, an annual renewal fee set by rule shall be paid.

565.831 Deceptive acts or false statements and omissions, liability to purchaser; joint and several liability; contribution; tender of reconveyance, time; limitation of actions

Sec. 31. (1) A person who disposes of subdivided lands in violation of section 6 or who, in disposing of subdivided lands engages in a deceptive act or practice, makes an untrue statement of a material fact or omits a material fact required to be stated in a registration statement or property report or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser under subsection (1) may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs and reasonable attorneys' fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(3) Every person who directly or indirectly controls a subdivider liable under subsection (1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(4) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or property report, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if it is proved he knew or reasonably should have known of the existence of the true facts by reason of which the liability is alleged to exist. However, if the person is a registered professional licensed by this state whose statement was part of his representation of another person in rendering professional services, liability hereunder shall not exceed that resulting from a duty to exercise a reasonable degree of care and skill ordinarily possessed and exercised by members of that profession similarly situated.

(5) A tender of reconveyance may be made at any time before the entry of judgment.

(6) An action shall not be commenced pursuant to this section later than 3 years from the time performance of all promises, statements, or representations contained in any registration statement, property report, purchase agreement, contract, option, or other evidence of a disposition of subdivided lands is to be completed. Where the cause of action arises out of any deceptive act or practice or the omission to state a material fact, the action shall be commenced no later than 3 years from the date the person discovers or should have reasonably discovered the deceit or omission. An action shall not be commenced by a purchaser more than 6 years after the sale or lease to the purchaser.

565.832 Subdivided lands within state, subdivider's principal office in state, or offer or disposition of subdivided lands made in the state, applicability of act, jurisdiction of circuit courts

Sec. 32. Dispositions of subdivided lands are subject to this act and the circuit courts of this state have jurisdiction in claims or causes of action arising under this act, in the following cases:

(a) The subdivided lands offered for disposition are located in this state.

(b) The subdivider's principal office is located in this state.

(c) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

565.833 Repealed by P.A. 1973, No. 184, § 2, Imd. Eff. Jan. 3, 1974

This section, added by P.A. 1972, No. 286, § 33, contained a saving clause applicable to preexisting registration and allowed 90 days for the effecting of the consolidation of prior registrations.

565.834 Condominiums

Sec. 34. No portion of this act shall have any effect on or take precedence over the application and enforcement within the state of Act No. 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Compiled Laws of 1948.

565.835 Effective date

Sec. 35. The provisions of this act shall take effect October 1, 1973, except that section 19 shall take effect April 1, 1973 and the department shall make available such rules, and all necessary forms and instructions for and may accept and process applications for registration, applications for approval of exemption, applications for approval of advertising and applications for consolidation of registrations and may make examinations, investigations, and conduct inquiries incident to such applications prior to October 1, 1973 so that persons regulated by the act can be in compliance therewith on October 1, 1973.

DEPARTMENT OF LICENSING AND REGULATION

DIVISION OF LAND SALES

GENERAL RULES

Filed with Secretary of State, July 27, 1973.

These rules take effect 15 days after filing with the Secretary of State (by authority conferred on the department of licensing and regulation by section 19 of Act No. 286 of the Public Acts of 1972, as amended, being section 565.819 of the Michigan Compiled Laws).

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MICHIGAN DEPARTMENT OF LICENSING AND REGULATION
DIVISION OF LAND SALES

PART I. GENERAL PROVISIONS

R 338.3201. Definitions A.

Rule 1. (1) The terms and definitions used in the act have the same meaning given therein when used in these rules.

(2) "Act" means Act No. 286 of the Public Acts of 1972, as amended, being sections 565.801 to 565.835 of the Michigan Compiled Laws.

(3) "Advertising material" means the pamphlet, circular, form letter, fact sheet, sign, radio, television, telephone presentation, newspaper or magazine advertisement, or other sales literature or advertising communication addressed to or intended for distribution to prospective subscribers or purchasers, not otherwise excepted under section 2(a) of the act, and includes radio and television scripts. Multiple listing books and other publications, the distribution of which is restricted to real estate brokers and salesmen licensed by the State of Michigan and their employees shall not be considered "advertising" within the meaning of the act or these rules.

(4) "Advertising submission" means a single piece of advertising material, as defined in rule 1(3).

(5) A common promotional plan shall not include a multiple listing service or real estate brokers offering unrelated properties in their regular course of business, unless such plan is adopted for the purpose of evasion of the act.

R 338.3202. Definitions I to S.

Rule 2. (1) "Interest in land" includes a certificate of participation in, interest in, share, membership in a corporation, profit or non-profit, whose purpose is to develop or make available real property and improvements thereto for recreational, vacation or second home site unless such interest, certificate

of participation, share or membership is registered and in compliance with 1964 PA 265, as amended, being sections 451.501 to 451.818 of the Michigan Compiled Laws, unless such interest, certificate of participation, share or membership plan is adopted for the purpose of evasion of this act.

(2) "Person authorized to appear to represent a developer" means a person who is an employee of a developer, the developer, his agent, or an attorney at law who files an appearance on behalf of a developer.

(3) "Subdivision" and "Subdivided lands" includes condominium projects consisting of 10 or more units and any portion thereof not included within the terms of Act 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Compiled laws of 1948.

R 338.3204. Documents.

Rule 4. (1) A document to be filed with the department shall be typewritten or in legible handwriting on 1 side of the paper only. One copy of each exhibit or document shall be submitted, unless the director requires more than 1 copy. A document shall be reduced or folded to a size not to exceed 8½ by 13 inches. All papers filed pursuant to these rules shall become part of the department's records.

(2) The use of verified photographs as part of documentation is permitted, except that the photographs shall not be permitted in lieu of proper legal descriptions of real property or other required written documents.

(3) The use of verified copies of original documents is permitted.

(4) An affidavit or affirmation as prescribed in the department forms shall be executed for each of the following documents: statement of record; partial statement of record; consolidation registration; registration amendment; annual registration renewal; application for advertising approval; partner, officer, director or principal disclosure; consent to service to process; and broker's application.

R 338.3206. Fees.

Rule 6. The following fees shall accompany documents submitted for filing:

(a) Registration fee - $250.00 plus $1.00 for each lot, unit, parcel or interest included in the application.

(b) Consolidation registration fee - $200.00 plus $1.00 for each additional lot, unit, parcel or interest added to the original application.

(c) Annual registration renewal fee - $100.00 plus $0.25 for each lot, unit, parcel or interest included in the application.

(d) Advertising submission fee - $15.00 for each submission, which was not submitted with an original registration or a consolidation, except that a fee for a classified ad of 2 column inches or less shall be $0.25.

R 338.3208. Address of director.

Rule 8. The official address of the director for delivery and receipt of all mail, telegrams, information, filings, registration, fees, and other material required by the act or these rules is:

Director of Land Sales Division
Michigan Department of Licensing and Regulation
1008 South Washington Avenue
Lansing, Michigan 48926

R 338.3218. Modification of rules.

Rule 18. The director, in order to achieve the purpose intended by the act, may add to, waive, modify or otherwise condition, or change any requirement created by these rules in case of particular factual circumstances.

§ 338.3219. Recission of Emergency Rules.

Rule 19. The emergency rules promulgated by the Department of Licensing and Regulation, Division of Land Sales and filed with the Secretary of State on April 26, 1973, are rescinded.

§ 338.3220 Amendment to Comply with rules.

Rule 20. (1) An application for registration for which a notice of filing has not been issued on the effective date of these rules, shall be amended to comply with these rules.

(2) Registrations in effect on the effective date of these rules shall be amended [illegible] registration or the annual renewal, whichever comes first.

PART 2. EXEMPTIONS FROM THE ACT

R 338.3221. Statutory exemptions.

Rule 21. Except as otherwise provided by rules promulgated by the department as authorized by the act, the act shall not apply to offers or dispositions of interests in land specified in sections 4 and 5 of the act unless the method of disposition is adopted for the purpose of evading the act.

PART 3. REGISTRATION OF NON-EXEMPT SUBDIVIDED LANDS

R 338.3231. Statements of record and property reports; contents and filing.

Rule 31. (1) A developer shall apply for a registration of non-exempt subdivided land by means of a statement of record and property report in accordance with the act and this part.

(2) A statement of record shall be made on the form supplied by the department. A property report shall be in the form prescribed by the department. They shall be fully executed.

(3) A statement of record and property report shall include, but not be limited to, the information required by sections 6 to 10 of the act. The property report shall include on its face the following language in 12 point bold capital type:

"THE DEVELOPER DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN THE OFFER TO SELL, SALE, FINANCING, OR OTHER DISPOSITION OF LAND INCLUDING THE MAKING AVAILABLE OF ALL IMPROVEMENTS, OR OTHER AMENITIES OF THIS SUBDIVISION."

(4) A statement of record and a property report shall be filed with the director by personal delivery at, or certified mail to, the address set forth in rule 8.

(5) The registration fee shall accompany a statement of record and property report, and shall be paid by check or money order, payable to the "State of Michigan."

R 338.3232. Statements and reports; effective dates.

Rule 32. (1) The property report shall be considered a part of the statement of record for the purpose of determining the effective date and suspension of the effective date.

(2) The effective date of the statement of record shall be no later than

60 days after the date of notice of filing which shall be issued to an applicant within 10 days of receipt of the application by the department unless:

(a) The applicant has consented in writing to a delay.

(b) The department has entered an order of rejection with notice of specific deficiencies therein.

(c) If any amendment to the statement of record is filed before the time of the registration, the statement of record shall be considered to have been filed when the amendment was filed, unless the amendment is filed with the consent of or pursuant to order of the department. In such case, the amendment shall be considered as filed as of the original notice of filing date.

R 338.3233. Statements; rejection.

Rule 33. (1) A notice of deficiency and order of rejection with respect to a statement of record or an amendment may be issued by the director within 45 days after the date of notice of filing, if before its effective date the director has reasonable grounds to believe that the statement of record or amendment is on its face incomplete or inaccurate.

(2) An order of rejection with respect to a statement of record may be issued to an applicant if it appears to the director that the developer has attempted or made intentional misrepresentations, or concealed or omitted material facts in the statement, or has attempted to evade or has evaded the provisions of the act, or has made misleading or deceptive statements. A developer may correct the particulars specified in an order of rejection within 15 days after receipt of the order unless otherwise extended by the department.

R 338.3234. Statements and reports; amendment, suspension and consolidation.

Rule 34. (1) An amendment to an effective statement of record shall be filed within 30 days after a change which affects a material fact. If the

department considers it necessary or appropriate in the public interest or for the protection of purchasers, it may suspend the certificate of registration until the amendment is considered registered and an intent to reject is entered or a delay agreed upon.

(2) If a developer registers additional subdivided lands to be offered for sale, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for sale under the same promotional plan and the property report shall be amended to include the additional lands so registered. The consolidation of registration of additional subdivided lands shall be considered registered after 30 days unless an intent to reject is entered with a specific statement of deficiences within 30 days thereof or a delay is agreed upon.

(3) If, in connection with lots previously offered for sale and covered by an effective statement of record, the developer intends to offer additional lots as part of a common promotional plan, either a new or a consolidated statement shall be filed. The developer shall answer specifically each question in the statement and submit a new property report. The developer shall not incorporate by reference answers to questions in the previous filing. Supporting documentation may be incorporated by reference where it applies to both the original filing and to the additional lots to be offered. In all other respects, the consolidated statement shall conform to the requirements of an initial statement filed in accordance with these rules.

R 338.3235. Registration under other law.

Rule 35. (1) A registration of a subdivision in effect under any other act of this state shall remain in full force and effect, except that within 30 days after the effective compliance date of the act in section 35, the developer shall comply with the additional requirements of the act.

(2) If a statement of record has been filed with and accepted by the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, U.S. Government, the department may accept a copy of same as part of the disclosure requirements under the act if the material is accompanied by a statement under oath by the developer, certifying that the copies are copies of all documents upon which the federal statement of record was based and stating the effective date of the federal filing. An addendum form prescribed by the department shall be fully executed and submitted to the department in addition to the certified federal statement of record.

R 338.3236. Investigations and certificates of registration.

Rule 36. (1) After receipt of a properly executed statement of record, the department shall examine and investigate the matters therein in accordance with sections 13 and 20 of the act.

(2) After inquiry and examination, the department shall issue a certificate of registration if the requirements of the act and these rules are met. The department shall also approve the form of the property report.

P 338.3238. Annual reports.

Rule 38. A developer shall file an annual report in the form prescribed by the department within 30 days after each annual anniversary date of an order registering subdivided lands. The report, as a minimum, shall reflect any material changes in information contained in the original statement of record and property report. An annual report of a consolidated registration is permitted within 30 days after the annual anniversary date of the consolidated registration. Payment of the fee required by rule 6 shall accompany the annual report.

PART 4. PROTECTION OF PURCHASERS

R 338.3241. Unfair acts and practices; documents.

Rule 41. (1) It is unfair for a person to use a contract, agreement, deed, option or other evidence of disposition of lands under the act which contains provisions whereby a purchaser or prospective purchaser agrees, without his written consent thereto in a separate document or by conspicuous type in any such instrument:

(a) To waive a right afforded by the act; the interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 USC 1701 et. seq.); and the Consumer Credit Protection Act commonly known as the Federal Truth in Lending Act, and any rules or regulations promulgated thereunder.

(b) To assume all risk of loss to the property without title passing to the purchaser or actual possession being in the purchaser.

(c) To a prior or subsequent sale of the optioned or purchased property.

(d) To waive as against an assignee of the developer, a mortgagee, or subsequent holder, a claim or defense arising out of the transaction that the purchaser would have against the developer.

(e) To forfeit all prior payments upon default.

(f) To acceleration of the unpaid balance of a contract upon default.

(g) To lose possession of the property without notice of and a prior hearing in a court of competent jurisdiction.

(h) To waive a right to redeem the property after default.

(i) That an assignee, mortgagee or subsequent holder of the developer is not obligated to perform as to the purchaser.

(2) It is unfair for a developer, his agents, servants, employees or others acting on his behalf:

(a) To offer to or induce a purchaser to execute a document, paper, or writing without all spaces filled in or inapplicable spaces clearly stricken.

(b) To alter or deface a document, paper, or writing without the knowing, intelligent, and voluntary consent of the parties thereto.

R 338.3242. Unfair acts and practices; discrimination.

Rule 42. It is unfair for a developer, his agents, servants, employees, or others acting on his behalf to discriminate on the basis of race, color, religion, sex, or national origin in an offer to sell, sale, financing, or other disposition of land including making available the use of all improvements, or other amenities of the existing or proposed subdivision.

R 338.3243. Unfair acts and practices; general

Rule 43. (1) It is unfair for a person to use a method of rebate of interest, or finance charge which requires or results in a purchaser paying a greater amount of interest or finance charge upon prepayment than he would have paid if he had financed for that shorter period up to the time of prepayment.

Example: Use of "Rule of 78's" of "sum of the digits" methods.

(2) It is unfair for a developer, his agents, servants, employees, or others acting on his behalf:

(a) To make a promise with no present intent to perform it.

(b) To fail to reveal to the purchaser or prospective purchaser all terms, conditions, notices, and amounts of any contract, agreement, option, deed, property report, or other evidence of the purchaser's indebtedness.

(c) To substitute another lot, unit, parcel, or interest in land for that purchased or optioned without the knowing, intelligent, and voluntary consent thereto by the purchaser

(3) It is unfair for a developer to fail to afford to a purchaser all rights, privileges, or advantages that are represented or implied are available to a purchaser as the result of the purchase.

R 338.3251. Deceptive acts and practices.

Rule 51. The methods, acts, and practices listed in rules 52 to 59 are

deceptive, and a developer, his agents, servants, employees, or others acting on his behalf shall not engage in them.

R 338.3252. Deception; approvals and memberships.

Rule 52. (1) Representing that the developer, his agents, servants, employees, or others acting on his behalf, have sponsorship, approval or certification they do not have.

(2) Representing that land has been inspected by the department and/or received approval whether in fact it has or has not.

(3) Representing the necessity, desirability, or the advantage to a prospective purchaser of dealing with a developer, by a false connection with or endorsement by the government, nationally known organization, or membership in a professional association.

R 338.3253. Deception; availability of land and utilities.

Rule 53. (1) Representing the availability of land without clearly and conspicuously disclosing in immediate conjunction therewith any limitation on availability, location, or quantity.

(2) Using the developer's personnel to repeatedly announce that lots are being sold when in fact this is not the case or to make false repetitive announcements of the same lot being sold.

(3) Representing a utility service as "available" or some similar representation, unless such utility service is installed in the subdivision and ready for use, or use is assured under financial arrangements made for installation, and such arrangements are disclosed.

R 338.3254. Deception; access to subdivisions.

Rule 54. (1) Representing or implying that a subdivision is restricted to owners, purchasers or their families by means of guards or private roads or facilities, the use and enjoyment of which require special identification, unless this is true.

(2) Representing that a prospective purchaser has to pay a refundable or non-refundable temporary membership fee in order to visit, tour, or inspect a subdivision for the reasons that such is restricted to members only when in fact such offer is made systematically and on a regular basis to all persons solicited for purchase.

R 338.3255. Deception; visits and free goods and services.

Rule 55. (1) Failing to reveal in an offer to induce a person to visit, inspect, or tour a subdivision all terms, conditions or prerequisites that have to be met by any person.

(2) Offering or representing that goods or services are "free" without clearly or conspicuously disclosing in immediate conjunction with the offer or representation all terms, conditions, or prerequisites to the receipt, retention, or use of the goods or services.

R 338.3256. Deception; price, value and credit.

Rule 56. (1) Representing or implying that a prospective purchaser has to act quickly to purchase land at a savings since the price thereof is about to increase unless in fact a decision has been made to increase the price and that the increase does take effect.

(2) Representing that the price of land to a prospective purchaser is a discount or reduction from a regular price unless in fact the represented regular price was the customary and regularly sold-at price for a reasonable prior period of time.

(3) Representing or suggesting that the price of land is a savings when compared to other prices sold at by competitors of the developer unless such other land with the higher price has the same characteristics, attributes and qualities of the offered or advertised land and such compared-to prices are not fictitious. Example: "Lake front lots this week $5,000. Compare at $8,000."

(4) Failing to reveal the cost of the land to the developer where it is represented the purchaser is making an investment, which will increase in value due to the sole efforts of the developer.

(5) Representing that a purchaser is making an investment in real estate which will increase in value as the result of the effort of the developer unless this is true.

(6) Offering or representing that credit availability is easy when in fact it is not.

(7) Offering or representing that credit terms are easy when in fact they are not.

(8) Misrepresenting or causing others to misrepresent the interest rate or finance charge as other than it actually is.

R 338.3257. Deception; repurchases, refunds, consideration for referrals.

Rule 57. (1) Representing to a purchaser or prospective purchaser that the developer will buy back, resell, list, or otherwise dispose of purchased property unless, in fact, this is true.

(2) Representing or inducing a purchaser or prospective purchaser to buy land or execute a contract, agreement, option for a consideration, or other evidence of indebtedness on the basis that if the purchaser is not satisfied a refund will be made, unless this is true.

(3) Representing or promising a commission, bonus, discount, reward, over-ride, or prize for referring other purchasers to the developer, where such promise or representation is similarly made to those referred.

R 338.3258. Deception; promotion schemes, documents.

Rule 58. (1) Representing that a developer, salesman, agent, servant, employee, or other acting on behalf of a developer is conducting a survey, contest, poll, or other similar inquiry, when in fact it is a systematic marketing approach in an

effort to sell property.

(2) Representing to a prospective purchaser that he or she is specially selected, when in fact they are not.

(3) Obtaining a prospective purchaser's signature to a contract, agreement, option, or other evidence of indebtedness by representing it is only a reservation, receipt, or temporary membership certificate.

(4) Failing to clearly and conspicuously inform a purchaser that a contract, promissory note, or other evidence of indebtedness could be assigned.

R 338.3259. Deception; miscellaneous.

Rule 59. (1) Misrepresenting the necessity, desirability, or advantage to a prospective purchaser of dealing with a developer, by misrepresenting a developer's alleged advantages of size.

(2) Offering or representing to sell or lease lots, units, parcels, or interests in land which in truth the developer does not intend or want to sell or lease.

(3) Knowingly making a statement or illustration which creates a false impression of the kind, quality, nature, and value of the land offered when later, the purchaser may be routinely switched from the advertised land to other land.

(4) Failing to clearly and conspicuously disclose the use to which contiguous land has been put where the disclosure is material to the use of the lot or subdivision in light of the positive representations made.

(5) Engaging in any other method, act, or practice which has the capacity or tendency to deceive.

PART 5. ADVERTISING AND SALES PROMOTIONS

R 338.3261. Effect of standards.

Rule 61. Precise rules to determine that material is misleading, or that a plan of sale or development lacks adequate safeguards and assurances to prospective purchasers, cannot be made which will be applicable in all situations. Without an intent to limit its consideration or determination to the general standards set forth in these rules and without an attempt to compel any particular form or method of advertising, promotion, development, or sale of subdivided lands, the standards in rules 62 to 70 are guides for a person preparing to file advertising material and for department personnel. These standards are not considered to be all-inclusive for the department in evaluating advertising to determine whether it is false, deceptive, or misleading and fails to make full and fair disclosure within the intent of the act and these rules.

R 338.3262. General standards.

Rule 62. (1) Claims and representations contained in advertising shall be accurate and provable.

(2) Advertising shall not misrepresent facts or create misleading impressions.

(3) Advertising shall not contain a statement which, though true, implies an untruth.

(4) Advertising shall not make a derogatory or unfair reference to competitive developments, subdivisions, or properties.

(5) Advertising shall not reprint published material unless information contained in the reprint is representative, truthful, relevant, and pertinent to the property being offered.

(6) Advertising shall not contain a statement, photograph, or sketch portraying the use to which land can be put unless the land can be put to such use without unreasonable cost.

(7) Advertising shall not contain an asterisk or any other reference symbol as a means of contradicting or substantially changing a previously made statement or as a means of obscuring a material fact.

(8) Advertising shall not use a name or trade style which implies that the advertiser is a non-profit research organization or public bureau or group, when such is not true. Advertising of such an organization is prohibited when the true nature of the plan of sale or ownership is misrepresented or concealed.

(9) Maps, plats or representations shall clearly indicate the estimated date that development will be completed. If completion dates are over a period of years, then a series of shadings, outlines, or coding may be used to indicate estimated dates of completion.

R 338.3263. Distances.

Rule 63. (1) Where a community is referred to, advertising shall state the location of the subdivision and the mileage from the approximate geographical center of the subdivision in road miles to the approximate downtown or geographical center of the community.

(2) Where an amenity or improvement is referred to, advertising shall disclose with reasonable specificity, the location of such amenity or improvement in relation to the size and location of the subdivision.

(3) Advertising shall not use such terms as "minutes away", "short distance", "only miles", "near", and terms of similar import to indicate distance, unless the actual distance in road miles is used in conjunction with the terms.

R 338.3264. Sketches and pictures.

Rule 64. (1) Advertising shall not contain an artist's sketch to portray

a proposed improvement or non-existent scene without an indication that the portrayal is an artist's sketch and that the improvement is proposed or the scene does not exist. An artist's conception of an existing improvement or scene shall be representative and state that the rendering is an artist's conception.

(2) Advertising shall not contain before and after pictures for comparative purposes without the analysis of the pictures.

R 338.3265. Improvements and facilities.

Rule 65. (1) Advertising of an improvement to a subdivision or any specific part thereof which is not completed shall not be made unless it is stated in unmistakable terms that the improvement is merely proposed or under construction and the estimated date of the promised completion indicated.

(2) Advertising shall not describe land as a homesite or lot if potable water is not available. Advertising shall give reasonable assurance that a septic tank will operate or a sewer system is in existence unless facts to the contrary are included in each advertisement pertaining to that property.

(3) Advertising shall not contain a statement, photograph or sketch relating to a facility for recreation, sports, or other convenience not presently in existence, unless it is stated that the facility is not on the land and the distance thereto in miles is given, or that the facility is merely proposed.

(4) Advertising shall not refer to a governmental facility, wherever located, unless money has been budgeted for actual construction of the facility and is available to the public authority having the responsibility of construction, or an actual disclosure of the existing facts concerning a governmental facility is made.

(5) Advertising shall not refer to a governmental facility under study, unless it is fully disclosed that the facility is merely proposed and under study and

no reference is made to the location or route of the facility until such has been decided by the responsible public authority.

R 338.3266. Roads, streets, waterways, and floods.

Rule 66. (1) Advertising which refers to "roads" and "streets" shall make affirmative disclosure as to the nature of the roads and streets, such as paved, gravel or dirt. To be described as improved or paved, a road and a street shall be constructed and surfaced according to county, city, or other acceptable authority specifications, or satisfactory guarantees made for such construction and surfacing.

(2) Advertising shall not refer to property as waterfront unless the property being offered actually fronts on a canal or other body of water.

(3) Advertising which uses the term "canal" shall disclose the approximate width and approximate depth of water in the canal and whether or not it provides access to open water.

(4) Advertising shall disclose if the land or any part of it is regularly flooded or substantially covered by standing water for extended periods of time during the year, unless adequate drainage is assured by bonding or other means acceptable to the department.

R 338.3267. Access and easements.

Rule 67. (1) Advertising of land which does not have available legal access to the purchaser shall disclose that fact and its effect.

(2) Advertising which refers to legal access shall be accompanied by phraseology to indicate whether the access is usable as a passage for conventional automobiles.

(3) Advertising shall not refer to the existence of a road easement or a road right-of-way unless the easement or right-of-way has been dedicated to the public or to appropriate property owners and recorded in the public records of the county where the property is located.

(4) Advertising which indicates the size of the tract offered shall indicate the size and kind of all easements to which the property may be subject. If the property is subject to easements which are unusual in size, this fact shall also be noted. Maps, plats, representations, or drawings shall indicate the dimensions of the tract and all easements.

R 338.3268. Consideration, prices and values.

Rule 68. (1) Land shall not be advertised as "free" if the prospective purchaser is required to give any consideration therefor. Land shall not be advertised for "closing costs only" when these costs are substantially more than normal, or when additional land has to be purchased at a higher price or to render the land usable.

(2) Advertising which refers to a property exchange privilege shall state clearly any qualification concerning the exchange privilege.

(3) Advertising shall not refer to a pre-development sale at a lower price because the land has not yet been developed unless there is a plan of development, and a subdivision plat has been recorded, or reasonable assurance is available that the plan will be completed.

(4) Advertising shall not indicate a discount on property that appears to effect a price reduction from the advertised price. A discount may be given for quantity purchases, cash, larger payments, or for any reasonable basis. The purpose of this standard is to eliminate the use of fictitious pricing and illusory discounts.

(5) Advertising shall not contain false statements concerning future price increases by the subdivider.

(6) Advertising shall not make predictions of specific or immediate price or value increases of lots, parcels, or units of advertised lands when the subdivider does not have control over such price increases.

(7) Advertising shall not compare land values unless it is clear who is making the comparison and it is relevant and fair.

R 338.3269. Taxes and assessments.

Rule 69. (1) Advertising containing statements regarding taxes and the amounts thereof shall employ the latest available figures.

(2) Advertising referring to the purchase price of land shall also include any additional compulsory assessment or cost to the prospective purchaser, that are known, or should have reasonably been known, at the time of disposition.

(3) Advertising referring to a promised improvement for which a prospective purchaser will be assessed shall disclose that fact.

R 338.3270. Miscellaneous standards.

Rule 70. (1) Advertising shall not represent that the land offered for sale may be subdivided or resubdivided unless it includes necessary and relevant information regarding the estimated cost of future subdividing.

(2) Advertising shall not infer or imply that the subdivider will resell or repurchase the land being offered at some future time unless the subdivider has agreed with the department to resell or repurchase land for or on behalf of purchasers and has given reasonable assurances to the department to demonstrate his ability to perform this agreement.

(3) Advertising which refers to oil, gas, or mineral rights shall disclose all pertinent facts pertaining to such rights.

(4) Advertising which refers to gifts, benefits, or vacation certificates shall disclose the terms and conditions of offers therein in conspicuous print.

(5) Advertising may contain the unqualified term "development" only to

describe a subdivision, the plat of which has been recorded.

(6) Advertising shall not contain the terms "guarantee or guaranteed refund" unless the refund is unconditional.

(7) A newsletter giving information as to a place, facility or event more than 10 miles distant from land involved, or make a prediction applicable to an area greater than the land involved, as for instance, future population of an entire state, shall carry a disclaimer as follows:

"Information contained in this newsletter is general to (name of state). Property for sale by (development company) may not be affected at any foreseeable time by any place, facility, event, or prediction described."

(8) Advertising which forecasts a future event or population trend shall be by a qualified person and pertinent to the offering.

R 338.3281. Visitation programs; general disclosures.

Rule 81. (1) The terms, conditions, and prerequisites to use and enjoyment of a visitation program shall be disclosed in promotional material, advertising, and on any certificate. This includes, but is not limited to, the developer's participation in the program, the nature of any gift or other benefit, including, but not limited to, what the prospect will actually receive, when he will receive it, the obligation he is under, if any, and the fact, if true, that the participant is to pay his own transportation, food, lodging, or other incidental expenses, and all other conditions or limitations placed on the gift or benefit.

(2) Material for a visitation program, whether written, television script or radio presentation, shall disclose, in immediate conjunction with the offer of a visit to land, the expenses of which will be paid in whole or in part by others, that a person enjoying the visit will be subjected to a sales promotion for land unless, if such is not true, there is a disclosure that a person is not obligated nor required as a term or condition of the use and enjoyment of the visit, to participate in, listen to, or otherwise be subjected to a sales promotion for

land and such is in fact honored.

R 338.3282. Visitation programs; specific disclosures.

Rule 82. (1) In the promotion of a visitation plan, the developer or his representative shall clearly identify themselves.

(2) The names of certificate companies with whom the developer has contracted, if any, shall be disclosed.

(3) Promotional material including advertising and certificates shall disclose the identity of hotels, motels, places of lodging, transportation companies, restaurants, attractions, or other similar establishments which honor, subscribe to, or participate in the visitation plan.

(4) A certificate or other written material evidencing the rights of a donee, beneficiary, or certificate holder shall contain a fixed expiration date for the rights.

R 338.3283. Visitation programs; guarantees.

Rule 83. (1) Promotional material for a visitation program, including advertising and certificates, shall disclose the guarantees made by a developer to insure a participant's use and enjoyment of a visit.

(2) A program which uses as a part thereof the granting or giving of a discount coupon or other similar discount program shall disclose in immediate conjunction therewith the guarantees that have been made to insure the participant's use and enjoyment thereof.

R 338.3284. Visitation programs; procedures.

Rule 84. (1) A visitation program shall be described as part of the statement of record or described separately as advertising material.

(2) A certificate to be used in a visitation program shall be submitted to the department and shall meet the advertising standards as set forth in this part.

(3) The department shall be advised of a material change, including identity of the certificate companies, hotels or facilities before institution of the material change.

(4) When a participant in a visitation program is obligated to listen or be subjected to a land sales promotion, the developer shall supply, a copy of the property report and forms of agreement as provided in the act.

R 338.3291. Promotional plans; general provisions.

Rule 91. The department will not enter an order registering a subdivision and will consider the general promotional plan false and misleading, and the plan of sale or development lacking adequate safequards and assurances, if:

(a) The fee title holder is not bound by part 6.

(b) The plat or plan of the subdivision by which lots, tracts, or parcels are offered for sale has not been duly recorded in the plat records of the county where the lands are located if required by law, and the streets, roads, alleys, easements, parks, and other public areas shown thereon have not been dedicated to the appropriate private or public authority. Sales maps which are not so recorded may be used if they are not designed to deceive or would not tend to deceive prospective purchasers, state in conspicuous print that they are maps only and not plats, and include additional disclaimers in conspicuous print to prevent misleading purchasers.

(c) The contract or agreement given to a prospective purchaser by the developer upon payment of the first money by the prospective purchaser is not sufficient in form to immediately vest an interest in the land in him and to afford notice to all persons of his interest by recordation thereof.

(d) The developer does not provide adequate safeguards, approved by the department, reasonably assuring contract purchasers who have complete refund privileges for more than 30 days, that if the refund privileges are exercised the developer will be in a position to refund in accordance with his agreement.

R. 338.3292. Promotional plans; encumbrances on land and contracts.

Rule 92. The department will not enter an order registering a subdivision and will consider the general promotional plan false and misleading and the plan of sale or development lacking adequate safeguards and assurances, if:

(a) Title to the subdivision is so encumbered that the lands to be offered cannot be used for any purpose expressly or impliedly represented in the plan of sale and advertising without the removal of the encumbrance, unless adequate safeguards are established to reasonably assure the encumbrance will be removed before the time the subdivider promises to deliver the interest contracted for

(b) The developer allows a mortgage, lien, or encumbrance to be placed and remain on the subdivision, or a part thereof, other than specific lots upon which improvements are constructed, and other than those in existence at the time of registration of the subdivision, without notifying the department and furnishing adequate safeguards reasonably assuring each purchaser that upon payment of the purchase price provided in the sales agreement, title to the property will be delivered with all promised improvements as contracted. The safeguards shall be subject to review and approval by the department at its discretion.

(c) The owner transfers, assigns, sells, pledges, or gives as collateral security, sales contracts on a subdivision without notice and submission to the department of evidence of adequate safeguards to reasonably assure that each contract purchaser, upon payment of the purchase price provided in the sales agreement, will recieve the title to the lands as promised and improvements, if any. The safeguards shall be subject to review and approval by the department a. its discretion.

R 338.3295. Promotional plans; group meetings.

Rule 95. (1) If an advertising or promotional plan includes promotional

group meetings, the standards in this rule shall be used as a guide by the director in determining whether or not the nature and manner of conducting the meetings are such as to fully disclose all significant facts concerning the subdivision.

(2) The department shall be notified in writing of the meeting not less than 15 days before its date. Notice shall consist of the date, hour and place of the meeting and the names of the developer and real estate broker involved.

(3) The meeting shall be conducted in a place open to department personnel for inspection and monitoring.

(4) Department personnel as authorized by the director shall have free access to the meeting and sales presentations.

(5) The advertising in the meeting is subject to the standards of advertising contained in these rules.

(6) A false or dummy buyer shall not be used to initiate sales or buying climate or for any other purpose, nor shall it be indicated that lots, parcels, units or interests have been sold, when in fact, they have not been sold.

(7) An oral statement to a prospective purchaser at the meeting shall be completely consistent with written material approved by the department.

(8) A prospective purchaser who expresses a desire or intent to leave the meeting at any time during or after the meeting may not in any manner be impeded from departing, pressured to remain, or denied any benefit promised in exchange for attending the meeting, including any transportation.

R 338.3301. Inferences; effect.

Rule 101. An inference reasonably to be drawn from advertising or promotional material will be considered to be a positive assertion unless the inference is negated therein in clear and unmistakable terms, or unless adequate safeguards have been provided by the developer to reasonably guarantee existence of the thing inferred. Advertising and promotional material will be judged on the basis

of the positive representation contained therein and the reasonable inferences to be drawn therefrom. Unless the contrary affirmatively appears in advertising or promotional material, the inferences set forth in rules 102 to 104 will be assumed to have been intended.

R 338.3302. Inferences; homesites and building lots.

Rule 102. When homesites or building lots are advertised without qualification the inferences are that:

(a) The lots are usable for such purpose without any further improvement or development by the prospective purchaser.

(b) There is an adequate potable water supply available.

(c) The lands have been approved for installation of septic tanks or that an adequate sewage disposal system is installed.

(d) No further major draining, filling, or sub-surface improvement is necessary to construct dwellings, except for reasonable preparation for construction.

(e) The individual homesites or building lots are accessible by automobile without additional expense to the purchaser over an existing right-of-way.

(f) No other fact or circumstance exists to prohibit use of the lots as homesites or building lots.

R 338.3303. Inferences; other lands.

Rule 103. When lands are advertised without qualification as usable for a particular purpose other than homesites or building lots, the inference is that the land is immediately accessible and usable for such purpose by purchasers without the necessity for draining, filling, or other improvement before putting the lands to use for such purpose, except for reasonable preparation for construction, and that no fact or circumstance exists to prohibit use of the lands for such purposes.

R 338.3304. Inferences; miscellaneous.

Rule 104. (1) When title insurance, abstract, or attorney's opinion is

advertised, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances, and defects except those which are disclosed in writing to the prospective purchaser before purchase.

(2) When a recreational facility, improvement, accommodation, or privilege is advertised, the inference is that it is on the land at the present time and available to the purchasers of lots at no additional expense, unless otherwise specified.

(3) When an improvement is advertised, the inference is that it is completed, unless it is advertised as proposed, and sufficient guarantees have been made for its completion.

R 338.3307. Presumptions.

Rule 107. It will be presumed by the director that:

(a) Advertising filed for approval will be that used to offer for sale or to induce persons to acquire an interest in the title to all lands which are described in or referred to in the material or supporting data filed with the department until changes in advertising for this purpose are submitted to and approved by the department.

(b) Advertising published, disseminated or broadcast by or in behalf of an owner or entity owning more than 1 subdivision is being used to offer lands in all subdivisions registered by that owner or entity unless an express limitation is made by that owner or entity to the department or by the department.

(c) Advertising published or disseminated by or on behalf of a sales agent is being used to offer lands in all subdivisions for which the person is a sales agent unless an express limitation is made to or by the department.

R 338.3311. Letters of transmittal.

Rule 111. Each submission of advertising to the department, either as part

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of a statement of record or as a subsequent submission, shall be accompanied by a letter of transmittal which given a brief, written description of each advertisement to assure that all future correspondence and orders concerning it will clearly identify it. The letter of transmittal shall be signed by the developer or his authorized representative and shall verify that the statements made and the representations contained therein have been reviewed and the advertisement is truthful and correct to the best of his knowledge and belief with regard to the statements contained therein.

R 338.3312. Identification of material.

Rule 112. (1) Advertising submitted to the department, either with the original statement of record or by subsequent filing, shall be assigned a number so the department or the applicant may refer by the number to a specific piece of advertising. Advertising relating to more than 1 subdivision owned by different persons but being sold through a common sales agent shall be assigned a designated number. However, this designation does not permit filings relating to separate subdivisions or parts of subdivisions without payment of the appropriate fee for each parcel, tract, or subdivision to which it relates.

(2) The developer shall print on advertising material approved for use, the number assigned by the department to that specific piece of material.

R 338.3313. Material with statements of record.

Rule 113. (1) Advertising material submitted with a statement of record shall be considered in accordance with part 3.

(2) Advertising material not submitted with a statement of record shall be submitted to the department for approval before its use in this state. This advertising will be approved or rejected by the department within 15 days after its receipt. Where an order of rejection is not entered within that time, the advertising will be deemed approved unless the applicant has consented in writing

to a delay. If an amendment to the application for approval of advertising is filed before the time when the land is registered, the application shall be considered filed when the amendment was filed, unless an amendment is filed with the consent of the department or pursuant to its order. In such case, the application shall be treated as filed on the date of filing the original application.

R 338.3314. Determinations and rejections.

Rule 114. In reviewing any advertising submitted by an applicant, the department shall determine whether it makes a full and fair disclosure or is false and misleading within the intent and meaning of the act and these rules, by examining the form, language, and content of the advertising and supporting data and any other available information to ascertain whether the express and implied representations therein are true and make a full and fair disclosure. If it appears that the representations are not true and do not make a full and fair disclosure as to all subdivided lands to which the filing relates, the department will enter an order of rejection or take such other action as it considers necessary.

R 338.3317. Out of state advertising.

Rule 117. When advertising approved by the department is disapproved in another state or jurisdiction, the advertising may be changed to meet the requirements of that state or jurisdiction without prior approval by the department if:

(a) The department is immediately notified of the change.

(b) A copy of the advertising as changed is filed with the department within 10 days.

(c) A copy of correspondence from the other state or jurisdiction requiring the change is filed with the department within 10 days.

(d) The changed advertising is used only in the state or jurisdiction where the change was required.

PART 6. MEANS TO ASSURE RECEIPT OF CONTRACTUAL INTERESTS

R 338.3321. Subordination of blanket encumbrance liens.

Rule 121. A blanket encumbrance shall evidence subordination of its lien to the rights of persons purchasing from the developer and that the developer is able to secure releases from the blanket encumbrance with respect to the property. The provisions shall be acceptable to the department. For purposes of this rule, subordination of the lien is satisfied by a release clause which by its terms unconditionally provides for the release of contiguous and non-contiguous separate lots, units, or parcels being offered to purchasers, so that the purchaser or lessee of a lot, unit, or parcel shall obtain legal title or other interest contracted for, free and clear of the blanket encumbrance upon compliance with terms and conditions of the purchase or lease from the developer.

R 338.3324. Trust and escrow accounts.

Rule 124. If the encumbering instrument does not contain adequate release clauses, the lien, mortgage, or other encumbrance shall be considered objectionable unless adequate reserves are maintained in a trust or escrow account. In determining adequacy of the account, the department will be guided by the facts and circumstances of each individual case, but the account shall comply with the following:

(a) Funds shall be kept and maintained in an account separate and apart from the owner's personal funds.

(b) The account shall be established in a bank or trust company doing business in this state, or another state where the account is required to be maintained there by the laws of that state and approved by the department.

(c) Monthly statements shall be furnished to the department for a new account for the first 6 months, and in the department's discretion, quarterly or semi-annually thereafter.

(d) The trust or escrow agreement shall state that its purpose is to protect the purchaser or prospective purchaser in case of default on a lien, mortgage, or other encumbrance, and shall authorize the department to inspect the records of the trustee relating thereto, and that upon order of the department or a court, the trustee shall release and pay over the funds to the department or a purchaser, or the holder of the blanket encumbrance.

(e) The department, by its director, shall execute an acknowledgment on the face of each agreement. This acknowledgment indicates approval of the form and content of the agreement, but shall not be construed to make the department a party thereto.

P 338.3327. Instruments of sale.

Rule 127. An instrument evidencing sale or disposition of an interest in a subdivision shall be executed in a recordable form in accordance with the laws of the state where the land is located. An applicant has the burden of an affirmative showing of this compliance.

PART 7. MEANS TO ASSURE COMPLETION OF IMPROVEMENTS

R 338.3331. Improvements for public use, convenience or necessity.

Rule 131. A subdivision or a part thereof on which construction of a promised improvement for public use, convenience, or necessity has not been completed, shall not be registered for disposition. However, an incompleted improvement does not constitute an objection if completion of the improvement is assured by substantial completion, an irrevocable bank letter of credit, bond, or similar undertaking posted with a public authority and acceptable to the department, or by adequate reserves established and maintained in a trust or escrow account. In determining adequacy of the account, the department will be guided by the facts and circumstances of each individual case, but the account shall comply with the following:

(a) Funds shall be kept and maintained in an account separate and apart from the owner's personal funds.

(b) The account shall be established in a bank or trust company doing business in this state, or another state where the account is required to be maintained there by the laws of that state and approved by the department.

(c) Monthly statements shall be furnished to the department for a new account for the first 6 months and in the department's discretion, quarterly or semi-annually thereafter.

(d) The trust or escrow agreement shall state that its purpose is to protect the purchaser or prospective purchaser in case the owner fails to complete construction of promised improvements or to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction, and shall authorize the department to inspect the records of the trustee relating thereto.

(e) The department, by its director, shall execute an acknowledgment on the face of each agreement. This acknowledgment indicates approval of the form and content of the agreement, but shall not be construed to make the department a party thereto.

R 338.3332. Improvements not for public convenience, use or necessity.

Rule 132. A subdivision or a part thereof on which construction of a promised improvement not for public use, convenience or necessity has not been completed, shall not be registered for disposition to the public. However, the incompleted improvement shall not constitute an objection if completion is assured by:

(a) An adequate plan of development, including financial resources committed to carry out the plan as provided in rule 135, which plan is subject to the department's continuing review and approval.

(b) In case of failure of a developer to establish an adequate plan or to adhere to the plan once established, the department may require establishment of a trust or escrow account.

R 338.3335. Financial security.

Rule 135. (1) The department may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security which it considers adequate in assuring a plan of development has adequate safeguards and assurances. In determining the security required, the department shall examine the status of improvements, the over-all cost of improvements, the terms of purchasers' contracts, the financial condition of the subdivider, and such other data as it considers necessary. The department shall consider whatever financial security has been posted with other governmental authorities in making its determination.

(2) A surety bond will not be approved by the department unless it is on the form provided by the department.

PART 8. TAXES AND ASSESSMENTS

R 338.3341. Developers' duties.

Rule 141. (1) In a transaction for the sale of land under the act in which taxes are to be paid by either party, a developer shall:

(a) Certify that there are no taxes, other than current taxes, owing on the property involved at the date of filing the statement of record, a consolidated statement of record, or an amendment to either.

(b) Provide a form of escrow accounting satisfactory to the department in accord with (2) if part of the purchasers' funds paid in or payable by the terms of the instrument disposing of the land is to be used for payment of taxes.

(2) In order that a purchaser will receive the interest in lands contracted for, if the developer apportions real property taxes prospectively and requires a purchaser to pay such taxes in a lump sum or on a periodic basis, the developer shall place in the escrow account 100% of the payments, with which to pay taxes when due.

R 338.3345. Purchasers' responsibilities.

Rule 145. (1) A purchaser is not responsible for payment of taxes or assessments levied before the effective date of his agreement with the developer or his agent, unless such taxes are prospective in nature, if so, they may be prorated and the instruments evidencing the sale or disposition of an interest in a subdivision shall so state.

(2) A purchaser shall not be assessed a service or collection fee or be required to pay a consideration for the assessment or allocation of taxes on the land involved in the transaction, in excess of that charged by a unit of government.

PART 15. DECLARATORY RULINGS, INVESTIGATIONS, AND HEARINGS

R 338.3451. Declaratory rulings.

Rule 251. (1) The department, on request of an interested person, may issue a declaratory ruling as to the applicability to an actual statement of facts of the act or a rule herein when he submits to the department the following:

(a) A clear and concise statement of the actual statement of facts.

(b) If the interested person desires, a brief or other reference to legal authorities upon which he relies for determination of the applicability of the act or a rule to the statement of facts.

(2) The department, if it determines it will issue a declaratory ruling, shall furnish the person with a statement to that effect and set forth the time in which the department will issue the ruling.

(3) A ruling shall repeat the actual statement of facts, the legal authority on which the department relies for its ruling, if any, and the ruling it makes. A ruling once issued is binding on the department and the department may not retroactively change the ruling, but nothing in this rule shall prohibit the department from prospectively changing a ruling.

R 338.3455. Officers to administer oaths and affirmations.

Rule 255. The following officers of the department are designated to administer oaths and affirmations during any investigation or proceeding under the act:

(a) Director of the department.

(b) Director, land sales division.

(c) Assistant director, land sales division.

(d) Chief investigator, land sales division.

(e) Presiding officer of a hearing.

R 338.3456. Officers to issue subpoenas and institute discovery.

Rule 256. (1) The following officers of the department are designated to subpoena witnesses, issue subpoenas duces tecum, and institute discovery proceedings, in accordance with Michigan general court rules in any investigation or proceeding under the act:

(a) Director of the department.

(b) Director, land sales division.

(c) Assistant director, land sales division.

(2) Nothing in this rule shall be construed to abrogate the authority of a presiding officer prescribed in the administrative procedures act of 1969, as amended.

R 338.3461. Rejections by department.

Rule 261. (1) The department may reject an application for advertising approval or a statement of record, including a property report, for a subdivision if the developer fails to comply with the act or these rules or the department's requirements thereunder. Before entering an order of rejection, the department shall notify the developer by certified mail of its decision in a notice of intent to reject for deficiencies. This notice shall toll the running of the 60 day period if the developer shall undertake to correct the deficiencies.

(2) The final decision shall be by further order.

(3) An order of rejection shall automatically be entered after 15 days following the date of mailing of the notice of intent to reject unless the developer corrects the deficiencies to the department's satisfaction within that time or the department extends the time to correct to a day certain.

R 338.3463. Hearings; notices and conduct.

Rule 263. (1) Parties shall be notified of a hearing by certified mail at their last known address, which shall be sent not less than 20 days before the

date of the hearing.

(2) A hearing shall be open to the public and shall be conducted in accordance with the administrative procedures act of 1969, being act 306 of the Public Acts of 1969, as amended, and sections 24.201 to 24.315 of the Michigan Compiled Laws.

(3) A hearing shall be conducted by a presiding officer who shall be appointed by the director of the land sales division of the department. The decision of such director shall be the final decision.

R 338.3464. Hearings; appearances, pleadings.

Rule 264. (1) A party may appear at a hearing in person or by a duly authorized representative or attorney.

(2) If a party fails to appear after proper service of notice, the director of the land sales division, if no adjournment is granted, may proceed with the hearing and make his decision in the absence of such parties.

(3) An adjournment or continuance may be granted by the director of the land sales division or the person he designates for good cause shown by a party to the hearing or on his own motion or after stipulation and agreement between all parties, but a request for adjournment shall be made in writing not less than 5 days before the date set for the hearing.

(4) A party may file a written answer to charges or claims made or may present an oral statement at the time of the hearing. Copies of written pleadings and briefs shall be served on the director of the land sales division and all other parties not less than 5 days before the date set for the hearing.

R 338.3465. Hearings; evidence.

Rule 265. (1) Testimony shall be under oath or affirmation.

(2) A deposition shall be taken only on order of the director of the land sales division upon a showing that it is impracticable or impossible to obtain

necessary evidence otherwise. It shall be taken in accordance with provisions for taking depositions in civil cases, as set forth in the Michigan general court rules or other applicable court rules.

R 338.3466. Decisions, orders, and rehearings.

Rule 266. (1) Within a reasonable time after completion of a hearing, the director of the land sales division shall send by certified mail to the last known address of the parties the decision and orders which shall include findings of fact and conclusions of law.

(2) A rehearing may be granted by said director upon application in writing by a party to the hearing or upon his own motion in accordance with the administrative procedures act of 1969, as amended. A rehearing shall be noticed and conducted in the same manner as an original hearing.

Mr. GONZALEZ. We have Herman J. Smith, vice president of the National Association of Home Builders; David D. Roberts, the vice chairman of the legislative committee of the National Association of Realtors, who is accompanied by our good friend Albert Abrahams, who is a vice president for governmental affairs; and we have J. B. Belin, Jr., president of the American Land Development Association.

Gentlemen, we are confronted with a factor here on the continued use of this hearing room. We will have access to it for about an hour, and then we will have to vacate it.

We are very grateful, because each of you has perfected a very fine written statement. We are going to suggest that, for the time that we conduct this as a panel, and if you would be kind enough to summarize your statements to help keep us within the period allotted to use this room, and of course to have a chance to ask questions, I would be very grateful.

Perhaps we could start with Mr. Belin.

STATEMENT OF J. B. BELIN, JR., PRESIDENT, CHAIRMAN OF THE BOARD, AMERICAN LAND DEVELOPMENT ASSOCIATION; ACCOMPANIED BY GARY A. TERRY, EXECUTIVE VICE PRESIDENT, WILLIAM B. INGERSOLL, GENERAL COUNSEL, AND GEORGE G. POTTS, DIRECTOR OF PUBLIC AFFAIRS

Mr. BELIN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Bruce Belin. I am president and owner of Belin & Associates of Houston, Tex., a real estate development company currently developing five recreational, resort, and residential projects in Texas, including the award-winning April Sound near Houston. I am presently serving as president and chairman of the board of the American Land Development Association.

Accompanying me today are Gary A. Terry, our association's executive vice president; William B. Ingersoll, general counsel; and George G. Potts, director of public affairs. Our association represents leading national and international companies which develop recreational, resort, and residential real estate.

In the interest of time, Mr. Chairman, I will not read our printed statement in its entirety, but I do request that the complete text and exhibits be included in the hearing record.

It is not our intention to hamper OILSR's efforts to help buyers inform themselves and to protect themselves from the irresponsible element which exists in real estate as, unfortunately, in every other business. But we do not believe such protection has to be at the expense of the honest, responsible developers who predominate in our industry. We therefore are compelled to speak out against what we consider are perhaps well intended, but nevertheless overly restrictive attempts to legislate even more regulation of our industry.

H.R. 12574, introduced originally as H.R. 10999, would amend the act substantially, adding more regulation. In our opinion, this bill would do considerable harm to developers—indeed, perhaps forcing many of them out of business altogether—while not producing the desired result of greater buyer protection.

One of the major provisions of the bill would give all purchasers and lessees an "unconditional 30-day rescission period" from the date of the consummation of the sales transaction.

Apparently, the purpose of this provision is to allow a buyer a period to reflect objectively on the correctness of his purchase. However, we strongly feel that the present 72-hour, 3-business-day requirement provides adequate and reasonable protection to any purchasers who might have acted on impulse.

While a number of States have rescission periods exceeding the present 3-day Federal requirement—for example, New Jersey is 7 days, New York is 10 days, California is 14 days—many of our member companies operating in those States maintain that such lengthy rescission periods do little more than encourage purchaser irresponsibility and permit overzealous sales persons to close sales by reminding the customer that he has "nothing to lose, since you can easily cancel this transaction if you change your mind."

We must reflect that, in no other type of "arm's length" real estate transaction is there such a rescission period; and it seems grossly unfair to single out one particular industry for such treatment, particularly when it goes beyond what would be necessary for adequate buyer protection.

However, the automatic 30-day rescission period pales when one considers the proposal for a 3-year period of revocation for the buyer given under certain specified conditions. The effect would be that the buyer has a 3-year "option," but the developer would be contractually bound. And if at any time during that period the buyer changes his mind for any reason—for example, he later decides he would rather have a new boat or a car—the developer must cancel the contract and give a full refund. It seems obvious, Mr. Chairman, that no business could operate under these conditions.

In short, ALDA believes such provisions allowing for 30-day and 3-year rescission periods are unreasonable, unnecessary, and would place an unconscionable burden upon the developer.

Another provision of the proposed bill would mandate that the "statement of record" contain copies of all advertising used by the developer, giving HUD specific statutory authority to regulate advertising.

Any such regulation of advertising which requires prior submission or approval from OILSR would be a bureaucratic nightmare, and would cripple the developer's ability to make timely changes to take advantage of market nuances.

OILSR already has advertising guidelines as part of its land sales regulations which serve to put the developer on notice as to what is expected in advertising.

The final provision of H.R. 12574 upon which I would like to comment is that dealing with the escrowing of moneys for so-called "basic services" promised but not completed, and the option granted the purchaser to void his contract and receive full refund if these services are not delivered.

The problem these proposals are designed to correct seems obvious. Their objective is the right one—to require the developer to perform his part of the contract. However, while on the surface this might seem to provide significant protection to the purchaser, in reality it can be harmful to him.

The cost to the developer of placing in escrow moneys of such large amounts will have to be borne by the purchaser in the cost of the property because, unless the developer is permitted to use such moneys to keep the project viable and economically feasible, the project could fail.

Such an economic burden will interfere with the developer's ability to perform his contract and complete these very same services. In fact, many present developers who already are providing such basic services, and more, would be forced out of business.

There are only a few in our industry who could afford to escrow at the beginning of a project the full cost of promised improvements. In effect, the developer's entire line of credit with his lenders could be tied up just meeting this single requirement.

Instead, Mr. Chairman, the common law remedy for damages applicable to failure to complete performance on a timely basis would seem to be a more just and reasonable remedy.

The administration's proposals—section 421, title IV of H.R. 11265—also would amend the act substantially, with the apparent intent of alleviating some of the problems we have addressed.

Section 421(e) of the HUD bill would have the effect of eliminating completely the so-called "free and clear of liens" exemption in the act. This exemption—which we view as founded in logic and equity—was intended by Congress to provide an exemption from regulation for developers who have title to the land and sell lots which are free and clear of all liens, encumbrances, and adverse claims to buyers who inspect personally the offering before purchasing.

Its repeal would not be in keeping with the purposes of the act and the Congress intentions in enacting it. This proposal would serve to permit OILSR to expand further its jurisdiction over developers never intended to be covered in the first place.

One of the major provisions of the administration's proposed amendments would give all purchasers and lessees an unconditional 14-day rescission period. Our previously stated objections to lengthened rescission periods would apply also to HUD's proposed 14-day period.

In summary, we feel that both Congressman Minish's bill and the HUD proposals amount to added substantive regulation of our industry. If adopted, they would pile unnecessary burden upon developers already struggling to comply with myriad Federal and State laws.

Mr. Chairman, OILSR has regulated segments of the real estate development industry which were never intended by Congress to be regulated. We would point out also that there have been many changes in our industry—especially the recreational part of it. This is simply not the same industry that it was in the late sixties and early seventies. Reports by public interest groups and the press have tended to focus on practices by high volume lot sales companies. Many of these companies and most of the objectionable practices are rapidly disappearing.

Mr. Chairman, the act does need to be amended. As you know, the Senate has acted to do so in section 71 of S. 3084. Permit me now to comment briefly on the major provisions of the Senate-passed amendments.

The sale or lease of condominiums would be exempted specifically from the act. We do not believe Congress intended that condomir

ums—or land on which a condominium is contracted to be built within 2 years—should be regulated under this statute, just as land on which is located a residential, commercial, or industrial building is exempted. Because they are not exempted from the act, OILSR can and has threatened to assert jurisdiction over condominium developers.

Mr. AuCoin [presiding]. Mr. Berlin, I notice you are reading word for word from your prepared testimony, and you have four pages of your prepared statement left.

I am concerned only because the other gentlemen—I want to insure that they have an equal opportunity to make statements and to still allow time for questions.

So that I would encourage you, if you could, to summarize as best you can the highlights of the remaining part of your testimony. The full part of it will be in the record, as you know, and then we can get into questions and answers.

Mr. Belin. All right, sir.

S. 3084 would provide for an intrastate exemption for the developer who sells less than five lots, or 5 percent of his total lots, whichever is greater, in one calendar year, to out-of-state purchasers, provided the developer gives clear title to the property and the buyer makes an onsite inspection.

Sales to purchasers residing within a 100-mile radius—an easy 1-day, roundtrip drive—of the property site, again subject to clear title and onsite inspection, would be exempted. This solves the problem faced by the developer operating on the boundary between several States, such as here in the Washington, D.C., area. While he may otherwise be exempt from the act's purview, OILSR can and does hold that such a developer is selling on an "interstate" basis, and is therefore subject in Federal regulation.

Under the Senate measure, a new provision would be added to define the term "sale or lease" to mean occurring at the time a contractual relationship is created between the developer and the purchaser. In its latest proposed revision of the regulations, OILSR served notice that it considered the "sale" to continue from the date of the signing of the contract by the buyer until the contract is paid in full or a deed has been delivered to the buyer, whichever comes later.

We feel this is a very important provision. As I stated earlier, the practical effect of such a definition by OILSR would be to extend the statute of limitations by allowing it to run the entire length of the contract period, with the concept of a "continuing sale" and for up to 3 years beyond the contract.

Such a definition would impose the "continuing sale" upon the entire act, thereby extending the statute of limitations. Our case search reveals that the definition in S. 3084 follows the prevailing opinion of the courts: 9 out of 11 of the cases we uncovered disagree with the agency's concept of a "continuing sale."

The Senate bill would add new language to the act to clarify the terms "liens," "encumbrances" and "adverse claims" so that it is clear that they do not refer to U.S. land patents and similar Federal grants or reservations common to most land in the Western United States—an omission which OILSR has used to defeat claims by developers for the "free and clear" exemption under the act. Requests for exemption under this section are rarely granted by OILSR.

Finally, because of contentions that the amendments would not only exempt developers—under certain circumstances—from the registration requirements of the act but would also exempt these same developers from the antifraud provisions of the act, language was added to the bill to assure that the antifraud provisions would in fact apply to those developers exempted under S. 3084.

Yesterday, Mr. Chairman, you heard a detailed description of how a purely interstate developer, specializing in off-site sales, operated several years ago to defraud thousands of consumers, many in New York. That case, as well as several others which have been prosecuted, were sad and despicable. Clearly, those actions fall under the intent of the act and should be regulated and prosecuted accordingly.

Today, however, we are before you asking that small, intrastate developers be exempted from the act because it was never the intent of Congress to regulate them under this statute. The Senate amendments simply clarify the act on that point, and do not call for substantive regulatory changes.

The large, interstate land companies—such as the one described yesterday by Ms. Hynes and those which have been the subject of action by the Federal Trade Commission—would in no way qualify for the exemptions provided for under S. 3084. The present act, with the clarifying Senate amendments, properly administered and with vigorous enforcement and prosecution when necessary, would adequately protect consumers if such fraudulent acts should reoccur.

Ms. Halloran of INFORM mentioned our association's most recent industry survey in claiming that our industry "seems to be riding on the shirt-tails of the current real estate boom," as she put it. She cites our survey, which among other things, concluded that sales are on the upswing because 78 percent of the survey respondents had better sales in 1976 than in 1975. Since most of our industry continued in a deep recession in 1975, when sales were often nonexistent or certainly at the lowest ebb imaginable, the fact that 78 percent indicated increased sales the following year—1976—is not surprising in the least. Nor, in our view, does it signify anything more than the fact that the recession had finally come to an end in 1976. To imply that this means a return by our industry to the days of the 1960's and early 1970's is totally without merit.

Congressman Minish, in his testimony yesterday as well as several months ago before the Senate Banking Committee, charged that "literally millions of consumers continue to be defrauded by land developers each year." We testified before the Senate Committee, and we do so here today, that we are unaware of any such valid figures, and do not know where they come from. We seriously question the figures and the assertion.

In conclusion, I want to reiterate the American Land Development Association's conviction that consumers should and must be protected from fraudulent, irresponsible real estate developers—the primary goal of the Interstate Land Sales Full Disclosure Act of 1968.

By endorsing the interstate land sales provisions of S. 3084, this subcommittee could take an important step toward assuring responsible regulation of our industry by clarifying Congress' intentions as to whom and how the law is to be applied, without sacrificing any consumer protections. We commend section 715 of S. 3084 to you.

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Thank you, Mr. Chairman, for allowing us this opportunity to appear before you today. We would be pleased to answer any questions the subcommittee may have.

[The prepared statement of Mr. Belin, on behalf of the American Land Development Association, with attached exhibits, follows:]

Statement of

J.B. BELIN, JR.
President and Chairman of the Board

Before the

Subcommittee on Housing and Community Development
House Committee on Banking, Finance and Urban Affairs

Concerning

Interstate Land Sales Full Disclosure Act Amendments

Mr. Chairman and members of the Subcommittee, my name is Bruce Belin. I am president and owner of Belin and Associates in Houston, Texas, a real estate development company currently developing five recreational, resort and residential projects in Texas, including the Award-winning April Sound project near Houston. I am presently serving as president and chairman of the board of the American Land Development Association (ALDA).

Accompanying me today are Gary A. Terry, our Association's executive vice president; William B. Ingersoll, general counsel; and George G. Potts, director of public affairs.

The American Land Development Association represents leading national and international companies which develop recreational, resort and residential real estate. Our members build and sell vacation homes, condominiums, planned unit developments, destination resorts, new and retirement communities, mobile home parks and recreational vehicle parks and campgrounds. While our membership includes the real estate development subsidiaries of some of the nation's largest corporations operating in interstate commerce, many of our member companies are family-owned or are limited partnerships and can be classified as small, intrastate developers. Some of our member firms, large and small, are considered builders of primary residential homes, and a few operate as real estate agencies.

Nevertheless, the Interstate Land Sales Full Disclosure Act (ILSFD/Act) of 1968 affects directly most, if not all, of our members. I hasten to point out, however, that in our opinion the ILSFD/Act was not intended to regulate some of these companies -- namely those operating primarily on an intrastate basis or as home builders or real estate brokers.

Background and Explanation of the Act

It would be appropriate at this point, Mr. Chairman, to provide the Subcommittee with a brief background and explanation of the Act, its intended scope and how it

has been administered -- from our point of view -- for nearly ten years now by the Department of Housing and Urban Development (HUD). However, in the interest of time, we have attached this information as Exhibit A, and I respectfully request that it, as well as several other exhibits related to that information, be included in the hearing record.

Since the enactment ten years ago of the Interstate Land Sales Full Disclosure Act, we have seen HUD's Office of Interstate Land Sales Registration (OILSR) expand its regulatory authority over segments of our industry which we fsel were not intended by Congress to be covered under the Act. In our opinion, the ILSFD/Act was intended, and should continue to be a disclosure rather than regulatory statute. Yet, through its ability to withhold effective registration and through various informal requirements, we believe OILSR has generated regulatory powers in administering the Act.

Moreover, the companies which the law was intended to cover are suffering unduly today from what often seems to be uneven formal and informal rules and procedures employed by OILSR. The agency's registration policies -- which we feel are too stringent and lack flexibility and predictability -- as well as the sheer complexity of the rules themselves have resulted in a substantial regulatory burden for all who have had to cope with the Act, especially for small developers.

We are aware that much of OILSR's expansion of its regulatory role, and many of the attendant problems, were those inherent in administering a new program with new people. In fairness, we feel that the agency and the Act have in fact stopped many abuses by a few unscrupulous developers and have likely prevented others from occuring.

It is not our intention to hamper OILSR's efforts to help buyers inform themselves and to protect themselves from the irresponsible element which exists in real estate as, unfortunately, in every other business. But we do not believe

such protection has to be at the expense of the honest, responsible developers who predominate in our industry. We therefore are compelled to speak out against what we consider are perhaps well intended, but nevertheless overly restrictive, attempts to legislate even more regulation of our industry.

I would like now to comment on the three major proposals which have been put forth to amend the ILSFD/Act.

H.R. 12574, "Interstate Land Sales Reform Act of 1978"

This proposed legislation, introduced originally as H.R. 10999, would amend the Act in several ways, with the apparent intent of strengthening the law to provide greater protection for real estate buyers by increasing the regulation of land sales. Unfortunately, under many of its provisions, the measure would not produce the desired results and would do considerable harm to developers — indeed perhaps forcing many of them out of business altogether.

The bill would extend the Act's coverage to include subdivisions of 40 or more lots, replacing the threshold of 50 or more lots in the present Act. Admittedly, smaller developers, often the very ones who least deserve regulation and can least afford the additional burden, would be brought in under federal regulation. In short, this seems to be just another example of expanding the Act's jurisdiction with little or no corresponding benefit to the consumer. Would it be 30 lots next year? And 20 by 1980?

The Act's jurisdiction would also be expanded, under this proposal, to cover lots which are less than 40 acres in size, i.e. eliminate the present exemption for lots five acres or larger. Proponents of this provision point out, perhaps correctly, that the so-called "five acre exemption" often tempts irresponsible developers to subdivide property into larger unusable lots in order to escape regulation; attracts "fly-by-night" subdividers; and results in the subdividing of marginally usable land. Conversely, consumers purchasing lots in excess of

five acres in size generally have the financial means and knowledge — or the ability to hire an attorney with such expertise — to buy such property without the need for the disclosure protection afforded under the Act. Also, as one ALDA member points out, such extension of jurisdiction could hamper certain developers' abilities to dispose of surplus property not a part of its common promotional plan. Moreover, since it is often a practical necessity that such large lots be offered with fewer improvements than is offered with smaller lots, the sale of such uncomplicated property (raw land in many cases) hardly requires the extensive disclosures required under the Act.

Under H.R. 12574, court-ordered sales of lots in connection with bankruptcy proceedings would no longer be exempted, although presumably all other types of court-ordered sales would continue to be exempt. While ALDA agrees with the apparent intent of this provision, to impose automatically a regulatory burden upon such a distressed situation may be unfair to the creditors. Moreover, such a provision may well be unconstitutional since the rights of bankruptcy are established in the Constitution.

One of the major provisions of the bill would give all purchasers and lessees an unconditional 30-day rescission period from the date of the consumation of the sales transaction. Apparently the purpose of this provision is to allow a buyer a period to objectively reflect on the correctness of his purchase, especially where he might have been subjected to a "high pressure" sales presentation. However, we strongly feel that the present 72-hour (three business days) requirement provides adequate and reasonable protection to any purchasers who might have acted on impulse. While a number of states have rescission periods exceeding the present three-day federal requirement, e.g. New Jersey seven days, New York ten days, California 14 days, many of our member companies operating in those states maintain that such lengthy rescission periods do little more than encourage

purchaser irresponsibility and permit over-zealous salespersons to close sales by reminding the customer that he has "nothing to lose since you can easily cancel this transaction if you change your mind."

Here are some additional undesirable results of lengthy rescission periods based on the experiences of some of our members:

> —it is very difficult for individual property owners to obtain financing for home construction and other improvements to their properties, since lending institutions will shy away from such commitments with a rescission period of this duration due to "prolonged exposure";
>
> —developers would find it very difficult to obtain financing of the "paper" generated by the on-going sale of properties;
>
> —the developer cannot recognize a "sale" for accounting purposes until the rescission period is over, creating severe problems for his financial statements; and
>
> —it requires the developer to invest in and carry a substantially higher number of lots in inventory. Because of the seasonability of our business, it is not uncommon for 50 percent of a developer's sales to occur in a two or three month period (particularly in the mid-west and northeast). If the buyer has a 30-day period to cancel the sale, that buyer's lot must remain in limbo for the full period and all monies received held in escrow. This in turn necessitates having perhaps double the normal supply of lots in inventory, and at a development cost which often amounts to several thousand dollars per lot, an excessive amount of the developer's capital would be tied up in inventory.

We must reflect that in no other type of "arm's length" real estate transaction is there such a rescission period, and it seems grossly unfair to single out one particular industry for such treatment, particularly when it goes beyond what would be necessary for adequate buyer protection.

However, the automatic 30-day rescission period pales when one considers the proposal for a three-year period of revocation for the buyer given under certain

specified conditions! It appears likely that nearly all developers would fall within one of the three conditional areas triggering a three-year rescission period — a penalty that at best must be considered extraordinary when applied to the practices of any business. For example, many developers require a minimum 10 percent down payment and most buyers do not and cannot pay full cash for the property. The effect would be that the buyer has a three-year "option", but the developer would be contractually bound, and if at any time during that period the buyer changes his mind for any reasons (e.g. he later decides he would rather have a new boat or car), the developer must cancel the contract and give a full refund. It seems obvious, Mr. Chairman, that no business could operate under these conditions. A developer's sales contracts are an important asset of his company and are the basis for his financial agreements with his lenders.

More specifically, the predictable results of this provision would be to prohibit any purchases on the same day a contract is presented to the buyer — despite the fact that many buyers may live within a day's drive of the project, personally inspect the property and are given ample opportunity to study the Property Report. It would also do away with installment contracts in land sales -- a common and well accepted means of purchasing today and maybe the only means available to the buyer to finance his purchase.

Under this legislation, there is proposed a requirement that title be transferred within 30 days. This is unreasonable and impractical since the paper work alone normally takes at least that long. The present HUD exemption (24 CFR 1710.11) allows for 120 days, a reasonable time for title transfer. Another provision would seemingly deny the developer the right to charge interest on any loans he makes to the buyer. This is a common and acceptable pratice in business today, well regulated by federal truth-in-lending laws. It is sometimes argued that, since the buyer does not get full use of his property until the installment loan is paid

in full, the developer should not be permitted to charge interest on the loan. We disagree with this proposition, however, because the buyer still has "ownership" rights on the property while the loan is being paid off, and more often than not he gets full use of the project's facilities and recreational amenities. Also, the use for which the land is intended in many projects is for outdoor camping and recreational vehicle parking. There would be no fairness in allowing the installment purchaser full use of his purchase, while denying the seller the right to reasonable charges for extending credit.

We would generally support the provision regarding forfeitures. Most developers will do everything possible to prevent a forfeiture, and will work with the buyer who may have encountered unexpected difficulties in paying for the property. Once a lot is sold, commissions paid and recordings made, a forfeited lot presents numerous problems for the developer and a forfeiture is the last thing he wants to happen. The common belief among casual critics of this industry that developers make a "killing" on forfeited lots is simply false.

In short, ALDA believes such provisions allowing for 30-day and three-year rescission periods are unreasonable, unnecessary and would place an unconscionable burden upon the developer.

Another provision of the proposed bill would mandate that the Statement of Record contain copies of all advertising used by the developer, giving HUD specific statutory authority to regulate advertising. Any such regulation of advertising which requires prior submission or approval from OILSR would be a bureaucratic nightmare,would cripple the developer's ability to institute an effective advertising program, and would greatly hamper his ability to make timely changes to take advantage of market nuances. Advertising is a flexible product which must be changed often on short notice, depending upon changing market conditions, seasonal variations, etc. The advertising industry works on strict deadlines and with the time it

probably will require to get it approved, effective and useful advertising by developers would no longer exist. Bear in mind that OILSR already has advertising guidelines as part of its land sales regulations which serve to put the registrant on notice as to what is expected in advertising. Used properly by OILSR, the present guidelines would accomplish the apparent purpose of this proposed provision -- to insure that developers' advertising is not false or deceptive. One final word on advertising: the provision that changes in advertising would not be considered "material" unless it reflects "substantial changes in the representation made by the developer..." would not be effective since OILSR's past record indicates a preconceived notion by the agency that every change is material.

ALDA supports the general principle of recovery by injured buyers of reasonable court costs, attorneys' fees, appraisal costs and travel costs, as well as the right of specific performance in lieu of damages, as the bill proposes. However, practical experience says that such provisions tend to encourage unwarranted lawsuits and add further to the work of the already overburdened court system. If there is any deterrent now to spurious lawsuits, it is that deterrent which arises from the prospect of having to pay court costs, attorneys' fees and other such expenses. To establish the prospect of such expenses being recoverable by the purchaser could lead to abuses by purchasers and their attorneys in launching legal action of a scale not warranted by actual damages. Instead, what might be considered is a provision for additional recoveries if it is proven that the developer intentionally disregarded his obligations to the purchaser.

H.R. 12574 would set the statute of limitations for all causes of action at three years after discovery of a violation — but no more than seven years after the sale or lease. In our opinion, lengthening the term of the status of limitations would only encourage procrastination on the part of the buyer, when he should be responsive and attentive to his obligations as a buyer. Allowing the statute of limitations to run for as long as seven years after the "sale" or "lease" may be almost the same as having no statute of limitations at all. Why? Because OILSR is presently proposing a new definition for sale or lease, maintaining that the sale does not occur until the contract is completed, all payments made in full and title is passed to the buyer. Since many developers regularly finance installment contracts for 10 years or more, the statute of limitations could remain in effect for at least 17 years. This would be disastrous to business and surely contary to public policy that there be finality to business transactions. I will comment in more detail on the definition of "sale" later in my testimony.

Under the bill, the Secretary of HUD would be authorized to issue cease and desist orders against developers, and new civil penalties would be established in the form of fines up to $5,000 for each violation and fines for criminal charges of up to $10,000 and/or imprisonment for one to seven years. Government regulation of our industry is already so prolific and the risks so great even for accidental violation of some rule or requirement that it is hard to believe that stiffer penalties would even be an effective deterrent. Civil and criminal penalties, it seems, should be viewed in light of the confusing proliferation of regulation. It is nearly impossible for a developer today to be in strict compliance with all regulations at all times. Yet, under this provision, the developer is faced with penalties comparable to an individual who willfully commits a seri-

ous felony, e.g., armed robbery. The penalty, we submit, should be in keeping with the damage to society and the intent of the violator. Thus, ALDA feels such additional powers and fines are unnecessary since the present penalties seem severe enough to act as a deterrent. OILSR's present power of suspension should afford purchasers adequare protection. Finally, a cease and desist order issued without justification can hamper seriously a legitimate developer while the issues are being litigated. If this authority is to be given to the Secretary, the developer should also be given the right of recovery for damages when such orders are improperly issued, or when premature public announcement of intention to issue a cease and desist order is made before a hearing on the issue is first held.

A new section of the Act, authorizing state attorneys general to bring civil actions on behalf of their residents, has been proposed in this bill. Although it is difficult to perceive this as a legitimate function of a state attorney general's office, we find it equally difficult to oppose such a provision in principle. However, we wonder if it is truly a proper use of taxpayers' funds. It would seem to give the attorney general a great amount of new political "clout" with consumers, but it could also create a problem in trying to decide which civil actions should be brought of the several complaints filed with them. As the many government bureaucracies which are unencumbered with the concerns of time, effort and expense in such actions, they could cater to almost any complaint filed with them, harrassing business and clogging the courts even further.

The final provision of H.R. 12574 upon which I would like to comment is that dealing with the escrowing of monies for so-called "basic services" promised but not completed, and the option granted the purchaser to void his contract and receive full refund if these services are not delivered. The problem these pro-

posals are designed to correct seems obvious, and their objective is the right one -- to require the developer to perform his part of the contract. However, while on the surface this might seem to provide significant protection to the purchaser, in reality it can be harmful to him. The cost to the developer of placing in escrow monies of such large amounts will have to be borne by the purchaser in the cost of the property because, unless the developer is permitted to use such monies to keep the project viable and economically feasible, the project could fail. Such an economic burden will interfere with the developer's ability to perform his contract and complete these very same services. In fact, many present developers who already are providing such basic services, and more, would be forced out of business. There are only a few in our industry who could afford to escrow the full cost of promised improvements, bearing in mind that many developers have several developments underway at the same time. In effect, the developer's entire line of credit with his lenders could be tied up just meeting this single requirement. And, bonding is generally unavailable to cover such situations.

As to giving the buyer the option to void his contract and receive full refund, please consider these points:

> --providing the purchaser with such a quick, convenient means of getting out of his contract is fraught with the same inequities as a developer who cancels the buyer's interest if the buyer falls a month behind in his monthly payments on lot purchase (an action no legitimate, responsible developer would take);
>
> --certain construction delays are unavoidable and certainly beyond the control of the developer, e.g., strikes, material shortages, unusually inclement weather, temporary restraining orders and, as in the case of one of our members in the west, the bankruptcy of a road contractor due to the national fuel crisis several years ago;

—if "any other amenities" which the Secretary may specify should include recreational facilities, it should be pointed out that delays may not have a material effect upon the buyer's use and enjoyment of his property, e.g., construction of an outdoor swimming pool at a midwestern or northeastern project scheduled for completion by November 1 but not completed until December 31 (also, the Secretary's discretion of what constitutes "any other amenities" should be restricted to those declarations in the Property Report, with a grace period, relating to the size and cost of the improvement, available to the developer); and

—again, developers could find it difficult to obtain project development loans with such a provision available to prospective buyers.

Instead, Mr. Chairman, the common law remedy for damages applicable to failure to complete performance on a timely basis would seem to be a more just and reasonable remedy.

Our Association readily accepts and supports the need for reasonable regulation where it is shown to be required. However, we feel that this bill amounts to a "shotgun" approach to regulation and is not the desired solution. The problem developer can be regulated and eliminated without the total industry — and ultimately the consumer — bearing the costs. The federal law can be made to do what it was intended to do, equip the buyer with the facts needed to enable him to make a rational purchase.

The Administration's Proposed "Amendments to the Interstate Land Sales Full Disclosure Act"

The Administration's proposals — Section 421, Title IV of H.R. 11265 — would amend the ILSFD/Act in a number of ways, with the apparent intent of alleviating some of the problems we have addressed, while at the same time strengthening the Act to provide greater protection for real estate buyers by increasing the regulation of land sales practices. However, under some of its provisions, these proposals would likely not produce the desired results and

would do considerable harm to developers — indeed perhaps forcing many of them out of business altogether. I would like to comment on several of the HUD-endorsed proposals.

HUD's proposals would raise the threshold of jurisdiction under the Act from 50 lots to "100 or more lots." While ALDA would support this proposal, we are not at all certain it would in fact lessen OILSR's regulatory hold on small, mostly "intrastate" developers. So long as OILSR continues to interpret the term "common promotional plan" as they have in the past (described in Exhibit A), lots will be aggregated by the agency as a means of bringing smaller developers under the purview of the Act. Thus, this amendment at best would only serve to delay the time when certain developers were brought under OILSR's regulation. If this amendment were coupled with the requirement that "common promotional plan" be defined as follows, perhaps it could prove workable: "the offering for sale or lease of subdivided land, incorporating the use of the following common elements at the same time: (a) common sales staff; (b) and common ownership; (c) and common advertising or subdivision identity or contiguity."

Under the Administration proposals, court-ordered sales of lots would no longer be given a blanket exemption. While ALDA might be inclined to support this change, it may well create a "conflicts of laws" problem so far as bankruptcy proceedings are concerned. On the other hand, under the existing exemption, a developer who files for bankruptcy could, through a trustee, sell property without a HUD registration. If so, financially successful developers are then put in a disadvantageous position. We are aware that there have been abuses of this exemption, and we view the proposed change as constructive. However, we would urge language to require OILSR to accept registration of such a subdivision, or otherwise authorize court-ordered sales where it can be shown that not only creditor but buyer interests are protected.

Section 421(e) would have the effect of eliminating completely the so-called "free and clear of liens" exemption in the Act. This exemption, which we view as founded in logic and equity, was intended by Congress to provide an exemption from regulation for developers who have title to the land and sell lots which are free and clear of all liens, encumbrances and adverse claims to buyers who inspect personally the offering before purchasing. OILSR has never favored this exemption and rarely grants it. Nevertheless, its repeal would not be in keeping with the purposes of the Act and the Congress' intentions in enacting it. In short, this proposal would serve to permit OILSR to expand further its jurisdiction over developers never intended to be covered in the first place. ALDA opposes such an amendment.

One of the major provisions of the Administration's proposed amendments would give all purchasers and lessees an unconditional 14-day rescission period from the date of the consumation of the sales transaction. Apparently the purpose of this provision is the same as that intended under the extended buyer rescission period called for in H.R. 12574. Our objections to that bill's rescission period would apply also to HUD's proposed 14-day period. Moreover, even a 14-day rescission period would not track with most state requirements, since the majority of states have periods of less than 14 days.

Another provision proposed by the Administration would delete the statutory reference to a maximum filing fee of $1,000. In addition, there would be specific authorization granted for OILSR to charge fees from developers who make exemption requests. ALDA would not oppose such an amendment, if the agency can demonstrate a real need to lift the $1,000 maximum fee -- paving the way for higher registration fees -- and charge for exemption requests.

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The section of the Act relating to cooperation with the state (sec. 1409) would be amended by these proposals to provide that the Secretary of HUD may accept state filings as a substitute for the federal filings. But, if the Secretary has not accepted a state's filing requirements, then the federal Property Report would "be used in lieu of any state disclosure document delivered to purchasers." Aside from what might become very serious constitutional problems here, such an attempt by OILSR to preempt state requirements is sure to be opposed by state regulatory agencies. For example, California has a number of substantive land sales requirements which, if not met, prohibit the sale of subdivided land. If such requirements are already in place and being enforced at the state level, why should the federal agency (HUD) have authority to preempt them? This proposed amendment should not be adopted.

A number of other provisions in the HUD bill are identical or similar to amendments proposed in H.R. 12574. Since I have already addressed them earlier in my testimony, I will not repeat these comments here.

In summary, we feel that in general the Administration proposals recommended by HUD amount to added substantive regulation of our industry. If adopted, they would pile unnecessary burden upon developers already struggling to comply with myriad federal and state laws.

Section 715 of S. 3084, "Interstate Land Sales Full Disclosure Amendments of 1978"

Mr. Chairman, ALDA was founded in 1969 as a direct result of the enactment by Congress of the Interstate Land Sales Full Disclosure Act in 1968. At the time, the Association's founders were concerned that the new law would place enormous regulatory power in the hands of the federal government (in this case, a new agency at HUD called OILSR) to the detriment of hundreds of competent,

honest land developers, both large and small. Nothing in the nearly ten years since has eased that concern.

In our opinion, OILSR has expanded its regulatory authority over segments of the real estate development industry which were never intended by Congress to be regulated. We would point out also that there have been many changes in our industry — especially tha recreational part of it. This is simply not the same industry that it was in the late 1960's and early 1970's. Reports by public interest groups and the press have tended to focus on practices by high volume lot sales companies. Many of these companies and most of the objectionable practices are rapidly disappearing.

Mr. Chairman, the ILSFD/Act does need to be amended, and as you know the Senate has acted to do so by including such amendments in legislation (S. 3084) passed on July 20. Permit me now to comment briefly on the major provisions of the Senate-passed amendments, Section 715 of S. 3084.

The sale or lease of condominiums would be exempted specifically from the Act. We do not believe Congress intended that condominiums (or land on which a condominium is contracted to be built within two years) should be regulated under this statute, just as land on which is located a residential, commercial or industrial building is exempted. Because they are not exempted in the Act, OILSR can and has threatened to assert jurisdiction over condominium developers.

In addition, the Senate bill specifically exempts commercial or industrial development property, even if such property is located in a municipality without zoning authority. Although the Act was amended in 1974 to provide for such an exemption, OILSR apparently refuses to grant such exemptions in communities which do not have zoning powers. This amendment would remedy that inequity.

S. 3084 would provide for an intrastate exemption for the developer who sells less than five (5) lots or five (5) percent of his total lots (whichever is greater) in one calendar year to out-of-state purchasers, provided that the developer gives clear title to the property and the buyer makes an on-site inspection. Although the five percent rule is now in the regulatory exemptions, it is unworkable, especially for the small developer. An example is the developer who sells nine lots, only one of which is to an out-of-state buyer. The five percent rule does not exempt this basically intrastate developer -- OILSR considers him in violation with 11 percent of his sales being made out-of-state. The addition of the five lot limit makes the intrastate exemption a realistic and workable one.

Sales to purchasers residing within a 100-mile radius (an easy one-day, roundtrip drive) of the property site, again subject to clear title and on-site inspection, would be exempted by the bill. This solves the problem faced by the developer operating on the boundary between several states, such as here in the Washington, D.C., area. While he may otherwise be exempt from the Act's purview, OILSR can and does hold that such a developer is selling on an "interstate" basis, and is therefore subject to federal regulation.

Under the Senate measure, a new provision would be added to define the term "sale or lease" to mean occuring at the time a contractual relationship is created between the developer and the purchaser. Sec.1402/15 USC 1701 (11) would be amended to read: "'sale or lease' means the entering into of a legally binding agreement by a purchaser to buy or lease a lot in a subdivision. The date of sale or lease shall be the time a contractual relationship is created between the developer and the purchaser;". In its latest proposed revision of the regulat OILSR served notice that it considered the"sale" to continue from the date of the signing of the contract by the buyer until the contract is paid in full or a deed

has been delivered to the buyer, whichever comes later. As stated earlier, the practical effect of such a definition by OILSR would be to extend the statute of limitations by allowing it to run the entire length of the contract period, with a concept of a "continuing sale," and for up to three years beyond the end of the contract. OILSR has indicated that it needs this provision to "clarify the Agency's position" with regard to policy and practice in one type of litigation -- the prosecution of fraud cases. However, such a definition would impose the "continuing sale" upon the entire Act, thereby extending the statute of limitations. Our case search reveals that the definition in S. 3084 follows the prevailing opinion of the Courts. Nine of 11 cases we uncovered disagree with the agency's concept of a "continuing sale." Only two cases, in our opinion, could possibly be cited to support OILSR's proposed definition of "sale" -- and even they are somewhat questionable.

Still another problem emerges in this area. As I indicated earlier, a large segment of the real estate development industry relies upon being able to finance commercial "paper" (i.e., notes and installment contracts) resulting from sales. But due to the increased and prolonged exposure that would result if the "sale" period (and the statute of limitations) is extended, financial institutions are unlikely to be willing to provide such financing to the developer. Moreover, such a situation would discriminate against the cash purchaser. While he has the traditional and accepted two-year statute of limitations, the installment buyer would enjoy an extended period. The definition contained in S. 3084 is a realistic and fair solution to the problem.

The Senate bill would add new language to the Act to clarify the terms "liens," "encumbrances" and "adverse claims" so that it is clear that they do not refer to U.S. land patents and similar federal grants or reservations common

to most land in the western United States — an omission which OILSR has used to defeat claims by developers for exemption under Sec. 1710.11 of the Act. Requests for exemption under this section are rarely granted by OILSR. The following restrictions, common to land west of the Mississippi River, are considered "liens," "encumbrances" or "adverse claims" by OILSR: unspecified exploration rights, mineral rights, water rights, railroad easements (specific) and unspecified railroad "wandering" easements. Many of these are not even considered by title insurers to be liens, encumbrances and adverse claims.

Finally, because of contentions that the amendments would not only exempt developers — under certain circumstances — from the registration requirements of the Act but would also exempt these same developers from the anti-fraud provisions of the Act, language was added to the bill to assure that the anti-fraud provisions would in fact apply to those developers exempted under S. 3084. It was never the intent of our Association or of any of the bill's sponsors and supporters to exempt such developers from the Act's fraud provisions.

In conclusion, I want to reiterate the American Land Development Association's conviction that consumers should and must be protected from fraudulent, irresponsible real estate developers — the primary goal of the Interstate Land Sales Full Disclosure Act of 1968. By endorsing the interstate land sales provisions of S. 3084, this Subcommittee could take an important step toward assuring responsible regulation of our industry by clarifying Congress' intentions as to whom and how the law is to be applied. We commend Section 715 of S. 3084 to you.

Thank you, Mr. Chairman, for allowing us this opportunity to appear before you today. We would be pleased to answer any questions the Subcommittee may have.

EXHIBIT A

BACKGROUND and EXPLANATION of the ILSFD ACT

Title XIV of the Housing and Urban Development Act of 1968 is the "Interstate Land Sales Full Disclosure Act." As Public Law 90-448, it took effect on April 28, 1969, following some five years of on-again, off-again Congressional hearings and unsuccessful attempts to enact legislation. The purpose of the Act was to protect the consumer from deceptive and fraudulent land sales practices in interstate commerce. It is a full disclosure law that aims to provide the potential buyer all the pertinent information needed to make an informed, rational purchase of real estate.

The Office of Interstate Land Sales Registration (OILSR) is the agency within HUD delegated the responsibility for administration of the Act. The duties of this office include receiving from developers Statements of Record and other supportive material, responding to consumer inquiries, investigating consumer complaints, field inspecting of properties and informing the public of certain rights granted them under the Act. The office is not expected to pass judgement on possible future appreciation, the fair market value of, or the general quality of real estate.

The Act requires the developer or (his) agent, whose prospective subdivision meets certain criteria (explained below), to file with OILSR a "Statement of Record" about the subdivision before any lots are to be offered for sale or lease. The Statement of Record contains such information as a financial statement of the development company; a copy of the corporate charter; copies of deeds and mortgages; any conditions set down in local ordinances and regulations; the availability of or proposed plans for installation of facilities (i.e. schools, churches, hospitals), basic services (i.e. water, sewage disposal, roads), utilities (i.e. electricity, gas) and recreational amenities (i.e. swimming pools, tennis courts, golf courses, hiking trails, etc.); and any necessary supporting documents such as sketch plans, plats and area maps. The developer or (his)

agent is also required to prepare a "Property Report" to be given to prospective buyers. The Property Report contains information drawn from the Statement of Record that will be helpful and informative to the person contemplating the purchase, including such information as the distance to nearby communities; existence of any mortgages or liens on the property; the availability, location and costs of present and proposed facilities, services, utilities and amenities; soil and foundation conditions; and the present number of dwellings occupied.

Covered under the Act are all subdivisions "divided or proposed to be divided into fifty (50) or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan...." Thus, an individual or company which owns 50 or more lots whether located in one contiguous plot or scattered throughout a county or counties may be subject to the Act, depending upon one's interpretation of the term "common promotional plan." Under OILSR's interpretation — which has contributed to bringing many smaller subdivisions under the Act's registration requirements — lots are presumed to be sold under a common promotional plan if the following criteria exist: a "thread" of common ownership; common advertising or promotion; common name or identity; common sales agents; common sales offices or facilities; common sales inventory; etc. The statute itself only describes a common promotional plan for land where the land is "contiguous or known, designated, or advertised as a common unit or by a common name...."

Certain exemptions from full registration are provided in the statute and in the regulations promulgated by OILSR. The statutory exemptions, with but one exception, require no formal written determination and, most significantly, exempt the following types of subdivisions from the Act:

--subdivisions consisting of less than 50 lots;

—subdivisions consisting of lots, all of which are five acres or more in size;

—the sale of lots on which there is a completed building or a contractual obligation on the part of the developer to complete a building within two years from the date of sale;

—the sale of lots to persons engaged in the construction of residential, commercial or industrial buildings;

—lots zoned for commercial or industrial development, provided certain criteria are met; and

—the sale of subdivision lots which are free and clear of all liens, encumbrances and adverse claims, provided each purchaser inspects personally each lot prior to signing the contract. This latter exemption requires a favorable determination by OILSR, however, before it is available to developers.

In addition, there are four regulatory exemptions, one of which requires the issuance of an "Exemption Order" by OILSR. The exemptions for which no action is required by the developer or OILSR are:

—lots sold for less than $100 including closing costs;

—lots leased for a term not exceeding five years; and

—the sale of less than 50 lots (which are also not more than five percent of the developer's total lots) when the remainder (95 percent) of the subdivision is otherwise exempt.

The fourth regulatory exemption requires that a subdivision meet several criteria, including: less than 300 lots; location entirely within one state and offered entirely or almost entirely within the state where the subdivision is located; all advertising and promotion confined to the state; and no more than five percent of the sales in any one year made to nonresidents of the state. In order to obtain this exemption, however, the developer must first provide OILSR with certain facts, including basic information about the ownership and size of the subdivision and any other similar filings with federal or state authorities; a statement identifying the lots to be exempted and the reasons for the request; a description of the promotional methods to be used and whether any principals of the developer have interests in other subdivisions; and finally, submission of a filing fee of $100.

Even though no specific determination by OILSR is required on the other exemptions, the developer may obtain an "Exemption Advisory Opinion," provided he submits a nonrefundable $100 fee, a statement of facts and law whereby the developer believes himself exempt, and certain basic administrative information.

Finally, the Act prohibits developers from using "any means or instruments of transportation or communication in interstate commerce, or of the mails..." to sell or lease lots without complying with the registration provisions of the Act, or to defraud purchasers.

ADMINISTRATION of the ACT by OILSR

When the Act and regulations thereunder first took effect in 1969, the process was relatively simple and filings were often processed and made effective in a matter of days. But the regulations have been revised several times since then and have become increasingly technical — each revision requiring more extensive and detailed disclosures, and in some cases complete refiling with OILSR. The most significant revision to the regulations became effective on December 1, 1973, and OILSR is again revising the regulations to become effective probably sometime this year or early in 1979. These new revisions, first proposed a year and a half ago in January of 1977, were finally reissued for a second comment period on June 1 of this year. The latest proposed regulations covered 46 pages in the Federal Register — almost a complete revision.

A copy of ALDA's oral statement on July 17 at the first of three public hearings on the proposals is attached as Exhibit B. The Association will submit to OILSR more detailed written comments before the August 31 deadline, and we will be happy to provide the Subcommittee with a copy of that statement when it is completed.

As the regulations now stand, it takes 60 to 90 days for an expert in the registration procedure to process a complete filing through OILSR. For the

developer who, for financial reasons or otherwise, drafts and processes his own registration, the process probably will take nine months to a year. But until the developer is granted an effective date on the registration, he cannot sell a single lot, while he still has to cope with considerable ongoing expenses.

Briefly, the following steps are necessary to the OILSR registration process:

(1) The assemblage of the information necessary to prepare the Statement of Record and Property Report required by the Act and implementing regulation. This involves providing the answers to numerous questions and the compilation of hundreds of pages of formal documents, including: audited and certified financial statements for the developer and any other entities involved; complex legal title documentation, including title policies and legal opinions; engineering documentation; letters from local and state governmental bodies regarding the installation of various utilities; etc. Information and documentation required in many cases is not clearly set out or explained in the regulations, so that the average person unfamiliar with the agency and its requirements would not know what to include.

(2) Preparation of the documentation in the format required by the agency. This includes the formal drafting of the narrative, the form and substance of which can be vital to obtaining filing approval.

(3) Submitting and processing the registration documents through OILSR itself. This includes negotiations over the structure of the narrative, the included documentation and the language of the specific disclosure. Much of the OILSR review is based on internal agency policy and individual examiner discretion — with the result that many of the filing requirements are unwritten.

(4) Negotiating with the agency over additional documentation and changes in disclosure language and format. This can take several months of going back and forth between the developer and the agency and produce much paperwork.

It is estimated by OILSR itself that less than five (5) percent of all filings clear the agency on original submission.

Once a registration is effective, however, the process does not end there. OILSR requires that amendments be made to the filing within 15 days of a "material change" in the status of the subdivision. OILSR has never issued guidelines on what constitutes a "material change" and administrative law decisions on the subject show a wide range of disclosures considered to be "material." For example, OILSR has maintained that the following items were material and required that filings be suspended for failure to disclose them: a change in the assistant secretary of the developer's corporation; a five percent (5%) increase in the cost of bottled gas; and a $5,000 damage suit against the development company which had a net worth in excess of $30 million. One fairly recent case had OILSR and a developer disputing over whether a proposed riding stable should be disclosed as a "recreational facility" or as a "nuisance." On the other hand, undoubtedly OILSR can cite some serious deficiencies in disclosures — but it seems fair to say that minor deficiencies which have been considered material by OILSR have been at least equal to the major ones.

What may be a genuine difference of opinion between OILSR and the developer on the materiality of a disclosure can result in lengthy and costly administrative proceedings. Many of the developer's records may be subpoenaed, as may the developer himself. He may be required to come to Washington to defend himself or else make the requested changes without regard to their merit. If he opposes OILSR dictates, he risks having the registration suspended — which has the effect of stopping all sales at the developer's subdivision until the amendments are made. If the developer decides to defend himself through the administrative hearing process, it can be nearly three (3) months before his case is heard by the HUD Administrative Law Judge, and up to 24 months before a final decision is rendered. This means that after the developer has undergone the

administrative procedures, his filing may still be suspended and he will still have to amend it. In the meantime, no sales may be made until the amended filing is again made effective.

On reviewing some 19 Administrative Law cases involving OILSR, we find that the length of time involved from the date of OILSR first notifying the developer of alleged violations to the date of the final decision ranges from 30 days (in one case only) to about 20 months, with the average for the 19 cases reviewed being about five and a half months. However, this time period does not include the time the developer's filing may be suspended after the decision is rendered and the time it takes the developer to prepare and submit the disclosures required as a result of the decision.

The December 31, 1973 regulation revisions by OILSR required that all filings effective prior to that date must be brought into compliance with the new rules at the time any other amendment was necessary. For example, if the developer needed to amend his registration to show that a proposed golf course would not be completed until a year later than originally planned, he would be required to amend his entire filing. The latest proposed OILSR regulation revisions contain a similar provision. In the case of both the 1973 rules and the forthcoming revisions, the format and characteristics of the registration were and probably will be changed radically, making even those familiar with the process relearn the entire procedure through trial and error.

OILSR, however, is not the only agency with which the developer must be involved. If he wishes to sell in more than one state, he faces possible registration in most or all states where he wishes to market his subdivision. According to a 1976 survey (updated through June of this year) by the Land Development Institute, Ltd. — a copy of which is attached as Exhibit C — 45 of the 50 states have some kind of registration requirement for developers offering or selling

land to residents of a given state when the land offered was not located within the borders of that state. State registration requirements range from the submission of basic information about the subdivision, to registrations equalling or surpassing the scope of the federal registration. In addition, numerous states have substantive regulatory requirements, such as the posting of bonds to assure completion of project improvements. And in several states, out-of-state land is considered a "security" and the developer must undergo a full-scale securities registration in order to sell it.

Only about ten of the states with registration requirements will accept as a matter of course the entire OILSR filing (Statement of Record and Property Report) in lieu of their own registration. As many as 15 additional states may accept part of the OILSR filing, may accept it for one developer but not for another within their discretion, may accept the HUD Property Report but require a separate "Registration Statement" meeting certain state requirements, and other combinations. On the other hand, although such states as California, Florida, Illinois, Michigan, Minnesota, New Hampshire and New York have registration requirements that either meet or exceed the standards set by OILSR, the federal regulations presently provide that only one state filing -- California's -- is acceptable as meeting OILSR requirements. And this came about with respect to California only after OILSR, on December 5, 1975, reversed a decision made a year earlier in which the agency said it would no longer accept any filing made with and accepted by <u>any</u> state. A more detailed explanation of the situation in California is provided by Mr. Sid M. Karsh, president of Dart Resorts and president of the Western Developers Council, an association of California real estate developers and land development related companies, in a letter earlier this year to the Senate Select Committee on Small Business. Mr. Karsh's letter is attached as Exhibit D.

But what are the costs involved to the developer of all this regulation? When all is said and done, we estimate the developer probably will have spent $25,000 to $100,000 on the registration procedure, including legal, accounting and engineering expenses, staff time and other miscellaneous expenses. That is, if he can afford a registration attorney, which many small developers feel they cannot. If he does the work himself, what he saves in attorney's fees he will more than likely lose in time spent on the registration.

Attorneys tell us that their fees for registration for a small developer cannot be substantially less than for a large developer because the basic requirements for registration are the same. Thus, the registration cost, on a per lot basis, is much higher for small developers than for large developers.

EXHIBIT B

OFFICE OF INTERSTATE LAND SALES REGISTRATION (OILSR, THE AGENCY)
STATEMENT OF THE
AMERICAN LAND DEVELOPMENT ASSOCIATION (ALDA)
PROPOSED REGULATIONS POLICY HEARING
JULY 17, 1978

OPENING REMARKS:

I am William B. Ingersoll, General Counsel for the American Land Development Association (ALDA, THE ASSOCIATION). Accompanying me today is George G. Potts, Director of Public Affairs for the Association. We appreciate this opportunity to testify on behalf of the Assocation concerning the OILSR's proposed rules for registration of interstate land sales, as they appear in Part V of the Federal Register of June 1, 1978.

The American Land Development Association (ALDA) represents leading national and international companies which develop recreational, resort, and residential real estate. Our members develop homes, condominiums, planned unit developments, destination resorts, new and retirement communities, timesharing facilities, mobile home parks, recreational vehicle parks and campgrounds. I should also point out that some of ALDA's member companies are lending institutions which provide financing for the industry or are actively engaged in developing properties of their own. You will undoubtedly receive testimony from many of our members in the course of these public hearings and by written statements during the comment period.

Since our time is limited, we intend only to generally focus on a few areas of the proposed Regulations and followup this testimony with more comprehensive written comments.

I. Redefinition of "Sale" is "Ultra Vires"

ALDA believes OILSR's redefinition of the term "Sale" as now proposed is without legitimate legal basis. When the redefinition of "Sale" was first published in the January 31, 1977 Federal Register, the stated rationale was for the purpose of extending the statute of limitations in fraud cases, based on what OILSR termed a "theory" of an ongoing sale. Extending the statute of limitations so as to remove from an alleged perpetrator of fraud the benefit of his wrongdoing is a common judicial remedy to be imposed when circumstances of fraud warrant its use.

However, OILSR has not limited the redefinition to sales involving fraud only, but it has, in a most extraordinary fashion, expanded its "theory" to apply generally, thereby expanding the statute of limitations in every transaction. We believe this to be an arbitrary departure from judicial policy and one not supported by the legislative history of the Act. ALDA previously addressed this issue in its written comments to the proposed regulations dated April 30, 1977.

In its newly proposed regulations, OILSR states no supportive judicial precedent under its own Act and it has no support in its own legislative history for the expanded definition of sale. Nevertheless, in attempting to support

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its position, OILSR asserts for the first time that its position is supported by cases under federal securities laws. ALDA would be pleased to have the citations for these cases, even though they are admittedly not based upon the Act itself, so that they may be reviewed by all interested parties. Particularly, it would be edifying to learn in what respects OILSR considers these security cases as precedent for the redefinition of "Sale". We believe, in fact, that OILSR may be erroneously dependent on cases and precedents based upon another statute administered by another federal agency, wholly without applicability to OILSR's subject area.

In summary, ALDA strongly opposes the proposed redefinition of "Sale" as unconsciencable, arbitrary, and without legal precedent.

II. 24 CFR 1710.11 Extinction:

We think the proposed alteration of Section 1710.11 eliminating the 120 day rule to deliver deeds is an unfortunate example of agency overkill without adequate factual substantiation. OILSR finds a potential danger to purchasers because sellers may encumber lots after the exemption is currently granted and the contract to purchase is signed. This is the first time that the Association has become aware that the OILSR's current policy has generated problems of the type they refer to at all. OILSR has not shown statistically or otherwise that the benefits of its proposed rule will outweigh the harm to legitimate developers, especially small developers. This statutory exemption has been basically untouched since

the statute was first implemented. Nowhere has the Congress stated or even suggested that this exemption was being improperly used or administered. We would request that the agency carefully reconsider its proposed regulations regarding the crippling of this exemption to the point of practical extinction.

Nevertheless, ALDA applauds the agency decision to limit the annual filing requirement associated with this exemption and finds this new proposal both protective from the purchasers viewpoint and workable by developers.

III. "Scattered Lot" Exemption (1710.13(b)(7) is step in the right direction.

The Association commends the OILSR for the effort expended in review of its existing regulations and policy concerning exemptions from the Act. We feel that the proposed new "scattered lot" exemption in Section 1710.13(b)(7) is a step in the right direction to solving one of the developers' and agency's most perplexing problems of coping with the concept of a "common promotional plan", especially as it relates to the small (scattered site) developer. We feel that there are still problems which will require further explanation by the agency regarding this exemption and we intend to point these out in our written comments.

IV. New "Limited Offering" Exemptions are Unduly Complicated:

We find the new exemptions in Sections 1710.14 and 1710.15 of the proposed regulations as unduly complicated, confusing, and restrictive. In light of the fact that these

proposals will replace the existing "limited offering" exemption, which is currently the easiest and most popular exemption used by the small developer, we feel that these proposals should be broadened and simplified.

For example, ALDA believes the intention in Section 1710.14 to limit the exemption to 150 lots is arbitrary and unnecessary. As with the current Section 1710.14(a)(2), the limitation should be at least 300 lots. The 300 lot limitation was previously believed by OILSR to be fully protective of consumer interests and we are not aware of any problems which should further limit the availability of this exemption.

A. 14-day rescission period is outside of statutory authority. As to the 14-day cooling off period, ALDA is unaware of any statutory provision which grants OILSR the authority to provide for any rescission period not specifically granted by Congress. 15 U.S.C. 1702(b), the only provision granting OILSR authority to provide for exemptions, states that such a determination shall be based on two elements and two elements only:

a. "The small amount involved, or

b. The limited character of the public offering."

OILSR, in stating its rationale for the 14-day rescission period, as "time necessary for a purchaser to determine whether the lot can be used for the purpose for which it is being acquired" establishes for the record that the rescission period is not proposed, even remotely, for either of the two permissible purposes. Furthermore, it is inconsistent with

the entire scheme of exempting certain subdivisions for the expressed statutory purposes and simultaneously imposing an arbitrary, and probably illegal, 14-day rescission period.

V. New Filing Format -- Good idea to simplify language, but cost to comply not commensurate with proven benefits to purchasers.

As to the new registration sections, including the new format and requirements for the Property Report and Statement of Record, ALDA commends the efforts of the agency to simplify disclosure because we share a common belief that consumers should be able to understand disclosures to the greatest possible extent.

While we concede that the new narrative disclosure format could be somewhat more understandable, we continue to seriously question the agency taking this course of action without first measuring the extraordinary costs associated with and the economic impact of requiring complete re-registration of all filings, at a cost of many millions of dollars to the industry as a whole, weighed against the ultimate benefit to consumers. Simply stated, the OILSR has yet to produce any valid empirical evidence to support a rewriting of the registration requirements.

A. Elimination of Financial Statements a Good Idea. Quite frankly, we feel that the most beneficial proposal in the new disclosure format is the elimination of complicated financial statements from the Property Report. We feel that

this simple proposal will do more to make the Property Report readable and understandable to the consumer than all the other changes in format requirements.

B. Cost Sheet Too Complex and Subject to Abuse. Furthermore, we must protest against the use of a "cost sheet" as being unworkable from the developers' perspective and misleading to consumers.

C. "Red Warning" Provisions are Simplistic and Directly Contradictory to the Proposition of Cutting Down on Printing Costs.

We must also protest the new proposals of boilerplate multiple red letter warnings to appear in the Property Report. We feel that numerous warnings throughout the Property Report will remove the intended emphasis to the consumer and will increase substantially the printing costs of the document, thereby more than offsetting the printing cost reduction realized by the one color cover page which OILSR realistically cited as justification for such a change.

VI. Conclusion: ALDA Favors Real Simplification.

This concludes our oral statement regarding the major concerns of the Association with the proposed regulations. We compliment the agency for having implemented many of our suggestions in these proposals. The Association will submit to the OILSR more detailed comments in writing prior to the August 31, 1978 deadline as extended. Thank you again for allowing us this opportunity to express the Assocation's views on the proposed rules and regulations. With an undertaking as important as this, we would suggest and pray that the final draft involve a much closer participation by the industry which will be most immediately impacted.

EXHIBIT C

THE AMERICAN LAND DEVELOPMENT ASSOCIATION

READ FULL TEXT OF QUESTIONS ON PAGE 3 TO PROPERLY INTERPRET CHART.

Question #	1			2	3	4	5	6	7	8	9	10	11	12	13
USA	Registration Required?		Number of lots, units, interests	On-site inspections?	Annual reports?	Rescission Period?	Approve/Review Advertising?	Mail in Advertising?	Advertise in Nat'l Publications	Phone in Advertising?	Prohibit/Limit Gifts, Prizes?	Accept OILSR Filing?	Accept OILSR/HUD Exemption?	Allow Reservation; Option Agreements?	
	In-State	Out-of-State													
AL	--	L C T	--	No	No	--	No	No	Yes	Yes	No	--	--	--	
AK*	No	L T	10	L-Yes T-No	Yes	L-Yes	Yes	No	Yes	No	No	YES IAK	No	No	
AZ	L C T	L C T	4	Yes	Yes	No	Yes	No	No	No	Limit	No	No	Yes	
AR	No	L C T	--	Yes	No	No	Yes	No	No	No	No	NO	No	Not Known	
CA	L C T	L C T	L-5 C,T-2	Yes	Yes	L-Yes C,T-No	L-Yes C,T-No	No	Yes w/ Dsclm.	No	Limit	No F[1]	No	Yes	
CO*	L C T	L C T	20	No	Yes	No	No	Yes	Yes	No	No	No	No	Dis.	
CT	C	L C T	5	Yes	Yes	Yes	Yes	No	No	No	Limit	Yes	Dis.	No	
DE	No	L C T	5	No	No	Yes	No	No	Yes	No	No	NO	No	No	
DC	No	No	--	No	No	No	No	Yes	Yes	Yes	Yes	--	--	--	
FL*	L C T	L C T	L-50 T- 7	L-Yes C,T-No	L-Yes C,T-No	Yes	L&T Yes	No	No	No	Limit	No	No	No	
GA	L	L F[1]	25	Yes	Dis.	Yes	No	No	No	No	No	No	No	No	
HI	L	L	2	Dis.	F[1]	No	Yes	No	--	No	F[2]	No F[3]	Dis.	No	
ID	No	L C T	5	Dis.	Yes	No	Yes	No	Yes w/ Dsclm.	No	Limit	Dis.	Dis.	No	
IL	No	L F[1]	50	Dis.	Yes	Yes	Yes	No	No	No	Limit	No	No	No	
IN*	No	L C T	1	No	No	Yes	Yes	Yes	Yes	Yes	Prohb.	Dis.	No	No	
IA	Local	L C T	5	Dis.	Yes	No	Yes	No	Yes w/ Dsclm.	No	Limit	No	No	No	
KS	L	L	50	Yes	Yes	Yes	Yes	No	No	No	No	No	No	--	
KY	No	No	--	--	--	--	--	--	--	--	--	--	--	--	
LA	No	F[1] L C T	OILSR	F[1] Yes	No	Yes	Yes	No	F[2] Yes F[2]	No	No	Yes	Yes	Yes	
ME	No	L C F[1]	OOS	Dis.	2 Yr.	No	Yes	No	Yes	No	Dis.	Dis.	No	No	
MD	No	No	--	No	--	--	Yes	Yes	Yes	Yes	Prohb.	--	Yes	Yes	
MA	No	L C T	25	Yes	No	No	Yes	Yes	Yes	Yes	Prohb.	Yes	No	No	
MI	L T	L C T	25	Yes	Yes	Yes	Yes	No	Yes w/ Dsclm.	No	Limit	No	No	No	
MN	L C T	L C T	In-51 Out-10	No	Yes	Yes	Yes	No	Yes	No	Limit	T/R AI	No	No	
MS	No	L C T	50	Yes	No	No	Yes	No	Yes	No	No	Dis.	Dis.	Dis.	
MO	T-Dis.	L C T-Dis	Dis.	Dis.	LC-Yes T-Dis.	No	Yes	No	Yes	No	No	No	No	No	

KEY TO ABBREVIATIONS: C--Provisions apply to condominiums; Dsclm.--Disclaimer; Dis.--Discretionary; F[1]--See footnote listed by state; L--Provisions apply to subdivided land; OILSR--Office of Interstate Land Sales Registration, same requirements as; OOS--Out-of-state; P/R--Federal Property Report; Prohb.--Prohibited; T--Provisions apply to time sharing.

AI — Additional Information required.

READ FULL TEXT OF QUESTIONS ON PAGE 3 TO PROPERLY INTERPRET CHART.

Question #	1		2	3	4	5	6	7	8	9	10	11	12	13
USA	Registration Required?													
	In-State	Out-of-State	Number of lots, units, interests	On-site inspections?	Annual reports?	Rescission Period?	Approve/Review Advertising?	Mail in Advertising?	Advertise in Nat'l Publications?	Phone in Advertising?	Prohibit/Limit Gifts, Prizes?	Accept OILSR/HUD Filing?	Accept OILSR/HUD Exemption?	Allow Reservation, Option Agreements?
MT	L C T	L C T	5	Yes	Yes	Yes	Yes	No	Yes w/ Declm.	No	Prohb.	Dis.	Dis.	No
NB	L C T	L C T	25	Yes	Yes	Yes	No	No	--	No	No	No	No	No
NV	L T	L C T	35	Yes	No	Yes	Yes	No	No	No	No	No	No	No
NH*	L T	L T	50	No	Yes	L-No T-Yes	Yes	No	Yes w/ Declm	No	No	YES AI	No	No
NJ	No	L C T	1	Yes	Yes	Yes	Yes	No	No	No	Prohb.	Yes	No	No
NM	L C T	L F[1]	2	--	--	Yes	Yes	No F[2]	No F[2]	No F[2]	Yes	P/R	UNCLEAR	
NY	L C T	L C T	L-5 C,T-1	L-Yes C&T-No	L-Yes C&TNo	L-Yes C&TNo	Yes	No	Yes w/ Declm	No	No	No	No	L-No C&TYes
NC	No	No	--	--	--	--	Yes	Yes	Yes	Yes	Yes	--	--	--
ND	No	L C	5	Yes	Yes	No	Yes	No	Yes w/ Declm	No	Limit	P/R	No	No
OH	No	L C T	L&C-10 T-All	Yes	6 mos	No	Yes	No	Yes w/ Declm	No	Limit	No	No	No
OK *	F[1] C T	F[1] LCT	20	Dis	Yes	Yes	Yes	No	Yes w/ Dsclm	No	No	Yes	No	No
OR	L C T	L C T	4	L&C Dis.	F[1]	L-Yes	Yes	No	F[2]	No	No	No	No	No
PA	No	L C T	F[1]	Yes	Yes	No	Yes	No	Yes	No	No	P/R	No	No
RI	No	L&C Yes T-Dis	5	L&C Yes T-Dis	L&C Yes	L&C Yes	L&C Yes	No	Yes w/ Declm	No	Limit	Yes	No	No
SC	T	L	25	No	Yes	No	No	No	Yes	No	No	DIS	Dis.	Dis.
SD	L-Yes C&TDis	L-Yes C&TDis	In-50 Out25	Yes	Yes	Yes	Yes	No	--	No	No	Yes	Dis.	Dis.
TN	T F[1]	L C T	OOS	Dis.	Yes	Yes	Yes	No	Yes w/ Declm	No	Dis.	Dis.	--	No
TX	No	No F[1]	--	--	--	--	--	Yes	Yes	Yes	No	--	--	--
UT	L C T	L C T	10	No	Yes	Yes	Yes	No	Yes	No	Limit	DIS	No	No
VT	No	F[1] L T	Dis.	No	Yes	No	Yes	No	No	No	Limit	No	No	No
VA **	F[1] LCT	F[1] LCT	L10U C&T-DIS	DIS	No	No	No	No	F-1	No	No	NO F-1,2	No	No
WA	F[1] L C	F[1] L C	10	No	Yes	Yes	Yes	No	No F[2]	No F[2]	Limit	YES	No	Yes
WV	L C T	L C T	10	Dis.	Yes	No	Yes	Yes	Yes w/ Declm	Yes	No	Yes	Yes	Dis.
WI	No	L C T	1	No	No	No	Yes	Yes	Yes	Yes	Prohb.	No	No	No
WY	L	No	--	--	No	--	No	--	Yes	--	No	--	--	--

KEY TO ABBREVIATIONS: C--Provisions apply to condominiums; Declm.--Disclaimer; Dis.--Discretionary; F[1]--See footnote listed by state; L--Provisions apply to subdivided land; OILSR--Office of Interstate Land Sales Registration, same requirments as; OOS--Out-of-state; P/R--Federal Property Report; Prohb.--Prohibited; T--Provisions apply to time sharing.

AI — Additional Information required

READ FULL TEXT OF QUESTIONS ON PAGE 3 TO PROPERLY INTERPRET CHART.

Question # / Canada	Registration Required?		1 Number of lots, units, interests	2 On-site inspections?	3 Annual reports?	4 Rescission Period?	5 Approve/Review Advertising?	6 Sell in Advertising?	7 Advertise in Nat'l Publications	8 Phone in Advertising?	9 Prohibit/Limit Gifts, Prizes?	10 Accept OILSR/HUD Filing?	11 Accept OILSR/HUD Exemption?	12 Allow Reservation; Option Agreements?	13
	In-State	Out-of-State													
ALB	No	L C T	1	Yes	Yes	Yes	Yes	No	Yes w Declin	No	Limit	No	No	No	
BC	L	L C T	L-5 C&T-2	Yes	No	No	No	No	Yes	No	No	No	No	No	
MAN	L C T	L C T	5	No	Yes	Yes	Yes	No	No	No	No	No	No	No	
ONT **	C P[1]	P[1] L C	5	Yes	Yes	Yes	Yes	No	Jo	No	Prohb.	No	No	Dis.	
QU **	No	No	--	--	--	--	--	--	--	--	--	--	--	--	
SAS	L C T	L C T	--	Yes	3 mos	Yes	Yes	No	No	No	Yes	No	No	--	

REFERENCE-COMPARISON CHART

FOOTNOTES
(By state or province)

USA

CALIFORNIA

[1]California filings for situs subdivisions may be "passed through" to OILSR/HUD provided certain requirements are met.

GEORGIA

[1]The legal status of time sharing units under the Georgia Securities Act is undetermined at this time; however, certain types of offerings may be required to register.

HAWAII

[1]Hawaii authorities have not enforced compliance with Sec. 484-9 H.R.S., Annual Reports
[2]All aspects of promotional plans are carefully monitored pursuant to Sec. 484-5(a)(13) H.R.S.
[3]Currently, No.

ILLINOIS

[1]Sec. 372A of the Illinois Land Sales Act has been interpreted (as of this writing) to exempt condominium and time sharing units which are standing and complete or as to which there is a legal obligation on the part of the seller to construct a building within two years from date of disposition.

LOUISIANA

[1]Provision applicable only to offerings which are also subject to the registration requirements of the Interstate Land Sales Full Disclosure Act 15 U.S.C. 1701 et seq.
[2]Yes, unless the promotion is specifically designed to reach the Louisiana market.

MAINE

[1]The status of time sharing is not yet determined under the Maine Securities Act.

* New laws or regulations governing land sales enacted during 1977.
** New laws or regulations governing land sales enacted so far in 1978.

MAINE (cont'd.)
[2]Yes, the developer can advertise in national publications, but any sales consummated by Maine residents would be in violation of the Securities Act unless the developer is registered.

NEW MEXICO
[1]Registration is also required for condominiums and time sharing if they are deemed securities.
[2]No, if the offering is a security.

OKLAHOMA
[1]Registration may be required for condominiums and time sharing if they are held to be securities. One "right-to-use" time-share offering has been held to be a security in Oklahoma.

OREGON
[1]Formal annual reports are not required, but ORS 92.365 provides that filing information for subdivisions must be kept current. Securities registrations must be renewed each year.
[2]Sales to Oregon residents resulting from advertisements in national publications would be in violation of the law if the developer is not registered.

PENNSYLVANIA
[1]Developers are allowed to register only an inventory of lots, units or interests which they can actually sell during an 18-month period.

TENNESSEE
[1]Subdivided land and condominiums located within Tennessee may be required to register if the offering, taken as a whole, involves the offer or sale of a security.

TEXAS
[1]If condominiums or time sharing involve security interests, they may be required to register with the Texas Securities Commission.

VERMONT
[1]Condominiums would be required to register if the offering is an "investment contract" security.

VIRGINIA
[1]Time-shared condominiums are required to be registered.

[2]Undetermined at this time
[3]Developers registered with OILSR or HUD must submit a copy of their HUD filing as part of the Virginia registration.

WASHINGTON
[1]Condominiums are required to register unless the buildings are already constructed or there is a contractual obligation on the part of the seller to construct within two years. Time sharing offerings may be required to register under the Securities Act if they are held to be securities.
[2] This type of advertising may not result in any part of a sale taking place in the state of Washington, including negotiations.

CANADA

ONTARIO
[1]Currently, time sharing offerings are not permitted in the province.

REFERENCE COMPARISON CHART
QUESTIONS AND INSTRUCTIONS

Listed below are the questions which were submitted to the state agencies in the United States and Canada which have jurisdiction or potential jurisdiction over the sale of subdivided land, condominiums and time sharing. A brief explanation of how answers have been set forth in the Reference-Comparison Chart on pages 5-7 follows each question where necessary.

1. Is there a registration requirement for the offering or sale of the following, if located

	Subdivided Land (L)	Condominiums (C)	Time Sharing (T)
Within the State			
Outside the State			

CHART: If there is a registration requirement column 1 will show "L" for subdivided land "C for condominiums, and "T" for time sharing, as applicable I there is no such requirement for any of these, the column will show "No."

2. What number of lots, units or interests trigger registration requirements for subdivided land _____, condominiums (#)_____, time sharing (#)_____?

CHART: Column 2 will show the minimum number of lots, units or interests for which registration is required and, as necessary, the number for each type of offering (L, C, T). NOTE: Some states have different numbers for in-state and out-of-state projects.

3. Are on-site inspections required before an effective registration can be granted for subdivided land _____, condominiums _____, time sharing _____?

CHART: Column 3 will show "Yes", "No" or "Dis." (Discretionary).

4. Must annual reports be filed for registered subdivided land _____, condominiums _____, time sharing _____?

CHART: Column 4 will show "Yes", "No", "Dis." or the periodic occurrence of reports (e.g. every 6 months, 2 years, etc.).

5. Is there a rescission period for purchasers under the governing statute or regulations for subdivided land _____, condominiums _____, time sharing _____? (If there is any rescission period, whether conditional or unconditional, response should be YES.)

6. Must advertising materials be approved or reviewed prior to their use in the state for subdivided land _____, condominiums_____, time sharing _____? (Yes, No, Dis.)

7. Can a developer mail advertisements into the state from outside the state without registration (no company representative is present in the state)?

☐ YES ☐ NO

8. Can a developer advertise in national publications (i.e. Wall Street Journal, Time) without registration in your state?

☐ YES ☐ YES WITH STATE DISCLAIMER (Yes w/ Dsclm.)
☐ NO

9. Can a developer phone (such as using a WATS line) advertisements into the state from outside the state without registration (no company representative is present in the state)?

☐ YES ☐ NO

10. Do you prohibit or limit the offering of gifts, prizes, vacation certificates or other similar incentives to prospective purchasers?

☐ Prohibit ☐ YES ☐ NO
☐ Limit ☐ YES ☐ NO

11. Will you accept a certified copy of a developer's effective OILSR/HUD Statement of Record and Property Report as a substitute for the state's subdivision registration requirements?

☐ YES ☐ NO ☐ DISCRETIONARY ☐ PROPERTY REPORT ONLY(P/R)
☐ STATEMENT OF RECORD ONLY(S/R)

12. Can the developer submit an effective Exemption Advisory Opinion issued by OILSR/HUD in lieu of a full and complete state subdivision registration?

☐ YES ☐ NO ☐ DISCRETIONARY

13. Can a "reservation", "deposit", "option" or similar "indication of interest" agreement be used prior to perfecting a registration in your state if such agreement provides both that purchasers may withdraw from the agreement at any time without penalty and that all funds received under the agreement are placed in an independent trust or escrow account?

☐ YES ☐ NO ☐ DISCRETIONARY

EXHIBIT D

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WESTERN DEVELOPERS COUNCIL 1107 9TH STREET, SUITE 629 SACRAMENTO, CALIF. 95814 (916) 447-8284

United States Senate
Select Committee on Small Business
Russell Senate Office Building
Room 424
Washington, D. C. 20510

RE: OILSR Rules and Regulations

Gentlemen:

The following comments are submitted on behalf of Western Developers Council, an association of California land developers and land development related companies dedicated to responsibility in land development, and on behalf of its members and non-member business entities, both large and small, engaged in the development of land within California.

In 1969, when the Interstate Land Sales Full Disclosure Act became effective, the question posed to the real estate industry was "Can we afford to not protect the vacant lot purchaser from fraud and misrepresentation perpetrated by the irresponsible land developer?". Today, the question is "Can we afford all this protection?".

In California, we have watched the law expand to preempt State rights and to impose its filing requirements on small developers never originally contemplated to be under the purview of the Act for what seems to be the pure joy of expansion and imposition.

Effective January 1, 1975, despite the protestations of the State of California Department of Real Estate, this association, and the real estate industry, Section 1710.26 of Part 1710, Title 24, was amended to provide that no initial filings filed with and accepted by any State would be accepted as meeting the requirements of OILSR. Previously, materials filed with and accepted by California, both for initial filings and amendments and consolidations, had been acceptable to OILSR. This amendment was adopted

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notwithstanding the fact that the substantive requirements of the California Department of Real Estate for issuance of a California Subdivision Public Report far exceeded the full disclosure requirements of OILSR in providing protection of the lot purchaser. Only after major concessions were made by the California DRE in the format and content of its Public Reports were initial filings made with California reinstated, on December 5, 1975, as federally acceptable.

As part of its concessions, California agreed that all Public Reports for subdivisions which were required to be filed with OILSR, whether initial filings or amendments would be in the new format and contain the disclosures required by OILSR. However, due to a lack of consistency among OILSR examiners as to what constitutes an acceptable disclosure in a California Public Report, and a lack of cooperation between OILSR and the State, the developer has on many occasions been faced with nitpicking of disclosures, rejection of Public Reports for minor deficiencies in disclosures, resultant delays excessive documentation, and added costs involved in satisfying OILSR directly or by re-amendment of the State Public Report.

At times it would seem that the success or failure of a developer is dependent upon the whim of the OILSR examiner. As a case on point, a material amendment was recently submitted to OILSR after acceptance by the California DRE. As review of the material was not completed until the 30-day examination period had nearly expired, the examiner sent out a Notice of Suspension requesting additional information, rather than making such request by telephone as he had initially agreed to do. An explanation and additional documentation were sent to the examiner only to be met by further repeated delay in the review process even though the material submitted would have required not more than one hour of review time.

What do these delays, rejections and requests for additional documents mean to the small developer? They mean escalating holding costs, added legal, accounting and consultant fees, loss of sales personnel, loss of potential sales and in many cases the cost of refiling with the DRE which includes both payment of additional filing fees and the costs inherent in reprocessing. It is not unusual for these costs to be in the tens of thousands of dollars. Now, due to a recent OILSR policy decision, the

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developer also faces the added frustration of being unable to even obtain a status report by telephone.

As to the matter of the imposition of filing requirements on small developers, during the past year OILSR has had an investigative task force inspecting projects throughout California. Now the results of that investigation are being experienced as numerous developers of small projects are receiving notices that they are subject to the jurisdiction of OILSR. Who are these developers over whom OILSR has chosen to exercise jurisdiction? Among them are the following:

a. A small developer who developed a subdivision of 20 lots, all of which were sold out 2 to 3 years ago, and who has now developed another subdivision of 40 lots. OILSR contends there is a common promotional plan to sell 50 or more lots.

b. A small developer who presently has 30 lots all of which are over 5 acres in size and therefore exempt from registration. The OILSR investigation disclosed that in the developer's previous subdivision, located approximately 20 miles from the present subdivision, and also consisting of approximately 30 lots all of which were supposedly 5 acres or more in size and all of which were sold out about 3 years ago, 2 lots were fractionally under 5 acres.

c. At least 5 developers of small subdivisions within city limits, on the basis of over 50 lots, when the developers would not agree to sell not more than 20% of the lots as vacant lots.

What does it cost a small developer to file with OILSR? Depending upon how much of the work the developer does, it may cost from $10,000 to $50,000 per filing. This includes accounting costs that a small developer would not otherwise incur, such as costs for audited statements and budget projections, engineering and legal fees, title costs, and the innumerable costs incurred in assembling the necessary information.

In the final analysis, who suffers and who benefits from the all-encompassing protection of OILSR? The developer of course suffers. But so does the public - in the cost of the

750 Welch Road, Suite 300
Palo Alto, CA. 94304 (415) 329-1048
WESTERN DEVELOPERS COUNCIL 1107 9TH STREET, SUITE 629 SACRAMENTO, CALIF. 95814 (916) 447-0882

property which must be increased to cover the costs imposed on the developer. Who benefits? That is less easily answered, and perhaps can only be answered by cost effectiveness studies.

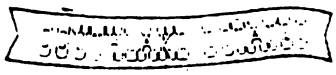
There comes a point in time where we reach what economists call the point of diminishing return. I believe we have reached that point and exceeded it by far in the matter of OILSR regulation.

Sincerely,

S. M. KARSH
President

SMK:am

EXHIBIT E



Box 1006
Lake Isabella, California

July 25, 1978

Rules Docket Clerk
Office of the Secretary of HUD
Room 5216
451 - 7th St., S.W.
Washington, D. C. 20410

Dear Sir:

Since 1964 we have developed and almost completely sold 517 lots; there are no partners or stockholders involved in any of our activities. We paid cash for all improvements and we bonded ourselves to the county and state to assure completion.

All advertising and promotional means were confined to the State of California. The 4 or 5 lots we did sell to California non-residents were visitors from other states visiting friends and/or relatives and they were given a complete visual tour of the property. In fact 100% of all buyers see the property before buying.

There were several ways in which our tracts could have been exempted, two of which are as follows:

1. Exemption because we had less than 300 lots, but because of some additional land I had which I might possibly develop, Mr. McDowell, Acting Dir. of OILSR, states he definitely would not exempt.

2. Statutory exemption - If land is free and clear, which ours was, but portions of the mineral rights are owned by the Federal Government, HUD will automatically deny it on these grounds.

We offered to have HUD come and inspec t the tracts and go over our books if they wanted to, but under no circumstances would they consider an exemption even though it might appear that we are reputable developers.

We have sold all lots at a reasonable price and all have appreciated from 25% to 75% and no more than a 10% commission has ever been paid to any realtor.

We were notified, after all arguments were presented, that they DENIED each of our 3 tracts.

We feel that small developers, such as we are, who do not highly advertise, do not pay high sales commissions, do not sell to out-of-state residents but only to people who actually see the property, should be exempt and should not come under the Act.

Sincerely,

SOUTHLAKE ESTATES

Wm. Joughin, Owner.

33-716 O - 78 - 21

Mr. AuCoin. Thank you, Mr. Belin. I appreciate your cooperation.

Mr. Roberts, you are serving as vice chairman of the legislative committee of the National Association of Realtors, and are accompanied by Al Abrahams.

Do you intend to provide testimony, as well as Mr. Abrahams?

Mr. Roberts. No, I will be providing testimony, Mr. Chairman.

Mr. AuCoin. I welcome you to the subcommittee and look forward to your testimony.

STATEMENT OF DAVID D. ROBERTS, VICE CHAIRMAN, REALTORS LEGISLATIVE COMMITTEE, NATIONAL ASSOCIATION OF REALTORS, ACCOMPANIED BY ALBERT E. ABRAHAMS, STAFF VICE PRESIDENT

Mr. Roberts. I will be brief. I have deleted a considerable proportion of my prepared remarks, in the interests of time.

My name is David D. Roberts. I am a realtor in Mobile, Ala., and vice chairman of the Realtors Legislative Committee of the National Association of Realtors.

Accompanying me today is Albert E. Abrahams, staff vice president of the government affairs office of our association.

Real estate brokerage, appraisal, management and other services have historically been provided by small enterprises. The 1974 Bureau of Census report on county business patterns shows that 91 percent of real estate establishments have less than 9 persons, and 80 percent have less than 4 persons. Moreover, the best estimates available to the industry indicate that less than 20 percent of the business is concentrated in the 9 percent of the industry having more than 9 persons.

Our own figures show that nearly 80 percent of the National Association of Realtors is truly made up of small businessmen that are involved in numerous and varied activities, one of which is land development.

We are opposed to the burdensome and complicated rules and regulations promulgated by OILSR which make interstate land sales registration extremely difficult, expensive, time-consuming, and virtually impossible without costly legal, engineering, geological, and accounting help.

Furthermore, we are opposed to the manner in which OILSR has extended the act to cover purely intrastate developments and the small, local land developer coverage never intended by Congress.

The National Association of Realtors has testified several times this year before both Houses of Congress on how the administration of the act by OILSR adversely effects both the land sales industry and consumers alike—and especially consumers.

This association strongly endorses Senator Nelson's amendments to the act, now section 715 of Senate-passed S. 3084, as a means of focusing OILSR's finite resources on the true interstate con artist, and as a means of limiting OILSR's assumed jurisdiction over intrastate and locally promoted subdivisions—those subdivisions never contemplated by Congress to be regulated.

OILSR has also testified on this matter this year, and stated before the Senate Small Business Committee, that, quote: "We also have

looked to the legislative history of the act for guidance in jurisdictional questions" in regulating intrastate subdivision sales.

The National Association of Realtors has also researched the committee reports, the conference report, the floor debate, and the act itself, and finds no justification to support OILSR's regulatory intrusion into the sale of intrastate or locally promoted land sales transactions.

For the most part, the proposed regulations continue to ignore the fact that intrastate and locally promoted subdivisions were never intended by Congress to fall within the purview of the act.

Section 715 of Senate bill 3084, the Nelson provisions of the Senate-passed version of the 1978 Housing and Community Development Act amendments, would let OILSR know just what Congress intended with respect to intrastate sales when the act was originally enacted.

Section 715 would require OILSR to administer the act as it was originally envisioned by Congress by codifying exemptions from registration under the act for activities substantially conducted intrastate.

Specifically, the Nelson amendments would exempt developers who sell substantially all their lots to purchasers residing in the State where the land is located. A developer may sell up to the greater of five lots or 5 percent of lots sold during a calendar year to out-of-State purchasers and still retain the exemption if the following conditions are met:

First, the lot is free and clear of all encumbrances and liens; second, the purchaser has personally inspected the lot; and third, the seller submits himself to the jurisdiction of the courts of the purchaser's home State.

The second exemption applies to the sale of lots to persons residing within 100 miles of the lots being purchased, but who happen to reside in another State.

It simply gives the opportunity to the developer who lives in the environs of one or more additional States to use a normal market area in the same way that a developer selling lots in a strictly intrastate setting would have.

In order to qualify under the 100-mile exemption, the developer must also meet the three conditions set out above and, in addition, must file a statement with HUD affirming that the conditions have been met.

Mr. Chairman, let me say that the Nelson provisions in S. 3084 do not attempt to rewrite or significantly amend the Interstate Land Sales Full Disclosure Act, as does the Minish bill H.R. 12574.

We have brought here today a brief comparison of the two bills that has already been distributed to subcommittee members and you will note from an examination of this comparison that there are very, very few, if any, conflicts between what the provisions are in the Nelson bill and the thrust of the Nelson bill, as opposed to the thrust of the Minish bill.

The Nelson provisions carry out the basic intent of the law that was enacted in 1968, and no more. These provisions are simple, and self-executing, and yet at the same time they provide the consumer with all of the protections against fraud now found in the act.

Let me state further that this association has no objection to rewriting the act in order to get at the con artists who are fleecing the American public. However, the small, honest developer needs relief now, and that is why we urge this subcommittee to accept section 715 of S. 3084 in conference.

The Nelson provisions do nothing to detract from OILSR's fraud jurisdiction over anyone engaging in fraudulent or deceptive land sales practices, be they interstate or intrastate.

Under the current administration of the act, OILSR views itself as the "approver" of all subdivision development in this country. OILSR views itself as the "protector" of every potential lot purchaser in the United States.

While that is admirable, it is an impossible feat. And by attempting the impossible, OILSR is doing very little to protect the consumer most vulnerable to interstate land sales fraud.

The administration has requested additional enforcement powers for OILSR; however, this association contends that HUD now has adequate enforcement authority to prevent and prosecute fraud in interstate land sales transactions. But HUD's authority has not been used to prosecute violators, because OILSR has been too preoccupied regulating those never intended to be regulated.

Under the current act, HUD is given powers to investigate, enjoin, and prosecute any violations of the act. In addition, section 1404(2) contains one of the broadest fraud provisions found in the United States Code.

Even more striking, when analyzing the question of whether HUD's record in this area is due to inadequate powers or inadequate administration, is that under the act, HUD has exactly the same enforcement powers as the Securities and Exchange Commission has under the Securities Act of 1933.

The Commission, using the same powers as HUD, has frequently prosecuted sale of stock in violation of the registration procedures, or in a fraudulent or misleading manner; has, under the courts' equity jurisdiction, asked for receivers for companies perpetrating a fraud on its shareholders; and obtained disgorgment of fraudulently gained profits for investors and in cases of particularly abusive conduct; and has helped the Department of Justice to criminally punish perpetrators.

Again, this has been done with the same tools HUD currently has, the same access into the courts, and the same investigatory and subpena powers.

I personally heard the testimony of a group of consumers before the Subcommittee on General Oversight and Renegotiation on April 11, 1978, on how they were victims of alledged fraudulent land sales in the Pocono Mountain area of Pennsylvania. We are very sympathetic to their grievances, as our membership is to any fraud victim.

It is our understanding that those consumers were involved in subdivisions which were registered with OILSR. That being the case, we ask: Why did not OILSR do something about such a fraud-prone development area to verify completion of promised facilities? And why did not OILSR utilize its existing enforcement authority to prosecute those violators?

This association, again, supports prosecution of all land sales con artists to the fullest extent authorized by the law.

And incidentally, Mr. Chairman, before I conclude—let me make this additional statement, which is not in our prepared statement.

Even though it is not in our prepared statement, we want to go on record as being in full support of the amendment offered by my Senator from Alabama, Senator Sparkman, exempting developments which are already regulated by local government agencies.

Again, we appreciate this opportunity to express our views on this important matter, and that concludes my testimony.

[Text resumes on p. 437.]

[Mr. Roberts' prepared statement, on behalf of the National Association of Realtors, appears with the following additional material: A comparison of Nelson provisions of S. 3084 with Minish proposals of H.R. 12574; a statement of Albert E. Abrahams, staff vice president, Government Affairs Department, before Senate Committee on Banking, Housing and Urban Affairs, May 26, 1978; and a statement of Mr. Roberts before House Committee on Banking, Finance and Urban Affairs, April 11, 1978, with attached correspondence.]

REALTOR®

NATIONAL ASSOCIATION OF REALTORS

Tom Grant, Jr. — President
H. Jackson Pontius — Executive Vice President
Albert E. Abrahams, Staff Vice President

Government Affairs
925 15th Street, Washington, D.C. 20005
Telephone 202 637 6800

STATEMENT OF

DAVID D. ROBERTS

VICE CHAIRMAN OF THE REALTORS® LEGISLATIVE COMMITTEE

NATIONAL ASSOCIATION OF REALTORS®

Before the

House Committee on Banking, Finance and Urban Affairs

Subcommittee on Housing and Community Development

HEARINGS ON THE INTERSTATE LAND SALES
FULL DISCLOSURE ACT AND LEGISLATIVE
PROPOSALS TO AMEND THE ACT

August 2, 1978

The NATIONAL ASSOCIATION OF REALTORS® is comprised of more than 1,712 local boards of REALTORS® located in every state of the Union, the District of Columbia and Puerto Rico. Combined membership of these boards is in excess of 600,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational and farm real estate. The Association has the largest membership of any association in the U.S. concerned with all facets of the real estate industry. Principal officers include: Tom Grant, Jr., President, Tulsa, Oklahoma; Donald I. Hovde, First Vice President, Madison, Wisconsin; and H. Jackson Pontius, Executive Vice President. Headquarters of the Association are at 430 North Michigan Avenue, Chicago, Illinois 60611. The Washington office is located at 925 Fifteenth Street, N.W., Washington, D.C. 20005. Telephone 202/637-6800.

My name is David D. Roberts of Mobile, Alabama. I am a REALTOR® and the Vice Chairman of the REALTORS® Legislative Committee of the NATIONAL ASSOCIATION OF REALTORS®. Accompanying me today is Albert E. Abrahams, Staff Vice President of the Government Affairs Department of our Association.

The NATIONAL ASSOCIATION OF REALTORS® is pleased that you have called this hearing to receive testimony on the Interstate Land Sales Full Disclosure Act (ILSFDA), the actions of the Department of Housing and Urban Development, Office of Interstate Land Sales Registration (OILSR), in administering that Act, and legislative proposals to amend the Act.

The NATIONAL ASSOCIATION OF REALTORS® is comprised of 50 state Associations, and more than 1,712 local boards of REALTORS® located in every state of the Union, the District of Columbia, and Puerto Rico. Combined membership of these boards is in excess of 600,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational, and farm real estate. The activities of the Association's membership involve all aspects of the real estate industry, such as mortgage banking, home building, commercial and residential real estate development, including development, construction and sales of condominiums. The Association has the largest membership of any association in the United States concerned with all facets of the real estate industry.

Real estate brokerage, appraisal, management and other services have historically been provided by small enterprises. The 1974 Bureau of Census report on County Business Patterns shows that 91% of real estate establishments have less than nine persons and 80% have less than four. Moreover, the best estimates available to the industry indicate that less than 20% of the business is concentrated in the 9% of the industry

having more than 9 persons. Our own figures show that nearly 80% of the NATIONAL ASSOCIATION OF REALTORS® is truly made up of small businessmen that are involved in numerous and varied activities, one of which is land development.

This Association generally supported enactment of the simple disclosure requirements of the Interstate Land Sales Full Disclosure Act to protect consumers from fraudulent and deceptive interstate land sales transactions, especially intarstate sales where purchasers had no opportunity to inspect or examine the land prior to purchasing and no way of knowing whether the developer was financially responsible for fulfilling commitments proposed with respect to developing the land.

We are, however, opposed to the burdensome and complicated rules and regulations promulgated by OILSR which make interstate land sales registration extremely difficult, expensive, time consuming and virtually impossible without costly legal, engineering, geological and accounting help. Further, we are opposed to the manner in which OILSR has extended the Act to cover purely intra-state developments and the small local land developer, coverage never intended by Congress.

The NATIONAL ASSOCIATION OF REALTORS® has testified several times this year before both Houses of Congress on how the administration of the ILSFDA by OILSR adversely effects both the land sales industry and consumers alike. This Association strongly endorses Senator Nelson's amendments to the Act, now Section 715 of Senate-passed S. 3084, as a means of focusing OILSR's finite resources on the true interstate con-artist and as a means of limiting OILSR's assumed jurisdiction over intra-state and locally promoted subdivisions -- those subdivisions never contemplated by Congress to be regulated.

OILSR has also testified on this matter this year and stated before the Senate Small Business Committee that "We also have looked to the legislative history of the Act for guidance in jurisdictional questions" in regulating intra-state subdivision sales. We have researched the Committee reports, the Conference Report, the floor debate and the Act itself and find no justification to support OILSR's regulatory intrusion into the sale of intra-state or locally promoted land sales transactions.

On June 1, 1978 OILSR published in the Federal Register revised rules and regulations to implement the ILSFDA. Before publication OILSR promised simplification of the registration process and a reduction of the paperwork burdens now imposed by OILSR on those seeking to comply with the Act. That is simply not the case with the proposed regulation.

While it appears that the revised rules and regulations are better organized in format and readibility, overall there is little reduction of the onerous disclosure requirements and paperwork burdens in the proposed regulations. It appears that the cost of compliance has not been reduced to any meaningful extent. For example, just the simple proposed provision to require additional red-ink consumer warnings throughout the property report alone would add administrative headaches and additional cost to the already harrassed developer and without any additional meaningful protection for the consumer.

For the most part, the proposed regulations continue to ignore the fact that intra-state and locally promoted subdivisions were never intended by Congress to fall within the purview of the Act. To illustrate how OILSR continues to ignore the law, the proposed regulations would require a 14 day purchaser's right to revocation as a condition for two of OILSR's proposed regulatory exemptions. This Association seriously questions under what authority OILSR is acting since Section 1404(b) of the

Statute provides for a 3 day revocation period. OILSR is aware of this statutory requirement and, in fact, as a part of the Administration's 1978 Housing and Community Development legislative package, has requested a statutory increase to a 14 day recission period. By regulation OILSR is again attempting to legislate by administrative fiat, just as it has in its assumed jurisdiction over intra-state land transactions. Congress must take action to rein OILSR's runaway administrative authority.

Section 715 of S. 3084, the Nelson provisions, of the Senate passed version of the 1978 Housing and Community Development Act amendments would let OILSR know just what Congress intended with respect to intra-state land sales when the Act was originally enacted. Section 715 would require OILSR to administer the ILSFDA as it was originally envisioned by Congress by codifying exemptions from registration under the ILSFDA for activities substantially conducted intra-state. Specifically, the Nelson amendments would exempt developers who sell substantially all their lots to purchasers residing in the state where the land is located. A developer may sell up to the greater of 5 lots or 5% of lots sold during a calendar year to out of state purchasers and still retain this exemption if the following conditions are met:

(1) The lot is free and clear of all encumbrances and liens,
(2) The purchaser has personally inspected the lot, and
(3) The seller submits himself to the jurisdiction of the courts of the purchaser's home state.

The second exemption applies to the sale of lots to persons residing within 100 miles of the lots being purchased but who happen to reside in another state. It simply gives the opportunity to the developer who lives in the environs of one or more additional states to use a normal product area in the same way that a developer selling lots in a strictly intra-state setting would have. In order to qualify under the 100 mile exemption, the developer must also meet the three conditions set out above and, in addition, must file a statement with HUD affirming that the conditions have been met.

Mr. Chairman, let me say that the Nelson provisions in S. 3084 do not attempt to re-write or significantly amend the Interstate Land Sales Full Disclosure Act, as do the Minish bill, H.R. 12574, and the Administration request contained in H.R. 11265. The Nelson provisions carry out the basic intent of the law as it was enacted in 1968 and no more. These provisions are simple and self-executing and yet at the same time they provide the consumer with all of the protection against fraud now found in the ILSFDA. The Nelson provisions do not require a battery of lawyers to administer nor do they require volumes of regulations to put them into effect.

I might just add parenthetically that perhaps one of the reasons there is objection to the Nelson amendments is that they are simple; simplicity does not seem to be readily understood in this overcomplex world in which we live.

The Nelson provisions give the smaller developer a chance to remain in existence while retaining OILSR jurisdiction over that developer. As just one example, there have been any number of criticism made of the 100 mile radius exemption. For years, Federal Savings and Loan Associations have been prohibited by law from making loans more than 100 miles from the S&L's main office. As far as we are able to determine this self-executing statutory requirement on S&L's, has never posed any great difficulty for the Home Loan Bank Board in carrying out its regulatory authority over those institutions.

Let me state further, this Association has no objection to re-writing the ILSFDA in order to get at the minority of those con-artist that are fleecing the American public. However, the small honest developer needs relief now and that is why we urge this Committee to accept Section 715 of S. 3084 in conference.

Pennsylvania. We are very sympathetic to their grievances as our membership is to any fraud victim. It is our understanding that those consumers were involved in subdivisions which were registered with OILSR. That being the case, we ask why did not OILSR do something about such a fraud prone development area to verify completion of promised facilities and why did not OILSR utilize its existing enforcement authority to prosecute those violators?

As I have already suggested, OILSR takes the attitude that if it registers all subdivision development in the United States, fraudulent land sales practices will be eliminated. However, as shown by the Pocono Mountain case, registration with HUD in and of itself does not prevent consumers from losing their investments. In fact, in cases such as this, only quick and convincing prosecution of fraud can hope to stop or at least minimize consumer losses. Viewed in this perspective, the Nelson exemptions do not deprive the consumer of any of the strong fraud protections provided by the law today. It is not the fault of the law that prosecution failed; the failure came from the inability of the bureaucrats to exercise their power and carry through with the prosecution.

Only through the conscientious enforcement of the Act's civil and criminal fraud provisions can fraudulent and deceptive land sales practices be eradicated. OILSR now has adequate enforcement powers and it is time that those powers be effectively utilized.

This Association supports prosecution of all land sales con-artists to the fullest extent authorized by law.

As stated, this Association testified before on the ILSFDA and the actions of the HUD Office of Interstate Land Sales Registration in administering the Act. I would like to offer for the record this

	NELSON PROVISIONS SECTION 715, S. 3084	MINISH PROPOSALS H.R. 12574
Section 1402 Definitions:	NO PROVISION	Lowers the Acts jurisdictional threshold to 40 lots
Section 1403 Exemptions:	Adds an exemption for condominiums	NO PROVISION
	Adds a new exemption to exempt sale operations which are intra-state or almost intra-state in nature	NO PROVISION
	Adds a new exemption to exempt the sale or lease of real estate by a developer to a resident of another state when the principal residence of the purchaser is within a radius of 100 miles from the property purchased	NO PROVISION
	Adds a new exemption for developed subdivisions within municipalities, where the local governing body specifies minimum standards for development.	NO PROVISION

	NELSON PROVISIONS SECTION 715, S. 3084,	MINISH PROPOSALS H.R. 12574
Section 1403: Exemptions	NO PROVISION	Amends existing exemption for the sale of real estate pursuant to court order to exclude from the exemption sales in connection with bankruptcy proceedings.
	NO PROVISION	Exempts the sale or lease of lots in a subdivision all of which are 40 acres (previously 5 acres) or more in size.
Section 1404: Prohibition relating to the sale or lease of lots in a subdivision	NO PROVISION	NO PROVISION
	NO PROVISION	Any contract for the purchaser or lease of a lot in a subdivision is voidable at the option of the purchasers for 30 days.
	NO PROVISION	Adds a cause of action for omission to state a material fact necessary to make another statement not misleading.
	NO PROVISION	Any contract for the purchase or lease of a lot in a subdivision is voidable at the option of the purchaser for 3 years if, the signing of the contract takes place on the day on which the purchaser is first presented with the contract; the financing of the sale or lease is provided by the developer or an agent who owns 30% financial interest in the developer or such contract does not contain a legally sufficient description of the lot's boundaries.
Section 1405: Registration	NO PROVISION	NO PROVISION

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	NELSON PROVISIONS SECTION 715, S. 3084	MINISH PROPOSALS H.R. 12574
Section 1406: Information Required in Statement of Record	NO PROVISION	Requires all printed materials, summaries of all verbal representations, and radio and television advertisements used by a developer to promote the sale or lease of lots affected under the Act to be made a part of the Statement of Record.
Section 1409:	NO PROVISION	Provides that nothing in the title shall affect or exempt any developer from the laws of any state relating to the sale of land, except to the extent those laws are inconsistent with the Act or regs.
Section 1410: Civil Liabilities	NO PROVISION	Allows court to order specific performance of any promises.
	NO PROVISION	In addition to damages, allows for recovery of attorneys' fees, appraisal costs, travel expenses, recovery of amount paid for the lot, any reasonable improvements and court costs.
Section 1412: Statute of Limitations	Clarifies statute of limitations to limit actions brought for not providing a property report to no later than 3 years after entering into a contractual agreement.	Purchaser may bring court action against a developer within (1) one to four (4) years after discovery of a violation depending on what section is violated. In no event shall a purchaser bring action against a developer more than 7 years (previously 3 years) after the sale or lease.

	NELSON PROVISIONS SECTION 715, S. 3084	MINISH PROPOSALS H.R. 12574
Section 1415: Investigations, Injunctions, etc.	NO PROVISION	If the Secretary believes a developer is in violation of the Act or regs., the Secretary may serve the developer with a complaint stating the charges and a hearing date. The developer must respond within 15 days of his intent to appear, if not the developer has waived his rights and the Secretary may issue a cease and desist order.
	NO PROVISION	Whenever the Secretary determines that a developer's action is likely to prejudice seriously the public interest, the Secretary may issue a temporary cease and desist order which is effective upon service. Within 10 days a developer may apply to U.S. District Court to suspend the order until completion of an administrative hearing.
Section 1418: Civil Penalties	NO PROVISION	Section 1417. Any person who violates any provision of the Act may be subject not to exceed $5,000 and each separate violation shall constitute a violation and in the case of continuing offenses, each day shall be a separate violation.
Criminal Penalties:	NO PROVISION	Any person who willfully violates any provision of this title or any regs. or any person who willfully omits or makes an untrue statement in the Property Report shall upon conviction be fined not more than $10,000 or imprisoned for not less than 1-7 years or both.

	NELSON PROVISIONS SECTION 715, S. 3084	MINISH PROPOSALS H.R. 12574
Section 1416: Administration	NO PROVISION	Provides authority for Secretary to appoint an Administrator of Interstate Land Sales.
Section 1419: Rules	NO PROVISION	Provides authority for the Secretary to make, issue, amend and rescind rules and regs. with respect to advertising, and other promotional material which may be used to promote the sale or lease of lots under the Act.
Section 1421: Education	NO PROVISION	Authorizes funds to be appropriated for public education concerning the dangers and difficulties inherent in the purchase or lease of lots covered by the Act.
Section 1424: Parens Patriae	NO PROVISION	Any attorney general of a State may bring civil suit in the name of such State, as parens patriae on behalf of individuals residing in such State in any district court having jurisdiction of the defendent, by reason of any violation of the Act, rules, regs., and orders.
Section 1425: Improvements	NO PROVISION	Any developer who agrees to provide basic services (sewage disposal, water, roads) shall deposit in escrow an amount determined by the Secretary not less than an amount equal to the total cost of the basic services which have been promised buy not completed, divided by the number of lots in the subdivision which will receive such services.

NELSON PROVISIONS SECTION 715, S. 3084	MINISH PROPOSALS H.R. 12574
Adds new requirements directing the Secretary to conduct rulemaking and adjudication in accordance with the Administrative Procedures Act and requires the Secretary to provide a written notice of reasons in any action taken which affects an individual.	NO PROVISION

NEW SECTION

NATIONAL ASSOCIATION OF REALTORS

Tom Grant, Jr.
President

H. Jackson Pontius
Executive Vice President

Albert E. Abrahams, Staff Vice President

Government Affairs
925 15th Street, Washington, D.C. 20005
Telephone 202 637 6800

STATEMENT OF

ALBERT E. ABRAHAMS

STAFF VICE PRESIDENT
GOVERNMENT AFFAIRS DEPARTMENT

NATIONAL ASSOCIATION OF REALTORS®

Before the

Senate Committee on Banking, Housing and Urban Affairs

OVERSIGHT HEARINGS ON INTERSTATE LAND SALES

May 26, 1978

The NATIONAL ASSOCIATION OF REALTORS® is comprised of more than 1,712 local boards of REALTORS® located in every State of the Union, the District of Columbia and Puerto Rico. Combined membership of these boards is in excess of 600,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational and farm real estate. The Association has the largest membership of any association in the U.S. concerned with all facets of the real estate industry. Principal officers include: Tom Grant, Jr., President Tulsa, Oklahoma; Donald I. Hovde, First Vice President, Madison, Wisconsin; and H. Jackson Pontius, Executive Vice President. Headquarters of the Association are at 430 North Michigan Avenue, Chicago, Illinois 60611. The Washington office is located at 925 15th Street, N.W., Washington, D.C. 20005. Telephone 202/637-6800.

My name is Albert E. Abrahams and I am Staff Vice President of NATIONAL ASSOCIATION OF REALTORS, Government Affairs Department. Accompanying me today is Dudley L. O'Neal,Jr., of the staff of the Government Affairs Department of our Association.

The NATIONAL ASSOCIATION OF REALTORS® is comprised of 50 State Associations, and more than 1,712 local boards of REALTORS® located in every State of the Union, the District of Columbia and Puerto Rico. Combined membership of these boards is nearly 600,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational, and farm real estate. The activities of the Association's membership involve all aspects of the real estate industry, such as mortgage banking, home building, commercial and residential real estate development, including development, construction and sales of condominiums. The Association has the largest membership of any association in the United States concerned with all facets of the real estate industry.

While I do not wish to leave the impression that every member of our Association is involved in land development, many REALTORS® are involved in selling homesites in their own communities and States, and are deeply concerned about the Interstate Land Sales Full Disclosure Act (ILSFDA) and the administration of that Act by the Office of Interstate Land Sales Registration (OILSR).

The NATIONAL ASSOCIATION OF REALTORS® would like to take this opportunity to compliment this Committee for including the provisions of S. 2716 in S. 3084, the Housing and Community Development Act Amendments of 1978.

You have struck a realistic blow against assumed administrative authority, regulations, paperwork and bureaucratic red-tape which seriously impede and frustrate the small businessman.

It is not just a President of the United States, Mr. Chairman, who may usurp authority not expressly granted him by the Constitution and by statute. The Federal bureaucrat has done his own fair share of that, sway from the limelight of public attention, burrowing deep in the impenetrable Federal Register.

These frustrations are aggravated even more when small businessmen are brought under a heavy Federal hand not by Congressional intent, but by relatively unbridled administrative interpretations of the laws. Congress, as well as President Carter, is on the record with the expressed desire to lift this Federal yoke from the small businessmen in particular. By including the provisions of the Nelson bill in S. 3084, this Committee offers the Congress the opportunity to translate words into action. How many other times have you done that this year, with a chance to make your action really stick?

We appreciate this additional opportunity to present testimony on the ILSFDA and Senator Nelson's bill, S. 2716, even though it is our hope that this hearing will not become a weapon fashioned to reject at a later time what the Committee has already done in such an overwhelming and positive fashion.

The need for registration and information on prospective interstate land sales transactions was justified when the Act creating OILSR passed in 1968. It applies today as well. The original statute applied to the legally unprotected resident of one state who, far removed from the scene of a prospective land purchase, was unprotected by the laws of his or her own state. Many of the lots involved were recreational and retirement in character, thus adding to the potential hardship for the person in danger of being defrauded. Accordingly, the NATIONAL ASSOCIATION OF REALTORS® supported the original purposes of the 1968 Act. We continue to do so.

As our witnesses have told the House of Representatives, we are willing to consider helpful changes that deal with real fraud in interstate transactions.

But without any limitation on HUD's limitless horizons, no effective enforcement can result today short of an army of enforcement officials wearing federal badges and seeking to protect every tiny transaction in the 50 states, there is and can be no effective means of enforcing the more complex and difficult interstate cases.

HUD's resources today cannot handle the hard-to-manage interstate fraud cases. HUD could do better if they just left the intra-state field to the states.

The NATIONAL ASSOCIATION OF REALTORS® addressed these matters in detail and in depth when we appeared before this Committee in connection with the HUD authorization

legislation for fiscal 1979 on March 13, 1978. We respectfully refer the Committee to our written statement and addenda submitted at that time.

The ILSFDA which is administered by the HUD Office of Interstate Land Sales Registration (OILSR) was initially enacted in 1968 to protect consumers from fraudulent and deceptive interstate land sales transactions.

The main objectives of the Act were:

1. To protect consumers purchasing land exclusively in interstate commerce by requiring that each purchaser be provided with a disclosure statement regarding the property; and

2. To allow consumers who may have legal claims against out of state developers to sue the developer in the consumers's resident state.

Congress recognized that these two concerns were not relevent in purely intra-state sales of lots and accordingly granted HUD authority to exempt those sales which were limited in nature.

Additionally, the sale or lease of real estate which is free and clear of all encumbrances and which the purchaser or his or her spouse made a personal on-site inspection of the property to be purchased is currently exempt from the Act's registration requirements. It was believed by the drafters of the Act that the on-site inspection and the free and clear title were sufficient in providing adequate information and protection for the buyer.

These exemptions were to permit small developers selling lots to their local clientele to be unimpeded by substantive disclosure requirements either because their offering was of a limited nature or because needed information could be discerned through personal on-site inspections. In essence, these exemptions were to allow local sales operations, those never intended to be regulated, to fall outside the registration and reporting jurisdiction of OILSR.

In the 10 years since enactment, however, there has been little, if any, Congressional review or oversight of the Act or of the administration of the Act by OILSR until this year. During that period, OILSR has by its own perceived authority extended the Act to cover all land sales, intra-state transactions as well as interstate. In fact, OILSR

appears to view its role as a Federal licensing bureau for all land development. This assumed jurisdiction goes far beyond the intent of Congress and severely and adversely effects those small land developers never intended to be covered by the Act. These small developers are simply being forced out of business, or they are holding their lots off the market, or they are marketing their lots to homebuilders only to avoid this regulatory labyrinth. Such actions adversely affect the consumer by depriving him the right of choice or by driving up the cost of lots without any value being added.

After hearings and careful consideration earlier this year of OILSR's actions Senator Nelson, Chairman of the Select Committee on Small Business, on March 10 introduced a bill, S.2716, to amend the ILSFDA.

Generally, the Nelson bill would require OILSR to administer the ILSFDA as it was originally intended by Congress by codifying exemptions from registration under the ILSFDA for activities substantially conducted intra-state. Specifically, the Nelson amendments would exempt developers who sell substantially all their lots to purchasers residing in the state where the land is located. A developer may sell up to the greater of 5 lots or 5% of lots sold during a calendar year to out-of-state purchasers and still retain this exemption if the following conditions are met:

(1) The lot is free and clear of all encumbrances and liens,

(2) The purchaser has personally inspected the lot, and

(3) The seller submits himself to the jurisdiction of the courts of the purchaser's home state.

The second exemption applies to the sale of lots to persons residing within 100 miles of the lots being purchased but who happen to reside in another state. It simply gives the opportunity to the developer who lives in the environs of one or more additional states to use a normal product area in the same way that a developer selling lots in a strictly intra-state setting would have. Are there protections for the consumer in this exemption under the terms of the Nelson amendment as adopted by your Committee? You bet! The same safeguards without the red-tape. For, in order to qualify under the 100 mile exemption, the developer must also meet the three conditions set out above and, in addition, must file a statement with HUD affirming that the conditions have been met.

The Nelson amendments would also provide technical changes in the Act in order to bring more reasonableness into OILSR's rules, regulations and interpretations of the Act. For example, the amendments would (1) make it clear that condominiums are not under the Act; (2) make it clear the terms "liens", "encumbrances", and "adverse claims" do not refer to the U.S. Patents or other similar Federal grants or reservations which are similar in effect to government's right of eminent domain; (3) direct OILSR to conduct its proceedings in compliance with the Administrative Procedures Act; and (4) define the terms "sale or lease" as occurring at the time when a contractual relationship is created between the developer and purchaser, thus clearing up an area where OILSR has been free to use whatever interpretation it has found most favorable to its continuing regulations of land sales.

In addition, a technical amendment which is supported by the NATIONAL ASSOCIATION OF REALTORS® was added by Senator Tower during Committee consideration of the Nelson amendments.

In 1974, the Act was amended to exempt industrial and commercial land. OILSR, however, refuses to permit the exemptions unless the land in question is specifically zoned for industrial or commercial development. Consequently, any commercial or industrial development property in a municipality without zoning authority would be unable to qualify for this exemption. During Committee consideration of the Nelson amendments, the Tower amendment was accepted to correct this inequity.

Several misconceptions have arisen with respect to the Nelson provisions. I would like now to address those misconceptions in an effort to set the record straight.

It has been contended that the Nelson amendments will not only exempt local developers, under certain conditions, from the registration requirements of the Act, but, will also exempt those developers from the anti-fraud provisions of the Act. This was never the intent of Senator Nelson and this Committee in adopting the Nelson amendments made it clear in the amending language that the anti-fraud provision of the Act would apply to the Nelson exemption.

It has also been contended that the Nelson exemptions will create misunderstanding and confusion and will cause administrative headaches with respect to computing the 100

mile radius exemption. The Nelson exemptions are simple and self-executing and require only the least amount of administrative overview. These exemptions will not require a team of lawyers to interpret statutory definitions and language which in many cases leads to interpretations of an Act opposite from that intended by Congress. It eliminates the need for administrative rules and regulations to implement the exemptions. The developer and the purchaser by using "a string and a map" can determine whether the exemption is applicable. If the exemption is applicable, the developer files with HUD advising the sale has been made under the exemption. And, if the developer fails to conform with any of the requirements of the exemption he is subject to civil as well as criminal penalties under the Act and action may be brought either by the purchaser, HUD, or both.

The Nelson amendments, because they are simple and self-implementing, have been described as raising a number of substantial concerns and problems in administering the Act. This argument ignores the fact that it was never the intent of Congress that small land developers were to be covered by the Act; yet, OILSR refuses to recognize that intent. The Nelson amendment now seeks to codify the exemptions provided in the original Act so those matters are not left to administrative interpetation, rules and regulations but may be discerned by an average citizen without resorting to lawyers and accountants.

Let me state again, that the Nelson amendments are plainly written and self-executing in order to accomplish two valuable aims: (1) to allow those never intended to be covered by ILSFDA to fall outside of OILSR's jurisdiction and (2) to remove the buresucratic burden of excessive paperwork, costs, and delays from the backs of small businessmen. The Nelson exemptions apply only to these small businessmen never intended to be regulated and not to the typically larger interstate developers relying on "interstate commerce" to promote their subdivisions.

Considering that 53% of all subdivisions filing with OILSR in the last two years were subdivisions of 100 lots or less and that these subdivisions, in OILSR's own words, "...are frequently promoted locally and are seldom characterized by high pressure sales, gimmicks, mass mail solicitations and "WATS" line operations, thus

warranting less federal involvement (emphasis added)", it appears to us that OILSR is clearly deviating from its Congressionally mandated priority of protecting consumers from deceptive and fraudulent interstate land sales transactions. In fact, OILSR has testified that "given the typical characteristics of the promotion of smaller subdivisions and the fact that the number of consumers involved is limited, we believe that staff time could be more efficiently used in registering and securing compliance with the Act by larger subdivisions".

While OILSR recognizes that the promotion of smaller local subdivisions are seldom characterized by those sales techniques which originally prompted the ILSFD Act and that the number of consumers involved in smaller subdivisions is limited, that office continues to preoccupy itself with the regulation of these smaller subdivisions at the cost of allowing consumers to be continued to be fleeced by those fraudulent interstate land sales operators who the Act was intended to regulate.

Because the Act has never been applied as a first priority to weed out fraudulent and deceptive interstate land sales transactions, this Association sees no merit in OILSR's position that stronger enforcement powers are needed to secure compliance under the Act for large interstate land sales operations.

Notwithstanding, the NATIONAL ASSOCIATION OF REALTORS® would like to make the following observations relative to the Administration's ILSFDA amendments contained in Title IV of S. 2637.

Section 421 would redefine a subdivision coming within the purview of the Act as land which is divided or proposed to be divided into 100 or more lots, rather than 50 in present law.

We wish to make it absolutely clear that this Association supports steps to remove small local "intra-state" land developments from OILSR's jurisdiction. This amendment could be helpful in achieving that aim. However, in the absence of the Nelson amendment and so long as OILSR uses the so-called "common promotional plan", i.e., any form of common ownership, advertising, inventory, financing, sales agent or sales offices, to aggregate lots in purely intra-state situations as a means of bringing small subdivisions

under the Act, this amendment would only delay the time in which subdivisions are brought under the Act. I assure you that most small developers work out of one office, possibly their home, and therefore are never out of OILSR's reach. If steps are taken to remove purely intra-state subdivisions from OILSR's jurisdiction without the future threat of having those subdivisions aggregated by OILSR based on a set of sale-oriented commonalities which a small developer will always employ, then the proposed amendment could be most beneficial, as it would permit OILSR to concentrate its actions on the large interstate land developments which was the intended focus of the Act.

Section 421(c) proposed to exempt lots in a subdivision in which all lots are 40 acres or more in size.

This Association in previous testimony opposed such an amendment as it appeared that OILSR was attempting to extend its jurisdiction over those never intended to be covered. However, with the acceptance of the Nelson provisions and upon review of our membership we see no objection to such an amendment if such an increase will more adequately protect the consumer from deceptive interstate land sales techniques promoting the sale of large tracts of land of questionable value in remote mountain and desert areas.

Section 421(e) requests that the on-site exemption under Sec.1403(a)(10) of the Act be repealed. This exemption was aimed at small intra-state or local interstate developers who sell lots to purchasers who have an opportunity to inspect personally the offering to judge for themselves the character and quality of the land before purchasing. OILSR has never favored this statutory exemption and has issued rules and regulations surrounding it that are so complex and vague that it is virtually impossible to obtain the exemption. The repeal of Sec. 1403(a)(10) would be directly contrary to the purpose of the Act and would serve to extend OILSR's philosophy of regulating all local land developers rather than the large interstate land sales operation as intended by the Act.

Section 421(g) proposes to amend the current $1,000 ceiling on the amount of fee a developer must pay the Secretary at the time of filing a statement of record or any amendment thereto. The revision would eliminate the $1,000 ceiling.

This amendment ignores the cost the developer and consumer now are paying because of OILSR's over-interpretation of a simple interstate land sales disclosure act. If

OILSR would focus its attention on fraudulent and deceptive interstate sales, open-ended administrative costs would not be necessary.

Before commenting on the additional enforcement powers sought by OILSR, I would like to reiterate two basic policies of our Association:

(1) developers who engage in fraud or otherwise deal in less than an honest manner with consumers should be prosecuted to the full extent of the law; and

(2) HUD should have adequate legislative authority to prevent and prosecute fraud. However, in analyzing the present Act and the proposed amendment, a crucial question needs to be answered, -- has HUD failed to do an effective job in this area because it has no authority to prosecute violators or has this result come about due to HUD's inefficiency in using the tools it has already been granted by Congress? It is our belief that it is the latter case.

Under the current Act, HUD is given powers to investigate, enjoin and prosecute any violations of ILSFDA. In addition, Section 1404(2) contains one of the broadest fraud provisions found in the United States Code. Thus, HUD currently possesses broad authority not only to prosecute developers who do not comply with the registration provisions of the Act but also to prosecute those who perpetrate fraud on the consumer.

What is more striking in analyzing the question of whether HUD's record in this area is due to inadequate powers or inadequate administration, is that under the ILSFDA, HUD has exactly the same enforcement powers as the Securities and Exchange Commission has under the Securities Act of 1933. As this Committee is particularly aware, as a result of its oversight responsibility over the Commission, the SEC has done an efficient job in enforcing a law which was the model for the ILSFDA. The Commission, using the same powers as HUD, has frequently prosecuted sale of stock in violation of the registration procedures or in a fraudulent or misleading manner; has, under the courts' equity jurisdiction, asked for receivers for companies perpetrating a fraud on its shareholder and obtained disgorgment of fraudulently gained profits for investors and in cases of particularly abusive conduct, and has helped the Department of Justice to criminally punish perpetrators. Again, this has been done with the

same tools HUD currently has, the same access into the courts and the same investigatory and subpoena powers. We believe that this is a further indication of the fact that OILSR has not been hampered by little and restricted Congressional authority in the enforcement area, but by its inability to use the potent and adequate tools already in its hands.

In light of this background, we find it particularly worrisome that HUD is seeking to establish an entire new bureaucracy to investigate, hear and judge violations in an administrative forum. Under HUD's proposals an entire administrative law network would be established to hear matters which HUD currently has the power to litigate before a District Court. Particularly with the powers of law and equity in the hands of a U.S. District Court judge, we see no advantage in allowing HUD to establish a new framework for discharging its responsibilities. We believe that with the enactment of the Nelson amendment, HUD will have more manpower to prosecute fraud perpetrators and we believe that prosecution can be carried out adequately and fairly through the Courts.

In the interest of protecting consumers, however, we believe it may be appropriate to give the Secretary some authority to issue cease and desist orders if all the following conditions are met:

(1) The developer has engaged in violations of the Act and there is a substantial likelihood of future violation;

(2) There is a substantial likelihood that the developer may dissipate the assets of the property owners and

(3) There is a substantial likelihood, in the absence of such an order, the rights of the property owners will be irreparably harmed.

Such authority should be for a single period, not exceeding three calendar days, to allow HUD time to seek injunctive relief before a District Court. If HUD is unable to prevail upon the court that an injunction should be issued, the cease and desist order would be dissolved.

While the NATIONAL ASSOCIATION OF REALTORS® support strong sanctions and penalties on fraudulent interstate land sales operators, we strongly oppose the imposition of penalties by an appointed official which deny a citizen access to their livelihood before that citizen has been afforded the constitutionally guaranteed benefits of due process.

We support the Administrations proposal to tighten up the Act's anti-fraud provisions by specifically prohibiting omissions of material facts within the Property Report. We find this provision strictly in keeping with the intent of the Act.

While this Association does not object to the proposed increases relating to the damage awards, and civil penalties, we believe that OILSR now has sufficient authority to prohibit interstate land frauds without stronger penalties. As we have said, we believe that the Office of Interstate Land Sales Registration has misdirected Congressional priorities in applying the Act, thus diluting the Act's intended impact upon the true interstate land sales con artist. If OILSR administers the Act within the original intent of Congress for a reasonable period of time and then if the Act does not provide the necessary tools to halt interstate land frauds, let OILSR then come before Congress to explain their inabilities and suggested remedies.

Again, we appreciate this opportunity to express our views on these matters.

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STATEMENT OF

DAVID D. ROBERTS

VICE CHAIRMAN OF THE REALTORS® LEGISLATIVE COMMITTEE

NATIONAL ASSOCIATION OF REALTORS®

Before the

House Committee on Banking, Currency and Housing

Subcommittee on Oversight and Renegotiation

Oversight hearings on
the Interstate Land Sales
Full Disclosure Act

April 11, 1978

The NATIONAL ASSOCIATION OF REALTORS® is comprised of more than 1,712 local boards of REALTORS® located in every state of the Union, the District of Columbia and Puerto Rico. Combined membership of these boards is nearly 600,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational and farm real estate. The Association has the largest membership of any association in the U.S. concerned with all facets of the real estate industry. Principal officers include: Tom Grant, Jr., President, Tulsa, Oklahoma; Donald I. Hovde, First Vice President, Madison, Wisconsin; and H. Jackson Pontius, Executive Vice President. Headquarters of the Association are at 430 North Michigan Avenue, Chicago, Illinois 60611. The Washington office is located at 925 Fifteenth Street, N.W., Washington, D.C. 20005. Telephone 202/637-6800.

My name is David D. Roberts from Mobile, Alabama. I am a REALTOR® and the Vice-Chairman of the REALTORS® Legislative Committee of the NATIONAL ASSOCIATION OF REALTORS®. Accompanying me today are Albert E. Abrahams, Staff Vice President, and Dudley L. O'Neal, Jr., Director, Legislative Liaison of the staff of the Government Affairs Department of our Association.

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While I do not wish to leave the impression that every member of our Association is involved in land development, many REALTORS® are involved in selling homesites in their own communities and States, and are deeply concerned about the Interstate Land Sales Full Disclosure Act (ILSFDA) and the administration of that Act by the Office of Interstate Land Sales Registration (OILSR).

We appreciate the opportunity to appear before this Subcommittee today to give the REALTORS® side of the story.

We have any number of concerns to raise with the Subcommittee regarding the administration of the ILSFDA by OILSR. First I will present our concerns which are based on information we have received from our members who have had firsthand experience with OILSR. I will then offer for the Subcommittee's consideration a number of recommendations with respect to improving the law and OILSR operations.

In addition to the examples I will discuss in my statement, I would like to submit for the record several cases we have received from our members that are typical of the numerous other complaints we have in our files.

At the outset, I wish to make it clear that the NATIONAL ASSOCIATION OF REALTORS® supported enactment of the simple disclosure requirements of the Interstate Land Sales Full Disclosure Act of 1968 to protect consumers from fraudulent and deceptive interstate land sales transactions, especially interstate sales where unsuspecting purchasers had no opportunity to inspect or examine the land prior to purchasing and no way of knowing whether the developer was financially responsible for fulfilling commitments proposed with respect to developing the land.

We have not altered our position. The 1978 Statement of Policy of the NATIONAL ASSOCIATION OF REALTORS® continues to support the purpose for which the Interstate Land Sales Full Disclosure Act was initially enacted.

We agree thoroughly, with Congressional complaints --- with you, Mr. Chairman, members of this Committee and others --- that the Act is not effective and is not providing the protection to consumers originally intended by the Congress. Newspapers continue to carry articles about land development fleecing operations, and unsuspecting consumers continue to find they are the victims of fraudulent and deceptive interstate land sales operations.

Why is the Act ineffective, and why is it not providing the desired protection to the consumer?

The NATIONAL ASSOCIATION OF REALTORS® along with a growing number of members of Congress believe the Office of Interstate Land Sales Registration is so busy and preoccupied with regulating those whom the Act never intended to cover that OILSR is simply unable to focus on, effectively regulate or weed out those involved in deceptive and fraudulent interstate land sales operations.

During the ten years since enactment, there has been little, if any, Congressional review or oversight of the Act or the administration of the Act by the Office of Interstate Land Sales Registration. During this period, OILSR has completely ignored Congressional intent and has interpreted the Act to mandate Federal "licensing" of all land development, be it interstate or intra-state development, and regardless of the size of the development.

For example, subdivisions consisting of 50 lots or less are exempt from the Act. Yet, under OILSR rules, regulations and interpretation, subdivisions containing less than 50 lots marketed solely within the borders of the State in which the subdivision is located are brought under the Act.

We seriously ask under what authority is OILSR acting? How is this office in HUD allowed to ignore Congressional intent and continually permitted to function literally as if it were accountable only to its own will? We have propounded the same questions to HUD and OILSR officials many times. We have responded on numerous occasions to ever-changing rules and regulations questioning OILSR's authority to bring purely intra-state land sales transactions under the Act. Time and again, we have been told if we desired change, we must seek legislation from Congress. We are told that OILSR views its mandate under the Act to regulate land sales to be all inclusive, and that OILSR will not be satisfied until every land development in this country is under the jurisdiction of that office.

Thus, while OILSR writes and re-writes its rules and regulations to bring all land development under its control --- its rules and regulations now fill several volumes and are so complicated even practicing lawyers find it extremely difficult to satisfy OILSR's demands --- local land developers are literally being forced out of business, and consumers find little protection under the Act.

Recently Congress saw fit to amend and, in fact, repeal some of the provisions of the Real Estate Settlement Procedures Act (RESPA) because that Act did not serve the consumer as it was originally hoped by the Congress. Careful review and examination of the Interstate Land Sales Full Disclosure Act will also prove it is not serving the consumer as it was originally intended. As one example, OILSR's administration of ILSFDA has increased the cost of land for the consumer. Local developers have no choice when confronted with OILSR's unrealistic rules and regulations, except either to hold their land off the market or to increase the price of offered lots to offset the excessive costs of complying with OILSR's demands. Certainly these actions do not help the consumer.

The Congressional Committees originating ILSFDA struggled with the legislation several years before it was finally enacted into law by Congress. The

statements of the original sponsors, the hearings, the Committee Reports, and the floor debates surrounding the legislation, as well as the Act itself, clearly show that the Act was limited to only those land development operations that crossed state lines where persons living in states distant from the situs of the land were influenced to make their purchases because of fraudulent and deceptive sales tactics or practices. The framers of the legislation very carefully provided exemptions so that land development sales confined to the boundaries of one State would not be under the Act.

One of the most disturbing aspects of OILSR's regulation of purely interstate subdivision development is the interpretation given to a "common promotional plan". Once a common promotional plan is determined to exist between separate subdivisions, by reason of a thread of common ownership, advertising or identity, office or facilities, inventories, etc., all lots within the separate subdivisions aggregated, whether previously exempt or not and will be considered as one subdivision. Thus the local "intra-state" developer is automatically brought under OILSR's jurisdiction. For the interstate sales operation this definition may be reasonable to trigger full disclosure. However, when the definition is applied to the small businessman, offering lots to purely intra-state purchasers and doing business from one office, perhaps located in his home, this definition becomes an unreasonable standard.

By various rules, regulations and interpretations by OILSR the very land developments so carefully and painstakingly exempted by the framers of the legislation are now being brought under the Act. Let us examine why.

That Act specifically provides that subdivisions consisting of less than 50 lots are exempt from the Act's registration and exemption requirements.

But take the small Georgia REALTOR® that has a total of 60 lots in three different subdivisions, perhaps 10 miles separated from one another with one subdivision planned for inexpensive priced houses, the second planned for more expensive houses, and the third for recreational or vacation sites. In fact, the subdivisions have no relationship to one another. This REALTOR® is required to file with OILSR for an exemption under the Act regardless to whom he sells the lots --- in-state or out of state purchasers --- because by aggregating the lots the REALTOR has for sale the total number or lots exceeds the 50 lot subdivision exempt by the Act.

Take the Wisconsin REALTOR® that has two or three small subdivisions, none of which exceed 50 lots, and who has never sold to a purchaser outside the State of Wisconsin. In fact, we are advised he has sold no more than 5 lots outside the county in which his subdivisions are situated. He uses the telephone and the mails in his day to day business operations. This REALTOR® is in violation of the Act and he is required to file with OILSR for an exemption.

Now take the Alabama REALTOR® who is developing recreational sites on a lake in his State some 50 miles from his home town, and who also is developing a subdivision of residential lots in his home town. This is a one man operation and the REALTOR® uses the same office and the same local newspaper advertisement to offer lots for sale in his subdivisions. He has never tried to market lots outside his home State; yet he is required by OILSR to file for an exemption because he is deemed to use a "common promotional plan" to sell lots in his two developments.

Now take the Maryland developer that has 75 lots in a subdivision, of which he has used 70 lots to build homes. The remaining 5 vacant lots are offered for sale. Lots in a subdivision on which houses are constructed or contracted to be constructed within 2 years are exempt under the law. This developer, however, is required to file for an exemption on the 5 lots because the total number of lots in the subdivision exceeds the 50 lots exempt by law.

These examples, of course, beg the question of "why so much concern if the REALTOR® is required to file for an exemption?" First, there is concern because Congress did not intend any of those subdivisions to be covered by the Act and second, let us explore filing for that exemption.

Most local land developers are not aware they are covered by the Interstate Land Sales Full Disclosure Act. They are taken by surprise when an OILSR official appears and advises them they may be in violation of a Federal law and could be subjected to Civil as well as Criminal penalties. Local developers are astounded when advised to stop selling lots until they have filed for the exemption. Others who hear by the "grape vine" they may be covered by the Act and who make inquiries of OILSR about their status are equally astounded when they are advised they must cease sales operations until an exemption from OILSR has been granted.

Once the complicated and complex filing starts, the REALTOR® is literally inundated with forms, paper work and rules and regulations the layman simply cannot understand. If he tries to fight the "system", he is subpoenaed to appear in Washington with all his files.

Having run the gambit of filing for the exemption, the local developer is then told he must send recision letters to all those purchasing lots within the previous two years agreeing to buy back any lot purchased within that time.

I do not have time to describe the utter confusion these revision letters caused to purchasers. Briefly, some purchasers believe the title of the property is clouded and seek recision. If there has been a turn down in land value in the area, recisions are sought. In fact, one developer was forced to buy back several lots in a subdivision during an economic slump in his area, only to sell the lots at a later date for more than the price of the original sale. That, however, was an exception of the rule because more than often the small REALTOR® is simply forced into bankruptcy, for he cannot carry sufficient capitol to buy back lots on which recision is demanded. And all too frequently local lenders are reluctant to extend the small REALTOR® further credit when they hear he is "in trouble" with the Federal law.

Let us assume the REALTOR® obtains his exemption, successfully markets his lots and continues to develop less than 50 lot subdivisions one or two at the time thereafter.

Eventually, he sells 300 lots. The Act requires full registration for subdivisions in excess of 300 lots. OILSR has suggested to our Georgia REALTOR® that when he reaches 300 lots he will be required to file for full registration including all the lots he has sold regardless of the exemptions he has already been granted. Our REALTOR® now questions whether such an undertaking is worth continuing in the land development business.

I have pointed out specific examples of how OILSR extends its broad interpretative power to bring purely intra-state land development under its jurisdiction. The criteria used by OILSR to invoke jurisdiction is: (1) aggregation to exceed the 50 lot statutory exemption, (2) applying common definitions of interstate facilities--the use of the telephone, local newspapers and the mails--to purely intra-state transactions in order to invoke interstate jurisdiction (let me add parenthetically that if applied nationwide in the same manner, every "the

and Pop" business in this country could be subject to interstate laws), and (3) the "common promotional plan", which simply means separate subdivisions will be counted as one if there is a thread of common ownership, advertising or identity, office or facility, inventory, etc.

In the cases cited OILSR, under its interpretation, could have assigned any one of the three criteria mentioned to bring my example cases within its jurisdiction. That is the uniqueness of being able to function as the prosecutor, the jury and the trial judge.

Let me now give you some examples of the problems a land developer faces when seeking interstate registration.

COMPLICATED REGISTRATION REQUIREMENTS

When one contacts OILSR requesting the necessary forms to file for interstate registration one receives an inch high stack of papers containing:

- Some 95 pages of published rules and regulations.
- An 11-page reprint of ILSFDA.
- A 27-page Statement of Record for OILSR's file, which requires some 42 addandum exhibits, and
- A 14-page Notice of Disclaimer which must be duplicated and one copy given to each prospective buyer.

Experts are needed to comprehend the complexities of OILSR's rules and regulations and to file the appropriate forms. OILSR provides no layman's handbook or description of important items to assist in filing and few businessmen are capable of filing for registration without the professional assistance of an attorney. And few attorneys are capable of properly filing without indepth knowledge of OILSR procedures. Not only is an attorney necessary but also in numerous cases engineers, geologists and accountants are needed to complete the so-called "Statement of Record". And why are these experts needed? The Statement of Record demands, among many other things:

- A description of soil deposits on every lot within the development;
- Detail specifications of water distribution systems, including costs and depth of well drilling, and types of pumps to be used;

·Estimated cost and schedules of completion of electrical line installation;

·Estimated costs and schedules of completion for sewage lines or estimated costs of septic tanks and drainfields;

·Description of municipal services, recreational and common facilities, shopping facilities, etc., and

·A detailed and full financial statement of the applicant or applicants.

An applicant is also required to file with the Statement of Record 42 letters or copies of statements or reports. For example, just four of the addendum items include --let me interject here that I use examples of only 4 of 42 addendum items required because time simply does not permit me to list all 42 items:

1. All engineering reports or hydrological surveys indicating the source and quality of water;

2. A health official's analysis of the clinical quality and bacteriological purety of the water;

3. A local governing body's statement relative to maintenance of the road system in the development; and

4. A local health authority's statement that each and every lot in the subdivision has been tested and approved for the installation of an on-site sewage disposal system.

While these four and the remaining 38 statements may be necessary for full disclosure for the large interstate operation, these paperwork requirements impose excessive difficulties and numerous compliance problems upon the small developers.

As I have shown, the information required in the Statement of Record is of a very complex and technical nature, and yet, one irony of it all is that OILSR requires, "unless otherwise noted, such questions in the Property Report must be answered in a short narrative statement..." and "all statements made...must be in plain concise language that an uninformed purchaser can understand but must disclose all pertinent facts."

Many State and/or local governing bodies have laws and codes which require land developers to file much of the same information required by OILSR at the local and/or State level. OILSR, however, refuses to accept such local filings, except in California, where accommodations have been reached with OILSR to accept limited State filings. Thus the prospective interstate land developer is saddled not only with the burden of duplicate filings, but also he is frequently subjected to duplicate inspections---(1) by local or State authorities using one set of standards, and (2) by OILSR using an entirely different set of standards. Such duplication is unnecessarily time consuming and costly.

TIME AND COST

The time consumed and cost incurred to comply with OILSR rules and regulations can be enormous and can drive up the price of land significantly for the consumer. Reports from our members involved in land development indicate that to file for a simple exemption from OILSR can cost as much as $1000 and may consume up to 50 manhours in preparation. In fact, members report that by making an application for an exemption and having that exemption approved in no way assures that one will not later be compelled to file for a full registration on the very same subdivision covered by the exemption. Full OILSR registration can cost as much as $20,000 and may consume 150 manhours in preparation. The major portion of these costs are represented in attorney fees. If the filing of a simple exemption is completed without administrative delays, the applicant may expect OILSR approval within 2 months; application for full registration without difficulty may take from 4 to 8 months to obtain approval.

It appears to be the rule rather than the exception for OILSR to send the applicants "deficiency notices" indicating that the applicants paperwork is inaccurate and incomplete. Often the items referred to by OILSR are of a minor nature and are not material to the prospective purchasers' decision to buy; in other words, the proverbial crossing of "t's" and dotting "i's". In addition, OILSR frequently challenges cost estimates provided in the Property Report. For example, last year OILSR advised one REALTOR® that a OILSR "source" had obtained a different estimate than was contained

in the Property Report on the cost of extending water lines from the street to the homesite. The member's estimate was obtained from the District water authority. OILSR's information came from an unidentifiable "source." Eventually, OILSR admitted its error, but while aimlessly questioning the estimate, homesites were being held off the market and the cost of the delay eventually had to be borne by the consumer.

Another example cited was a filing in which the applicant estimated the cost to run electric power into a project at $175,000. OILSR inspectors estimated the cost at $180,000. When it was discovered the member's estimate was obtained from the local utility company which proposed to install the lines, OILSR again admitted error.

We fail to see in these examples and many others like them how the consumer is being protected.

The remainder of any statement will address legislation pending before Congress that deals with the Interstate Land Sales Full Disclosure Act, i.e., S. 2716, to amend the Interstate Land Sales Full Disclosure Act; H.R. 10999, the Interstate Land Sales Reform Act; and H.R. 11265, Housing and Community Development Act of 1978."

Senator Gaylord Nelson of Wisconsin, Chairman of the Senate Select Committee on Small Business, has been concerned about the impact Federal rules, regulations and paper work have upon small businessmen for several years. The Select Committee has been studying and holding hearings on that general subject matter for about 3 years. During the course of the study and the hearings, the subject of the Interstate Land Sales Full Disclosure Act and the actions of the Office of Interstate Land Sales Registration were sometimes discussed by witnesses. The testimony of those witnesses caused Senator Nelson to become keenly concerned about ILSFDA and OILSR and in January 1978, the Select Committee held hearings on that specific subject matter. After the testimony presented by officials of HUD/OILSR and others, Senator Nelson became "convinced corrective legislative action is imperative" in this area.

Subsequently, on March 10, Senator Nelson introduced S. 2716, to amend the Interstate Land Sales Full Disclosure Act, which to date, has been co-sponsored by 10 additional Senators (Sparkman, McIntyre, Tower, Garn, Morgan, Cranston, Brooke, Haskell, Heinz and

Laxalt). We of course, are aware that thus far, no companion bill to S. 2716 has been introduced in the House of Representatives. Notwithstanding, we sincerely hope that this Subcommittee will take cognizance of S. 2716, and will carefully consider its provisions in these hearings and at other Subcommittee considerations of ILSFDA and OILSR actions.

S. 2716 exempts developers who sell no more than 5 lots or 5% of lots sold during a calendar year to out-of-state purchasers if; (1) the lot is free and clear of all encumbrances and liens, (2) the purchaser has personally inspected the lot and (3) the seller has agreed to submit himself to the jurisdiction of the courts of the purchaser's home State.

Secondly, the Nelson bill would exempt the sale of lots to purchasers residing within 100 miles of the subdivision if; (1) the lot is free and clear of all encumbrances and liens, (2) the purchaser has personally inspected the lot, (3) the seller submits himself to the juriedictlon of the Courts of the purchaser's home State and (4) the developer has affirmed with the Secretary of HUD that the first three conditions were met.

OILSR was never intended to police every land development and sales operation in this country; yet this is OILSR's aim. These two simple exemptions exempts local land sales operations, provides safeguards to the consumer buying an interstate lot from a local businessman and narrows OILSR's responsibility to effectively protect the land buying consumer from fraudulent interstate land sales operations.

The Nelson bill would also provide several technical changes in the Act in order to bring more reasonableness into OILSR's rules, regulations and interpretations of the Act.

First. Language has been added to make clear that the terms "liens," "encumbrances," and "adverse claims" do not refer to U.S. Land Patents and similar grants or reservations. OILSR's interpretation of the law on this has been used to bring virtually every acre of land sold west of the Mississippi under their jurisdiction.

Second. Language has been added which would require OILSR to publish any regulation in accordance with the Administrative Procedures Act.

Third. The term "sale or lease" has been defined as occurring at the time when a contractual relationship is created between the developer and purchaser, thus clearing up an area where OILSR has been free to use whatever interpretation it has found most favorable to its continuing regulation of land sales.

The Nelson bill would correct the present administration of the Act, such that, Congressional intent and the land buying public may be effectively served.

We ask this Subcommittee to give close attention to the provisions of S. 2716 and to the original intent of the framers of ILSFDA in these oversight hearings.

Mr. Chairman, let me now address your bill, H.R. 10999, and the Administration's ILSFDA amendments contained in Title IV of H.R. 11265.

Sec. 421(c) and (b) of the Administration's bill would redefine a subdivision coming within the purview of the Act as land which is divided or proposed to be divided into 100 or more lots, rather than 50 as in present law.

We wish to make it absolutely clear that this Association supports steps to remove purely intra-state land development from OILSR's jurisdiction. This amendment could be helpful in achieving that aim. However, as long as OILSR uses the so-called "common promotional plan" to aggregate lots in purely intra-state situations as a means of bringing those subdivisions under the Act, this amendment would only delay the time in which such subdivisions are brought under the Act. If steps are taken to remove purely intra-state developments from jurisdiction, then the proposed amendment could be most beneficial, as it would permit OILSR to concentrate its actions on the larger interstate land developments which was the intended focus of the Act.

Current law provides for an exemption of lots in a subdivision where all lots are 5 acres or more in size. Framers of the Act recognized that purchasers buying 5 acres or larger sized lots would probably be sophisticated purchasers seeking to utilize the land for other than recreational or residential purposes, and such purchasers would not be meaningfully served by the Act's disclosure requirements and thus were exempted. This provision was carefully considered and reviewed before it was included in the Act and still remains a sound and meaningful provision.

Section 2 of H.R. 10999 and Section 421(c) of H.R. 11265 seek to amend the 5 acre exemption and replaces it with an exemption for lots in a subdivision in which all lots are 40 acres or more in size. We feel this proposal is another example of OILSR attempting to expand its jurisdiction over those transactions never intended to be touched by the Act, and therefore oppose this amendment.

The HUD legislative package requests that the exemption under Sec. 1403(a)(10) of the Act be repealed. This exemption was aimed at small intra-state or local interstate developers who sell lots to purchasers who have an opportunity to inspect personally the offering to judge for themselves the character and quality of the land before purchasing.

OILSR has never favored this statutory exemption and has issued rules and regulations surrounding it that are so complex and vague that it is virtually impossible to obtain the exemption. The repeal of Sec. 1403(a)(10) would be directly contrary to the purpose of the Act and would serve to extend OILSR's philosophy of regulating all local land developers rather than the large interstate land sales operation as intended by the Act.

HUD's amendment to Section 1405(b) proposes to amend the current $1,000 ceiling on the amount of fee a developer must pay the Secretary at the time of filing a statement of record or any amendment thereto. The revision would eliminate the $1,000 ceiling.

This amendment ignores the cost the developer and consumer now are paying because of OILSR's over-interpretation of a simple interstate land sales disclosure act. If OILSR would focus their attention on fraudulent and deceptive interstate sales, open-ended administrative costs would not be necessary.

Section 3 of HR 10999 would provide that contracts for the sale or lease of lots in a subdivision be voidable by the purchaser up to 30 days following the transaction. Such a contract would be voidable for up to three years if the transaction takes place on the day the purchaser receives and signs the contract, or if any part of the financing is provided by the developer or an agent of the developer, or if the contract does not contain a precise description of the lot's boundaries.

The effect of this provision on the market will be disastrous; real estate speculation will increase causing further increase in the cost of land. Eventually, developers will refuse to consumate a same day sale for the purchase of a lot. Purchasers will be able to personally inspect an offered lot, as many times as they deem necessary, read a registered HUD Property Report covering the subdivision in which the lot is located, make inquiries into the developer's reputability, contract and consumate the lot's transaction on the same day and then have 3 years to void the contract.

REALTORS® believe it is unjustifiable to over-compensate for the wrongs which only a few fraudulent land sale operators have caused.

Section 1425 of HR 10999 provides that a developer who has promised to provide basic services to a subdivision, must deposit in escrow, an amount to be determined by the Secretary not less than the amount equal to the total cost of the basic services which have been promised but not completed with respect to the subdivision.

The vast majority of small land developers in this country work on a system of roll-over cash flow; as one or two lots are developed and sold the proceeds are reinvested as front money for development of a few more lots. As these lots sell the cash proceeds are again rolled-over until the subdivision is completed. If a small developer contracts to develop 5 lots within a subdivision and had to deposit in escrow the cost of providing the extension of sewer lines, the extension of roadwork, as well as extending water lines to the lots, that small developer's operation will undoubtedly go bankrupt. The provision on escrow deposits for basic services will seriously impede, if not shut down the legitimate sales operation of many small REALTORS®.

Section 4 and 10 of HR 10999 would require all advertisements, verbal representations and all printed material used by a developer to promote his lots to be made part of the statement of Record. The Secretary would have authority to regulate all advertising and promotional materials which are used to promote lots.

The National Association of REALTORS® favors disclosures of all pertinent information, including promotional material relating to the sale or lease of improved lots in a subdivision marketed over state border lines.

This amendment goes much further than the regulation of simple disclosure; in fact, it would give the Secretary complete authority and discretion to regulate advertising.

This Association opposes granting the HUD Secretary such authority.

We also have some concerns regarding the parens patriae Section of the bill which would

allow the 50 states attorneys general to sue for violations of the Act. Our primary concern is again from the small businessmen's point of view. With all the other legal costs faced by the small businessman due to regulations, this section would again add to the financial inability of such a businessman to defend himself in a costly suit based on a technical violation. When faced with the power and resources of the state being aimed at him, the small businessmen will give in as a practical matter, regardless of the frivolous nature of the suit or any meritorious defenses he may have. The sections of the bill giving the consumer court costs and attorneys' fees adequately protect the consumer and provide him with the incentive to vindicate his interest. In addition, class action suits brought by private attorneys will sufficiently protect the consumer without the involvement of an elected public official who may be forced to bring a suit for political purposes.

Both HR 10999 and HR 11265 propose to give the Secretary two new enforcement powers.

First, the Secretary would be empowered to serve a complaint on a developer believed to be in violation of the Act, rules, regulations or order issued by the Secretary and to set a hearing within 20 to 45 days after service of the complaint. The developer would be required to file within 15 days an answer and notice to appear at the hearing or waives the right for such a hearing. Following the hearing or the developer's failure to notify the agency of his intention to appear, the Secretary may issue an order effective immediately to cease and desist.

Second, upon a determination by the Secretary that a developer's actions are "likely to seriously prejudice the public interest", the Secretary would have the authority to issue a cease and desist order which is effective immediately. Such an order remains in effect until the completion of the administrative proceeding unless a developer applies within 10 days to U.S. District Court for suspension of the Secretary's order.

While the NATIONAL ASSOCIATION OF REALTORS® support sanctions and penalties on fraudulent interstate land sales operators, we strongly oppose the imposition of penalties which deny a citizen access to their livelihood before that citizen has been afforded the constitutionally guaranteed benefits of due process.

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It appears to us that if either HR 10999 or HR 11265 is enacted the effect would be to change the purpose of ILSFDA from a disclosure act to an act which substantially regulates the manner of land development. The change in altering the Federal role from disclosure to substantial regulation of how land developers operate is a radical one and should be studied carefully.

While, theoretically, the changes contained in HR 10999 and HR 11265 may be expected to prevent fraudulent operators from fleecing the public, at the same time they greatly restrict the operation of the vast majority of developers who are honest. The result of the proposals of HR 10999 and HR 11265 as outlined above will be higher costs to the consumer, and a drastic decrease in the amount of lots offered to the consumer with a promise of future improvements. The effect of either of these bills will be multiplied and make unfair and unjust burdens upon small honest land developers.

This Association fully supports the goal of prohibiting land frauds; we believe OILSR has sufficient authority now to do so. If OILSR administers the Act within the original intent of Congress for a reasonable period of time and then if the Act does not provide the necessary tools to halt interstate land frauds, let them come before Congress to explain their inabilities.

Until such time that OILSR strictly concentrates their manpower, rules, regulations and attitude on weeding out deceptive interstate land sales operations, no consumer, industry or government arm will be able to judge adequately whether or not the Interstate Land Sales Full Disclosure Act is effective consumer protection legislation.

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April 22, 1977

Mr. H. Jackson Pontius
Executive Vice President
National Association of Realtors
Executive Offices
430 North Michigan Avenue
Chicago, IL 60611

Dear Sir:

Owners comprised of a Realtor, Realtor Associate and an Investor.

1970 purchased 480 acre farm and kept intact until March, 1972. Developed 33 acres, sold first lot in April, 1972. From then until October 3, 1974, we sold 35 lots for a total of $132,408.68 of which all the money was invested back in development. Lots sold were free and clear and were sold only after on-site inspection. Was told by Attorney we were exempt from HUD and didn't need to file with them.

July, 1974, one of the owners with Attorney flew to Washington and met with Mr. John McDowell and Mr. Sol Mosher, Department of HUD, concerning registration. Reason: We wanted to develop an adjoining tract. We were advised to register the original subdivision with a few remaining lots to sell, then apply for an attachment for the new development.

In all cases we were assured there was no problem to file -- that an attorney wasn't really needed. This proved untrue as we will show you. It is impossible to accomplish registration without at Attorney and a C.P.A.

We were fortunate that we had an Attorney who gave us a firm bid to prepare the HUD Report. He lost quite a sum of money for actual time involved. His comment was that his fee should have been by the pound on paperwork.

We have found and will try to pass on to you the hopeless feeling we had in dealing not only with HUD, but once they had our name we were the target of other agencies in that department along with Missouri Clean Water Commission.

A letter received by Missouri Clean Water Commission March 5, 1975, contained a paragraph that I quote: "As the Missouri Clean Water Commission is considering revising the regulations to eliminate certain administrative problems including the deletion of Section 2.06, the developer could delay further development until the Commission has made its decision", unquote. August 1, 1975, we finally received a letter of exemption.

Although your request is for HUD I want to impress on you that the Clean Water Commission is equally impossible to comply with. We have been since 1975 trying to get our new addition approved and as of this date we have paid an engineer $1,417.60 and still have no approval ---- just RED TAPE.

If and when we have final approval from HUD and Clean Water Commission our costs in lots will put us out of the market. It could easily be $3,000.00 per lot. Since most developers ignore both agencies they can sell much cheaper. To date they have not been reprimanded. Should you like a file on Clean Water Commission we can provide it.

I hope to impress the financial impact the HUD regulations has had on us. In 1974 when we filed we had approximately $15,000.00 plus another $20,000.00 (borrowed) on our new addition and the start of a golf course for the area. The Red Tape of the two agencies has caused us to have to borrow money to fulfill our obligations to lot owners, and we have no income or sales because of their intervention and delays.

Attached is a condensed Attorney's Log and C.P.A. involvement.

It is very difficult to relay the problems, anxieties, and reverses we have experienced with the agencies. In all cases in dealing with Government Agencies we are judged guilty until we prove innocence. This is the reverse of our Constitution.

Even though the majority feel they are subjected to harassment and dictatorship rule by these agencies, it is impossible to fight them or even question them as they take it to court. They have all the time and money needed to fight it. Private citizens don't have it. My overall largest objection is having lived in this area and been in business for twenty-three years with sizeable holdings -- Charter member of Lions, original founder of Board for our Church, ex-Scout Master and currently on local & area Council, President for nine years of our local School Board, and many more civic endeavors -- yet I get treated like a fly-by night crook.

Not only has our financial security been jeopardized but it has caused burdens on engineers, construction firms, suppliers, builders, and real estate firms.

If our Politicians would talk with individuals such as us I'm sure they would enact legislation to put very restrictive controls on all agencies. Otherwise they have their own dictatorships controlled by people who were never elected to represent us.

You will notice our initial contact was in July, 1974, and our final approval was December, 1975. During this time we had no income from this project.

If you need backup material or personal testimony, we will be glad to cooperate. I would send copies of the actual file but it is too large for Parcel Post.

I am enclosing one of our property reports for your inspection and you can easily see the problems we've encountered in preparing this document. Would you buy a lot here after reading this report?

Best of luck on your presentation to Congress and HUD.

Sincerely,

R. H. CONNELL REALTOR

R. H. Connell

R. H. Connell, GRI

ATTACHMENT #1

C.P.A. ---- HUD

8/02/74 - Contacted C.P.A. requesting audited statements from 1972 to date as per HUD request

2/07/75 - Request for more information

2/12/75 - Request for more information

3/05/75 - Request for more information

3/24/75 - Request for more information

3/27/75 - Request for more information

4/04/75 - Received Audit Reports from C.P.A. thru 1/01/75

11/26/75 - Received 6 month Audit Reports from C.P.A.

5/06/76 - Requested Audit Report thru 3/31/76

6/11/76 - Received Audit Report thru 3/31/76

Audited Reports required each six months for additional expense.

ATTACHMENT #2

Correspondence from Attorney (taken from Attorney's file)

July, 1974 - Personal meeting in Washington, D.C. with Sol Mosher & John McDowell by one owner & Attorney

Aug, 1974 - Letter from Attorney to C.P.A.

10/24/74 - Letter to HUD advising preparation of report

11/20/74 - Letter from Attorney to owners, need information

12/12/74 - Letter from Attorney to Electric Company requesting verification that they supply power to subdivision

12/12/74 - Letter from Attorney to Telephone Company requesting verification that they supply telephone service to subdivision

12/16/74 - Received letter from Telephone Company

12/19/74 - Personal meeting, Attorney & Owners

2/04/75 - Letter to Missouri Clean Water Commission with application for exemption

2/08/75 - Clean Water Commission letter & application

March, 75 - Received rejection from Clean Water Commission on exemption

3/12/75 - Letter from Attorney to HUD requesting OILSR's current R & R

3/26/75 - Letter from Attorney to Clean Water Commission, appeal rejection

3/28/75 - Letter, State to file Corporation papers

4/01/75 - Letter from Attorney to U.S. Geological Survey requesting Topo Maps as per OILSR

4/04/75 - Letter from C.P.A. with 12/31/74 Audit Reports

4/07/75 - Letter, Clean Water Commission verifying exempt status

4/30/75 - Letter to Water Quality Control concerning Registration with Clean Water Commission

6/18/75 - Letter to HUD along with Affidavit requested concerning Clean Water Commission

8/01/75 - Letter from Clean Water Commission verifying application

8/13/75 - Letter from Attorney to Mr. Winkler, HUD, protesting technicalities. Confirmed he couldn't contact Mr. Winkler by phone.

ATTACHMENT #2
Page 2

2/17/77	-	Letter from Mr. Rogers referring sales made before registration, requesting list (same list as provided with HUD filing)
3/09/77	-	Letter to Mr. Rogers with list -- protest on time delay of two years
3/10/77	-	Letter to Mr. Rogers concerning OILSR #04214-29-204 with list.
3/19/77	-	2nd request on list & affidavit
3/24/77	-	Requested affidavit sent
4/16/77	-	Received letter demanding information on OILSR 04214-29-204 (we have return receipt in file dated 3/29/77 signed by Mr. Thomas)
4/16/77	-	Letter to Mr. Rogers verifying we have receipt

ATTACHMENT #3

Expenses Incurred to complete HUD filing.

Attorney Fees	$2,000.00
Filing Fees	350.00
1st Re-submission	100.00
2nd Re-submission	100.00
3rd Re-submission	100.00
Printing HUD Reports	231.29
Trip to Washington	500.00
C.P.A. Fees	2,157.73
MO. Division of Health	36.00
Engineering for Clean Water Commission	1,417.60
Legal Notices	27.00
Owner Expense	2,500.00
Total Expenses	$9,519.62

JACOBSON & LOVITT

LAND DEVELOPERS - REALTORS

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1977

October 7, 1977

Mr. Albert E. Abrahams
Staff Vice President
National Association of Realtors
925 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Abrahams:

The Interstate Land Sales Full Disclosure Act is seriously deficient in that there is no automatic exemption for developers who develop property in metropolitan areas where full control of these developments is exacted by the metropolitan authorities. The law is very poorly written in that it does not make any distinction between the sun belt and the highly controlled developments around the cities.

From talking to the people who have filed for exemption or complete registration, we understand that it is a real ordeal involving six month's time, and many thousands of dollars and fees for the many planners and lawyers required to carry out this procedure. The result is that the consumer pays a higher cost for the developed lot than he should have to pay, and one effect of the law is that the developers are afraid to sell to any individuals and sell only to builders. Because of this, individuals are forced to pay a profit to the builders who become middle-men in this transaction.

The effect of this law is hurtful. The number of people who may be protected from irresponsible, promotional developers is small compared to the millions of home buyers who are penalized by having to pay an extra price for their lots when all this could be remedied by a thoughtfully drawn amendment to the Interstate Land Sales Full Disclosure Act.

If we can help in any way, give us a call.

Sincerely,

Lloyd Lovitt

Fowler Realty
INCORPORATED
REALTORS

435 WEST ELIZABETH STREET
BROWNSVILLE, TEXAS 78520
TELEPHONE: AC 512/546-2415

October 20, 1977.

Mr. Al Abrahams
Staff Vice President
National Association of Realtors
925 15th Street
Washington, D. C. 20005

Dear Al:

I have been requested to send you some information on my encounter with O.I.L.S.R. I was attacked by them in August of 1976. At the time, I was at my Summer home in Wisconsin and was forced to return to Brownsville Texas immediately because a registered letter had arrived which indicated that we would be forced to cease selling lots in our Rio del Sol Subdivisions immediately.

In the Subdivision, we were selling lots to individuals; all lots were approved by V.A., and most had been approved by F.H.A. Our marketing plan was purely local in scope. With small projects such as this, it would be economic suicide to run large ads in national media or to buy television shows to attract an interstate market.

The letter I received from Mr. H. William Rogers, Director of Land Sales Enforcement Division, stated that because there was a possibility of a highway sign being seen by out of state people; because we had, in some instances, used the telephone in the conduct of our business because our local newspaper inadvertantly gets carried across state lines and several other highly intelligent reasons, we were told to cease selling lots to individuals or be criminally prosecuted.

In the project, we sell most of our lots to builders. This one, however, has 2 miles of water front. These water front lots generally sell to individuals rather than builders, as they are, in most cases, too expensive for speculative building.

The inside lots, of which there are many, were sold almost entirely to builders. I had, however, just invested approximately $200,000.00 in extending streets and utilities to 50 newly created water-front lots and was preparing them for

sales to individuals. The cease and desist order, of course, stopped us in our tracks; however, it did not stop the interest meter on that $200,000.00 in its tracks. It is still running and I still cannot sell lots to individuals.

When I cut short my vacation in 1976 and hurried back to Brownsville to consult with my local attorney, he informed me that the Land Registration Forms were so complicated and so vague in some of their questions, that he felt we would be in better hands if we hired a specialist who knew the kind of answers the registration people demanded.

I therefore contacted Mr. Ron Feferman, an Attorney from Corpus Christi, Texas and he filled out the form according to the approved O.I.L.S.R. requirements. The cost for having this one form filled out was $1,500.00. Feferman felt that we could qualify for a 300 lot exemption in another project and told me in a letter dated September 16, 1976 that the legal cost to obtain a 300 lot exemption for this other subdivision would amount to $2,500.00.

This project, as I above stated, was conceivad for purely local consumption. It is located within 2 miles of the Port of Brownsville and is directed market-wise at welders, ship fitters, machinists, shrimpers, and other people who work at the Port.

I have six co-owners in the Rio del Sol Subdivision. It took weeks to contact all of these owners and audit their holdings in other projects.

We were then required to submit a list of all sales in the project with the names and addresses of each purchaser and note any out of town purchasers that happened to stumble in. (stumble in is precisely the phrase applicable here because Brownsville has a large tourist population in the Winter, some of whom visited our site and purchased lots for future retirement homes). This, of course, is not possible now because we are prohibited from selling them and the people have to buy a house and a lot in order to make an investment. This greatly inhibits our growth and their ability to tie down a lot at today's prices for a home site in the future.

As we progressed in our negotiations with the O.I.L.S.R., more and more requests came in for addtional information. Each of these requests had a very short time deadline. In each case, it was necessary for us to stop all other activity to prepare the voluminous data required by them in the short amount of time. As I recall, we were forced to make lengthy applications for extensions of time in almost every instance.

On January 25, 1977, we were able to complete our list of sales and the necessary affidavits with them. On February 11, we received an offer of Settlement which stated in effect that we would not be permitted to sell lots to individuals; but could sell to builders. We were also asked to send letters of recision to each of the individual purchasers of lots in the project.

On March 11, 1977, we received the original Acceptance Settlement Agreement, one of the requirements of which was that in 90 days we were to send the Office of Interstate Land Sales Registration a list of all the persons seeking recision, the dollar amount of claim, and the terms under which the payment would be made. Fortunately, our project is carefully planned and honestly merchandised and no owners applied for a recision.

I was subsequently asked to prepare the same kind of stuff for each of three other projects; however, I have been sitting on my hands since then and have not been attacked by O.I.L.S.R. with regard to the others. We have, however, avoided selling lots to individuals in any of the projects. This, of course, slows down development and creates a pressing financial burden on us and all developers.

The fact that the owner cannot purchase a lot directly and build his home himself, or have a packaged or pre-fabricated home, has created a hardship to a lot of lower income people who would like to buy lots in our lower priced subdivisions. As the lots must be purchased and built upon speculatively by builders, these prospective purchasers are also danied freedom of design and other amenities to home ownership that I think are important to them.

In my opinion, the Office of Interstate Land Sales Registration may have a place in regulating the super-large developers who market thousands of lots on a national or regional scale.

The people in the O.I.L.S.R. have nit-picked the law to a point that it is penalizing the public in "overkill".

I, as a developer, can deliver a much better-planned and economically priced subdivision if I work in units of 100-200 acres (300-600 Lots) than if I am forced to develop less than 50 lots at a time and CANNOT OWN ANY OTHER DEVELOPABLE LAND WITHOUT BEING FORCED INTO A LENGTHY, COSTLY REGISTRATION PROCESS.

I was also very annoyed when my attorney informed me that O.I.L.S.R. demands a fee for answering requests for information while it is requiring reams of information from me at my expense.

Yours very truly,

FOWLER REALTY, INC.

Robert E. Fowler, Director
National Association of Realtors

TENNYSON GUYER
[illegible] District, Ohio
OFFICES
[illegible]
[illegible]
[illegible]
[illegible]

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON INTERNATIONAL RELATIONS
[illegible]
ASIAN AND PACIFIC AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
[illegible]
[illegible]
MEDICAL FACILITIES AND BENEFITS
SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

August 17, 1977

Mr. Albert Abrahams
National Association
of Realtors
925 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Abrahams:

I talked with Attorney Bill Meikle by telephone this afternoon since he was not available yesterday following my discussion with you.

I reviewed with Bill your statement that you would insert his "Statement" with your testimony to both the House and Senate Committees. He agreed with this procedure and I, therefore, enclose copy of his prepared statement.

Please keep Congressman Guyer's office informed on this matter so that we may be of maximum assistance to our constituent.

Yours very truly,

Marvin E. Monroe
Administrative Assistant

STATEMENT

We are a developer in an Ohio city where we develop sub-divisions, one at a time, and then the lots in the sub-division are sold for residential purposes primarily. Since the Inter-State Land Sales Act was passed, we have developed several sub-divisions, some of which have been completely sold and some of which are partly sold.

We received an initial demand to register our sub-divisions, since the sub-divisions in total exceeded the number under the Inter-State Land Sales Act, for an exemption, or that we should cease to sell lots or that we would be sued in Federal Court. Each and every demand included a threat to compel all of our records to be brought to Washington for a hearing, under the subpoena power.

We completed one lengthy questionnaire. Then we received a second questionnaire, most of the questions on the second being similar to the questions on the first. We were given ten-day dead lines in which to complete and return the questionnaires, with the usual threat. Any requests for clarification as to what was demanded, was met with about a six-week delay in answer, and with demands for more information rather than clarification. The time limitations were unreal, included holidays when no one at HUD was working, but the developer was expected to do so, and local offices were expected to remain open during holidays.

We sold most of the lots to individual contractors, who financed and constructed residences one at a time, and then sold the residences to individuals. A few lots were sold to individuals who financed their own homes. HUD demanded that we find out, after the fact, when each house was actually completede by the contractor, even though the relevancy of this information was doubtful at best. When we received the HUD demand initially, we had less than 20 lots unsold. All of the lots were occupied by $25,000.00 and up residences owned by local citizens, with financing for their homes obtained through mortgages from the FHA and local banks and building and loans, all without any real problems.

After about a year of struggle, HUD determined that we would not have any further action taken against us, if future sales were within one of the exemptions in the law, such as the exemption for sales to contractors.

Now, we are unable to sell you a lot, not even if you want the extra space of a vacant lot next door to your new home. We are unwilling to spend the money necessary to do a complete registration with HUD, as this would add to the cost of every lot.

Query: What does any of this have to do with fraudulent inter-state land sales, which have continued? We think HUD wants to regulate every sub-division in the United States of America, whether needed or not, at the home-owners added expense. This makes no sense at all, except in terms of additional bureaucacy to be maintained without regard to purpose at the taxpayer's expense.

We are unwilling to further identify ourselves, as we believe HUD, in its own way, will surely retaliate. Washington should be overloaded with developers subpoenaed with all their records for HUD hearings, from our point of view anyway.

We have been threatened with lawsuits from angry customers who insist that they want to buy a lot from us, but we are forced to tell them that HUD is protecting them and since we don't want to register and stand that extra expense, they just can't buy a lot from us directly. Clearly, the Inter-State Land Sales Act, including its regulations, needs substantial revision to allow orderly development of residential areas, under local and state planning and zoning ordinances building codes. Federal intrusion into this process simply adds to the cost, without meaningful protection to the home-owner.

33-716 O - 78 - 25

DRUSHELLA
Realty
804 EAST PACIFIC BLVD. ALBANY, OREGON

RESIDENTIAL
RURAL
COMMERCIAL

November 1, 1977

Albert E. Abrahams
Vice President, Government Affairs
National Association of Realtors
925 15th Street, NW
Washington, DC 20005

Dear Mr. Abrahams:

I read an article in the National Farm and Land Brokers magazine where hearings will be conducted regarding HUD'S OILSR. I hope something can be done to alleviate the harassment and disasterous effect it has had on us.

Clifford Bishop and myself have a small corporation of division of property. We developed several projects since 1968. We have put in roads to city and state standards etc.

In 1974 we received a letter from HUD stating we were under cease and desist from selling any more properties in Spring Lake Estates, our sub-division. This development had over 80 lots averaging five acres each. We had filled out a nine page public report with the real estate division. It was approved by the Oregon Real Estate Department. This all took place in 1971. When we received the cease and desist, we tried to explain to HUD that a public property report had been filed with the State of Oregon and given to each prospective buyer. But they said we were still under their juriediction and we had to file a property statement and a public report. We started in August of 1974. We got the report filled out after over 100 hours of time spent digging up details as the sub-division was approved three years prior and we had to trace backwards to get the information. We received a letter back from HUD asking for more information and telling us to send $100.00 with every letter or they would not accept it. They would not ask all the questions at once but one or two at a time and we mailed a check each time. This went on for 3 years. We couldn't sell any lots during this period and we sent them over $1,200.00 and made numerous phone calls to Washington D.C. It seemed every time we talked to them on the phone everything was just fine. Then we'd receive a letter from them asking for information which they had had for months.

In February we received a letter stating everything was OK and we could sell. In March we received a letter saying they needed three copies of the Final Report (which they had in their office), but they couldn't copy these reports without us sending them $2.50 for the copy. We sent the $2.50; they sent the copies, we signed them and

DRUSHELLA
Realty

RESIDENTIAL
RURAL
COMMERCIAL
REALTOR

804 EAST PACIFIC BLVD. ALBANY, OREGON

returned them to HUD in April. We presumed this was everything. We heard nothing further from them until September when they wrote and said they did not have the signed copies in their office. We know they received them in April as we have a signed registered letter receipt. Also, they only have 30 days to answer your correspondence and this had been much longer than 30 days..

This whole thing has been the biggest unnecessary harrassment I have ever seen. It has broke the corporation and nothing was said in the 40 page report to HUD that was not stated in the nine page state report. We've tried to call the regional office in Seattle for help but they can't give you any answers as they don't know whats going on in Washington DC.

If any further facts are needed, please get in touch with me as this is merely a brief statement as to what has happened.

Sincerely,

Duane A. Drushella

Duane A. Drushella

P. O. BOX 410
WASILLA, ALASKA

October 26, 1977

Mr. Thomas Krenik
Krenik Realtors
605 "A" Street
Anchorage, Alaska 99501

Dear Tom:

The following information relates to the amount of time and money expended, as well as problems incurred, with HUD regulations as related to OILSR requirements. Transac was first contacted by HUD with regard to their regulations in 1975, 6 years after enactmen of a law with which we were unfamiliar. Having been our broker for some time, you are familiar with the fact that Transac has never engaged in interstate salas.

It has been, and continues to be, our feeling that the OILSR department of HUD is outside of its bounds in requiring filing from our company. The following statements are answers to the specific questions asked by you for use by the National Association of Realtors in hearing to be held involving intrastate sales of land, and the regulation of same by OILSR and HUD.

1. Total costs incurred to date on HUD related work, involving time, materials, copies, legal fees, etc., has amounted to over $6,600 over the past 1 1/2 years It takes approximately 60 hours of work to compile a full Property Report and Statement of Record for a subdivision, now that preliminary studies and contacts have been made. This does not include time spend by agencies compiling information as reguested by the regulations A request for an exemption can feasibly be completed in 20 to 25 hours.

2. A major item of unreasonable action required from OILSR is the requirement of an audit to file on a subdivision with gross sales over $500,000 This is a major expense, not to mention time consuming and disruptive, that Transac would not otherwise incur.

OILSR informed Transac, via our attorney, that subdivisions with lots sold were in violation and would require filing. In compliance, a report was filed (a Statement of Record) for Denali Subdivision. We received a letter from OILSR sta ing that since all lots were sold, they saw no reason to register the subdivision and would return the filing fee. One week later, another letter relating to Denali Subdivision was received stating that the sales were "in violation" and recision letter may be necessary. The letters came from two different individuals.

Many letters from OILSR have indicated different cut off dates for lot sales that were in "violation."

We have been unable to find any part of the HUD regulations relating to OILSR that indicate use of a "Settlement Offer" yet were required to send out 410 letters to buyers from 2 years back offering to buy back their lots. (This incurred a cost of almost $1,000 and only 11 of the lots have been returned.)

Repeated letters from our attorney to OILSR have received a form letter in response that does not answer specific questions relating to our situation.

3. Transac has maintained a policy of selling only to persons who have made an on-site inspection of the property. There is a line to this effect on each closing statement, signed by the purchaser. Less than 2% of all sales made by Transac, Inc have been to individuals with an out of state address. These individuals inspect the property while in Alaska on vacation or business.

4. OILSR has adversely effected Transac, Inc., as a development corporation, by adding further complications to the already involved job of subdividing. This includes the burden of extra paperwork, time taken from employees who could be engaged in other projects, the cost incurred and imposing upon other agencies for documentation. Since we do not sell out side of Alaska, these burdens have been unjustly imposed upon Transac.

5. The best example of the adverse effect OILSR has caused the comsumer arose after mailing of recision letters as required by the "Settlement Offer." Transac received about 100 calls for an explanation from buyers. The let er was very vague and left most individuals with the feeling that Transac was trying to take their land away for less than it is worth (We were required to buy it back at the same price they paid mos lots have appreciated 50% to 100% or more). Another feeling was that this would place a cloud on their title and some buyers called their title company and we in turn received calls from these companies for further explanations.

6. To perpetrate our company, we must be in business to make a profit. As our costs increase, we must pass these costs along to the comsumer in order to maintain an income of a certain percentage. As our costs increase do to further government controls, inflation, or other items, the cost of each lot sold also increases. As the builder pays more for the lots, he must recoup his money by raising the cost of the houses he sells.

7. The closest state line to our subdivisions is some 1,500 air miles away, that of Washington. The only advertising done by our company or real estate brokers employed by us has been within Alaska. Since we are clearly intrastate, OILSR regulations should not concern themselves with our company.

I hope this information will be of help to you, Tom, as well as the National Association of Realtors, in the struggle for clarification of interstate land sales. I have attached a cost breakdown for our secretary's time and other costs incurred in compliance with OILSR regulations.

Sincerely,

Ralph W. Pott
Vice President

[illegible] COSTS TO DATE
[illegible], INC.

October 26, [illegible]

	COPIES	HRS	COST
Preliminary studies and contacts for information		40	290.34
Full Kuskokwim report		60	436.25
Postage			5.00
Filing fee			350.00
Copies	300		30.00
Kina Lane exemption	30	30	221.12
Century Park exemption	50	10	75.71
Cottonwood Shores full	50	30	223.13
Question Lake full	40	30	222.13
Legal fees - Washington attorney			766.04
Donna Willard, Anchorage			1,703.25
Shorewood		60	436.25
Copies (Property report, file copies, etc)	500		50.00
Postage			5.00
Filing fee			350.00
Print property report			75.00
Print deed of trust			17.50
Copy Property Report at 4X copy Center			70.83
Decision		70	508.90
Postage			357.40
Copies	500		50.00
Envelopes	400		87.75

TOTAL COST: $6,565.34

Salaries for time spent by executive members of Transac, Inc. not included.
Hourly rate figured at $6.50 per hour, plus 11.86% overhead
Copies at 10¢ per copy

LAW OFFICES
WHITEFORD, TAYLOR, PRESTON, TRIMBLE & JOHNSTON

305 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
301 825-8642

BALTIMORE OFFICE

October 21, 1977

Mr. Richard A. Moore
Gaylord Brooks Investment Company
P. O. Box 400
Paper Mill Road
Phoenix, Maryland 21131

Re: GBIC - Heritage Farm, Inc.
Our File No. RT 1905.116

Dear Dick:

In response to your letter of October 13, 1977, I can provide the following information concerning my dealings with OILSR:

1. The attorneys' fees for this office in filing for a Statutory Exemption for the property known as Greenfield Heritage Farm, Inc were approximately $1 500.00. To this total, you must add the fee of Bob Kearney Esquire, T. Frederick Feldman, Esquire and Robert M. Strickler, Esquire, all of who performed services in connection with this proposed Statutory Exemption It should be noted that at the time work on this file was terminated, the Statutory Exemption had not been obtained. I have never assembled a complete registration; but based on my exposure to this subject matter, I feel that the attorneys' fees involved in such a project would exceed $10,000.00.

2. As you know, OILSR denied the Statutory Exemption for Greenfield based on a number of items. The Title Opinion on the property prepared by T. Frederick Feldman cited potential dower rights of unknown spouses where deeds in the chain of title had been signed by a man, only. The Exemption was also denied since several power companies had obtained rights of way over portions of the land and the rights of way could not be located on the ground and had never been released.

   These items are of minor nature and occur in every development. To deny an Exemption and require full registration due to these minor matters, is to defeat the purpose of the law by adhering to the letter of the law.

3. In my opinion, the original full Disclosure Act was intended to prevent abuses in the vacation or second-home market. Greenfield was, obviously intended as a primary residential community with residents of both Maryland and Pennsylvania purchasing lots. I believe that subjecting such developments to these laws subverts the purpose of the laws for no good reason.

4. I believe that you would have more accurate information concerning other problems caused to the developer and the consumer as a result of the OILSR.

Please call if I can be of further assistance.

Very truly yours,

Dale B. Garbutt

DBG:lsv

Dale B. Garbutt

audie moore, Realtor/ 326 H Street, Suite 1, Anchorage, Alaska 99501, Ph. (907) 276-2115

October 28, 1977

Albert E. Abrahams
National Association of REALTORS
925 15th Street N.W.
Washington, D. C. 20005

Re: OILSR Rules & Regulations

Dear Al:

Earlier this year I received a letter from HUD informing me that I was possibly in violation of the Interstate Land Sales Act and demanding that I furnish information on any subdivisions in which I might have an interest.

I furnished the information and then was given thirty (30) days to either file a Statement of Record or request an exemption on four (4) different subdivisions in which I was the developer. In either event considerable supporting documentation was required.

We filed for an exemption on each of the subdivisions.

The cost of assembling the various documents for each subdivision was only approximately $100.00 plus the $100.00 filing fee with HUD. However, it took approximately 75 hours of my time which I value at considerably more than $50.00 per hour and approximately 100 hours of my secretary's time at approximately $25.00 per hour to try to understand and comply with the regulations that were furnished us.

Our request for exemption was denied because the number of lots in the four subdivisions, which they claim represented a "common promotional plan", totaled 302 and 300 is their upper limit for exemptions.

We were, however, fortunately provided with a Settlement Offer which we could, and did, sign which required us to send a letter to each purchaser of a lot after August 1, 1975 offering them a return of all their investment in exchange for their interest in the property if they so request within 30 days. We sent the presecribed letter to the lot owners which thoroughly confused them and while the 30 days is not quite up, no one has yet asked for the return of his investment.

A HUD representative from Seattle who was sent to Alaska about a year ago told us, among many other arbitrary rulings, that any subdivisions in the Matanuska-Susitna Borough, where my subdivisions were located, (some of which could be more than 100 miles apart) would be part of a common promotional plan if one person was involved in both subdivisions.

Of the 302 lots in our "common promotional plan" only two (2) were sold to out-of-state residents and none were sold to anyone who did not see the property before agreeing to purchase.

The unwarranted regulations of HUD will prevent me and many other small developers from any additional subdividing.

Per my understanding of the regulations, I could not now even divide one lot into two lots in the Matanuska-Susitna Borough without filing under the Interstate Land Sales Registration Act because it would be part of a "common promotional plan".

In my case most of the lots were already sold and the increased cost due to HUD's arbitrary rulings will have to be borne by me and not passed on to the consumer as they would surely be if I had not decided against any further subdividing.

I hope my letter is not too late to be of use. I just recently returned to Anchorage from a trip.

Sincerely,

Audie L. Moore

Audie L. Moore

ALM:pw

L.A. FELDER
AND ASSOCIATES

October 26, 1977

National Association of Realtors
925 15th Street, N.W.
Washington, D.C. 20005

Attention: Mr. Albert E. Abrahams
Government Affairs Office

Dear Mr. Abrahams,

I am a member of the Austin Board of Realtors as well as the Austin Association of Builders.

The following is my experience in trying to deal with the HUD Office of Interstate Land Sales Registration.

In 1973 I set out to develope approximately 250 lots. It was my intention of building homes on many of these lots myself (which would be exempt from OILSR) and sell the rest to other home builders (which is also exempt). However, to protect my "right" to be able to sell lots to anyone I decided to try to comply with OILSR by either getting an exemption or registering the property.

The following is a brief summary of what happened:

I contacted a law firm around January 1974 to assist me. They first had to research the law.

During the next 12 months of discussing the matter off and on with the law firm I was finally advised that considering the purpose and intent of the development that I should submit for what was referred to as a "300 lot exemption", but they cautioned me that in view of the fact t

I had previously developed some adjoining land the OILSR people could ultimately decline the application for an exemption then I would be bound to apply for a full registration which would require much more legal work and time delays.

In considering their advise I told a friend of mine about the matter and he advised me that a different law firm had obtained an exemption on a different technical matter by applying for an exemption under the "Individual approval" section.

Inasmuch as I wasn't even sure I would be selling lots to individuals I didn't want to risk the expense involved to get a full registration which I was told by me law firm would cost around $5,000.

Being a little disgusted with my law firm for not advising me of the third alternative I hired the second law firm. The first law firm sent me a bill for $1,904.16. (copy "A" attached)

During the next 10 months the second law firm after many conferences with me and OILSR people, a special trip to Washington for one of the lawyers, an exemption was issued to me from OILSR. The total legal fees of $3,009.81 (copies "B" attached)

After two years I thought I had resolved the task of complying with a government requirement However, this was only the beginning. One of my requirements was to file an anual report of sales of lots I sold to individuals. Being the exemption was not issued until July 29, 1975 (see copy "C" attached) and I had no lot sales that year I carelessly failed to file my annual report by the dealine figuring it was not necessary.

In March 1976 I received a termination notice (copy misplaced). I had the law firm see if he could get me reinstated. He did, legal cost $150. (copy "D" attached)

In 1976 I sold two lots to one individual. In December I filed the necessary annual report.

In January 1977 HUD sent two special OILSR investigators here from Houston to examine all my records and related documents.

In March 1977 I received, through my law firm another termination notice. (copy attached) They said I had the purchaser sign one of the preliminary unapproved restrictions. I did not agree, but by this time I was too disgusted and tired to care. I ignored the notice. In April of this year I received a second notice. This time from the "Enforcement Division". (copies attached) I was told to send a letter (of a sample they enclosed) to the one purchaser. The regulations stated that I was not to discuss it with him personally, and send it by registered mail. I am a friend of the purchaser and felt this was ridiculous.

At this point I was more than willing for the whole nightmare to be terminated.

Copies of my letter to OILSR and their reply in attached.

Sincerely,

L.A. Felder

LAF:be
enc.

P.S. The law firm sent me one final bill of $25.00 for forwarding OILSR termination notice to me. (copy attached)

AUSTIN, TEXAS 78701

L. A. Felder, Inc.
537 East Woodward
Austin, Texas 78704

December 10, 1975

December 5, 1975 - Fee for services rendered in connection with HUD claim for exemption including review of June 18, 1975 HUD letter and restrictions; conferences with Mr. Felder and review of HUD rules and regulations; revise claim for exemption; confer with Mrs. Lawhead, HUD, Washington, D.C.; prepare revisions to restrictions and claim for exemption and proceed with filing exemption. ~~$750.00~~ 40.00

IN ORDER TO INSURE THAT PROPER CREDIT IS GIVEN TO YOUR ACCOUNT. PLEASE RETURN A COPY OF THE ENCLOSED STATEMENT WITH YOUR PAYMENT.

May 31, 1975

L. A. Felder, Inc.
537 East Woodward
Austin, Texas

Xerox	$9.85
Travelling expense	353.61
Recording fees	6.00
Miscellaneous expense	15.35
Total	$384.81

GE.I

B840/
6/1.75

IN ORDER TO INCURE THAT PROPER CREDIT IS GIVEN TO YOUR ACCOUNT, PLEASE RETURN A COPY OF THE ENCLOSED STATEMENT WITH YOUR PAYMENT.

L. A. Felder
537 East Woodward
Austin, Texas

June 3, 1975 - Fee for services rendered from February through May, 1975, in connection with a claim for exemption to be filed with the Office of the Interstate Land Sales Registration for various lots in Granada Hills and lots in Granada Estates, Section I, including initial conferences with Mr. Felder regarding the past operations of the subdivision; discretion of builder's exemption and various other claims for exemption; review documents received from Mr. Felder in connection with proposed interstate exemption; research in HUD regulations and Interstate Land Sales Registration Act regarding amount of lots actually included within the subdivision and conference with Mr. Felder regarding onsite exemption; telephone conferences with Mr. Plantz and Ms. Spivo regardint the possibilities of converting a builder's exemption to an onsite exemption and telephone conferences with Mr. Felder regarding same; preparation of draft statement of reservations, restrictions, taxes and assessments and draft claim for exemption for onsite exemption; tolephone conferences with Messrs. Snyder and Kelly at the title company regarding mortgagee's title policy and title opinion necessary for lots in Granada Hills; continue working on draft statement of reservations; title search on lots within Granada Hills and preparation of opinion letter after a trip to Stewart Title Company; preparation of quitclaim deed in connection with one lot located within Granada Hills; final draft of opinion letter; preparation of exhibits, including all plats and reservations and restrictions; work on final form claim for exemption and statement and telephone conferences with Ms. Spivo regarding various problems with the claim for exemption; telephone conferences regarding summary of taxes on various lots; preparation of plats as exhibits; trip to Washington, D. C., to present claim for exemption and meetings with Mr. Plantz and Ms. Spivo regarding claim for exemption; and telephone conference with Mr. Felder regarding filed claim. 1,850.00

L. A. Felder, Inc.
Mr. L. A. Felder
537 Woodward
Austin, Texas

October 14, 1975

STATEMENT FOR SERVICES RENDERED

For professional services in connection with the final preparation of restrictions for Granada Estates, section 1, including complete review of restrictions and meeting with Mr. Felder to review final draft of restrictions; preparation of final draft after review of the requirements of the Office of Interstate Land Sales Registration and preparation of ratification agreement in connection with a prior sale of a lot in Granada Estates, section 1.

For services as above----------$150.00

L. A. Felder, Inc.
537 Woodward
Austin, Texas

October 14, 1975

STATEMENT FOR SERVICES RENDERED

For professional services in connection with Granada Hills and the inquiries from the Office of Interstate Land Sales Registration regarding prior lot sales including review of all prior lot sales and the letter from Mr. Diehl; telephone conferences with Mr. Felder and several telephone conferences with Mr. Diehl at OILSR; research into previous version of the regulation promulagted by the Office of Interstate Land Sales Registration during the period 1972-1975 to determine whether the now inapplicable intra-state exemption would apply to some of the prior lot sales; telephone conferences with Mr. Diehl resulting in the determination that only three of the prior lot sales required notification of rights of recission; preparation of two affidavits in connection with the sale of lots in Granada Estates, section 1, and prior lot sales in Granada Hills.

For services as above----------$225.00

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20410

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Gordon E. Wise, Esquire
Brown, Maroney, Rose, Baker
& Barber
221 West Sixth Street
Austin, Texas 78701

JUL 29 1975

IN REPLY REFER TO
XD (6/75)
A-488-73-C
Ms. Lambead
(202) 755-2390

Dear Mr. Wise:

Subject: OILSR No. 2-0980-49-99, Granada Estates, 78 lots.

This Office has received your Claim of Exemption-Affirmation and a copy of the Statement of Reservations, Restrictions, Taxes and Assessments on the captioned subdivision.

We have approved the Statement of Reservations, Restrictions, Taxes and Assessments as to form and content based on the information which you have submitted. This approval is not to be construed as an opinion by this Office that the actual method of sale qualifies the subdivision for the exemption from the full filing and disclosure requirements of the Interstate Land Sales Full Disclosure Act, but only that the developer has complied with the procedural requirements for claiming such exemption and has represented that the method of sale meets the requirements for exemption.

This approval is limited to the lots which are the subject of the Claim of Exemption and does not extend to the resale of any such lots.

Any representation that this subdivision has been registered with or approved by this Office or the U. S. Department of Housing and Urban Development would be in violation of the Act. If any reservation, restriction, tax or assessment, whether or not of record, has not been fully disclosed in the Statement approved by this Office, any sale made by means of such incomplete or untrue Statement would also be in violation of the Act and could subject the developer to both civil liability and criminal penalty.

This approval is based upon your representation that no sales offerings are being made in connection with this subdivision other than the lots affirmed to by the developer in the documentation of the filing. We also rely on the representation by you that the continued operation of this

subdivision will be in a manner consistent with the Claim of Exemption and that the acknowledged copies of purchaser's statement together with the developer's affirmations will be filed timely with this Office as required by Section 1710.11(b) of the Regulations. If you have relied upon the provisions of Section 1710.11(c)(1) of the section to establish the time of sale, you must file with each acknowledged statement and affirmation a copy of the applicable contract of sale.

This will be the only notification of the reporting requirement of Section 1710.11(b). Failure to submit the required acknowledged copies of the Statements of Reservations, Restrictions, Taxes and Assessments, the contract of sale if required, and the developer's signed affirmation within 31 days (post marked not later than each January 31) after the expiration of each calendar year will automatically revoke this approval for the entire preceding calendar year. Such revocation will make voidable, at purchaser's option, any sale made during that calendar year. In addition, such revocation will necessitate your applying for a new exemption. However, even if your request for a new exemption is approved, it is not retroactive and loss of the exemption during the previous year will not be affected. Furthermore, any nonexempt sales would be in violation of the Act.

Sincerely,

By [illegible]
Deputy Administrator

John R. McDowell
Interstate Land Sales Administrator (Acting)

cc: Mr. L. A. Felder

August 31, 1976

821

L. A. Felder, Inc.
537 Woodward
Austin, Texas 78704

Telephone tolls.	$3.81

Aug. 23, 1976 - Fee for services rendered in connection with termination notice from HUD, including conferences with Mrs. Sprigg at HUD and Mr. Felder; preparation of reinstatement of exemption letter; conferences with Mr. Felder, regarding conveyance of lot to Homeowners Association and preparation of deed and letter. 150.00

B10257
9-13-76

IN ORDER TO INSURE THAT PROPER CREDIT IS GIVEN TO YOUR ACCOUNT, PLEASE RETURN A COPY OF THE ENCLOSED STATEMENT WITH YOUR PAYMENT.

D

Mr. L. A. Felder
8016 El Dorado
Austin, Texas 78737

Dear Mr. Felder:

Enclosed is a copy of the Termination Notice from HUD which we received this morning and which I duscussed with you by telephone.

Let us know if you wish to take any further action in this regard.

Yours truly,

J. Cary Barton

JCB:lam
Enclosure

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20410

TERMINATION NOTICE

IN REPLY REFER TO:

MAR 9 1977

DB
(202) 755-2390

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
J. Cary Barton, Esquire
Brown, Maroney, Ross, Baker & Barber
1300 American Bank Tower
221 West Sixth Street
Austin, Texas 78701

Dear Mr. Barton:

Subject: OILSR No. 2-0980-49-99
Granada Hills/Estates, Section 1

You are hereby notified that the Statement of Reservations, Restrictions, Taxes and Assessments approved by this Office on July 29, 1975, is terminated.

The restrictions which were approved as part of your Statement of Reservations, Restrictions, Taxes and Assessments on July 17, 1975, were not the ones which you included in the statements given to purchasers in 1976. Actually, they were the restrictions which were partially disapproved by this Office on June 18, 1975.

If you wish, you may request reconsideration and present evidence to the Administrator indicating that this action is not justified based on the requirements of the Act and the Regulations promulgated thereunder.

If you wish to reapply for a Claim of Exemption under Section 1710.11 of the Regulations, you must file a Claim of Exemption in the form set forth in Section 1710.101 and a Statement of Reservations, Restrictions, Taxes and Assessments in accordance with Section 1710.102. In addition, you must submit evidence of title, a copy of the sales contract to be used, a plat of the subdivision and any promotional material which you have available.

2

In the alternative, if you wish to enter into non-exempt transactions, you must file a Statement of Record, together with supporting documents in accordance with the instructions and format outlined in Part 1710 of Title 24 of the Code of Federal Regulations. Please indicate your intentions within 30 days of your receipt of this letter.

Sincerely,

Elmer J. Koppler
Associate Administrator

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20410

APR 11 1977

IN REPLY REFER TO:
Winkler

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Cary Barton, Esquire
Brown, Maroney, Rose, Baker
and Barber
1300 American Bank Tower
221 West Sixth Street
Austin, Texas 78701

Dear Mr. Barton:

Subject: Granada Hills/Estates, Section 1; OILSR No. 2-0980-49-99

A review of the developer's acknowledged statements for 1976 shows that the developer gave a non-approved copy of the Statement of Reservations, Restrictions, Taxes and Assessments to that year's lot purchaser. Accordingly, that sale was not made pursuant to the exemption and was in violation of the Interstate Land Sales Full Disclosure Act.

To administratively settle this matter and in lieu of any further agency action based on the present facts concerning the sale or lease of lots prior to your compliance with the Rules and Regulations of the Interstate Land Sales Full Disclosure Act, we request that you agree to the terms of the enclosed administrative Settlement Offer.

This agreement will include sending a letter to the sole purchaser in 1976. This letter shall notify that person that since you had neither perfected a full Statement of Record nor received an affirmative exemption order at the time of sale, he has the right under Section 1404(b) of the Act to void his contract and receive a complete refund of all monies paid on account of the said contract, including principal, interest, taxes, special assessments and property owners association dues. This letter need not be sent to that purchaser if he: 1) bought a lot with an existing dwelling; or, 2) is a contractor engaged in the business of building; or, 3) has subsequently resold the property and can no longer reconvey the property to you.

The text of the enclosed letter is to be used. Any change in the text or form of this letter requires the approval of this Office before any mailing. No item is to accompany this letter other than a copy of a currently effective Property Report if you have effected a registration with this Office. The letter shall be sent certified mail, return receipt requested. The return receipt shall be retained in your files.

You are advised that the thirty (30) days mentioned in the model letter is in no way to be considered a limitation on the right of the purchaser to void his contract or to bring suit under the Act for a refund or damages. Neither you nor this Office can abridge this right.

If you accept this proposed settlement agreement, please execute the enclosed Settlement Offer and return it to this Office within 20 days of your receipt of this letter. If you fail to respond to this letter within the allotted time, we shall assume that you have rejected the Settlement Offer and consequently, we will assume the responsibility of notifying purchasers of their rights and consider what further action may be necessary to protect purchasers and assure full compliance with the provisions of the Interstate Land Sales Full Disclosure Act.

Please inform us of your intentions regarding the submission of a Statement of Record or an exemption request. Questions concerning filing a Statement of Record or submitting an exemption request can be directed to our Examination Division, (202) 755-5356, or Exemption Staff, (202) 755-2390.

In reply, please refer to Ed Winkler.

Sincerely,

H. William Rogers
Director
Land Sales Enforcement Division

Enclosures

May 25, 1977

Department of Housing and Urban Development
Office of Interstate Land Sales Registration
Washington, D.C. 20410

Attention: Mr. William Rogers

Ref: Ed Winkler

Subject: Granada Hills/Estates, Section I;
OILSR No. 2-0980-49-99

Dear Mr. Rogers,

To comply with your April 11, 1977 request, I am attaching a receipted copy of your form #FR1-376. It was given to the only purchaser of unimporved lots in Granada Estates Section I.

I would like to add that I am primarily engaged in the home building business. It is my intention to build homes on all the remaining lots in Granada Estates, Section I.

Sincerely,

L.A. Felder

LAF:be
enc.

RA1-376

MAY 25, 1977

Dear JOHN H. CLUTCHFIELD,

We are writing you at the request of the Office of Interstate Land Sales Registration to inform you of a matter of interest to you concerning your agreement to purchase ~~a~~ 2 LOTS IN GRANADA ESTATES SEC. 1.

At the time you entered into your lot agreement, there had been no effective Statement of Record filed with the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, nor had an exemption been established as required by the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., which became effective on April 28, 1969.

In view of the fact that your purchase agreement occurred prior to the effective date for an exemption or a Statement of Record in accordance with the Rules and Regulations of the Act, you may, if you wish, void your sales contract and any payments made pursuant to this agreement will be refunded. If you have resold your lot, however, your right to cancel has expired and is not transferable to the second buyer. If you have made improvements to your lot and feel you have been damaged, you may have to file suit if you wish to recover those damages.

So that our records may be brought up-to-date, we ask that you notify us of your intention within thirty (30) days from the date that you receive this letter, after which time we will assume that you wish to retain your interest in the property. In the event your property has been deeded to you and you elect to receive a refund within the period indicated, prior to such refund, you will be required to execute the necessary documents to reconvey the property to us free of any restrictions and encumbrances other than those contained in our original Deed of Conveyances to you.

If you have any questions regarding this matter, please feel free to call this Office and every effort will be made to assist you.

YOURS TRULY,
L.A. FELDER INC.
By L.A. Felder (Pres.)

RECEIVED BY
John H. Clutchfield

DATE May 25, 1977

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20410

JUN 21 1977

IN REPLY REFER TO:
Winkler
R77-260

Mr. L. A. Felder
L. A. Felder and Associates
8016 El Dorado
Austin, Texas 78737

Dear Mr. Felder:

Subject: Granada Hills/Estates, Section I, OILSR No. 2-0980-49-99

This will acknowledge receipt of your letter of May 25, 1977 and the copy of the letter sent to Mr. Crutchfield. Thank you for your cooperation in the resolution of this matter.

Sincerely,

H. William Rogers
Director
Land Sales Enforcement Division

821

MATTER: ISLS Application

TO L. A. Felder, Inc.
537 Woodward
Austin, Texas

DATE: February 5, 1975

STATEMENT FOR PERIOD: Through Date

	$	$
Services re:		
January (1974) conf. Felder		30.00
February (1974) Fee to Alan Minter re research and preparation question and answer sheet		342.50
May (1974) Conf. Felder, Minter and Davidson		100.00
June (1974) Conf. Minter, Campbell		40.00
July (1974) Confs. Minter, Davidson, Campbell re questionaire		230.00
January (1975) Confs. Minter, Davidson, Campbell, Felder re ISLS filing; examination of question and answer sheet and draft; preparation application and examination final draft		1140.00
Telephone Calls		10.46
Xerox Charge		11.20
TOTAL		$1904.1

B80179
3-12-75

July 19, 1977

Mr. L. A. Felder
L. A. Felder, Inc.
537 Woodward
Austin, Texas 78704

Legal services rendered during March and April, 1977, regarding notices from the Office of Interstate Land Sales Registration and telephone conferences and correspondence with Mr. Felder.....$25.00

821

IN ORDER TO INSURE THAT PROPER CREDIT IS GIVEN TO YOUR ACCOUNT, PLEASE RETURN A COPY OF THE ENCLOSED STATEMENT WITH YOUR PAYMENT.

BEASLEY-KELSO Associates, Inc.

A. REXFORD WILLIS, JR., C.P.C.U.
STEWART H. SMITH, GRI

INSURANCE - REAL ESTATE - INVESTMENTS

DRAWER K, 1402 NEUSE BLVD.
NEW BERN, N. C. 28560
(919) 633-3043

October 21, 1977

Mr. Dudley L. O'Neal, Jr.
Government Affairs Office NARS
925 15th Street N.W.
Washington 25, DC 20005

Dear Dudley:

Without exhaustive research on tying down specifics, it will be impossible for me to be as detailed as I would like to be. I am speaking here from my experience and the experience of my attorney, who has carried the lion's share of the load of OILSR.

1. a. The time and cost involved in filing and exemption indicate a minimum of three months delay and cost of $5000.00 upwards.

   b. The time and cost involved in complete registration would span a minimum of six months time and in excess of $10,000.00 in cost.

2. I'm not sure it is a question of being unreasonable, arbitrary, or bureaucratic, but more a case of the instability of the Rules(change before resubmit), lack of experience in the true understanding of land development, excessive work load not anticipated, and in some instances, carelessness in handling applications. If we must have rules such as these. let's staff for it and budget for personnel before instituting.

3. I believe this question can be answered affirmatively on the total issue.

4 The main burden shared by the developer, builder, and financier is

33-716 O - 78 - 27

a. A burdensome and somewhat unrealistic set of requirements.

b. Delay in sales, thereby increasing land and development cost to the consumer.

c. The timeliness of returning applications and corrections.

d. Certainly does decrease competition, hereby adding adding additional cost to the consumer.

e. Holding a Realtor in limbo awaiting right to sell

f. Rarely provides any more safeguard to the consumer than the average developer would do anyway.

5. Adverse effect on the consumer, runs hand in glove with the above mentioned additional cost, delay of land occupancy, uncertainty of contract, no simple explanation without volumes of reading, and slows competition, since some landowners and developers will not contend with it.

6. It is possible to derive considerable data from the above, which would substancially increase cost as well as being detrimental to the time of purchase.

I would like to recommend two approaches relative to these regulations, being:

1. To those local, county, or state agencies having land use or subdivision plans, issue instructions as to a minimum number of permits they must cover to make their regulations, when complied with, [illegible] materially exempt from OILSR.

2. Wherein we we have adequate regulations at local level, have a department within HUD that could and would expeditious y review same and approve for satisfying compliance with Federal regulations.

Land control and land use just basically are not a function of national government, as we are are all devious in what we consider good use (i.e. progress vs poverty). Our states, and

even counties, should be vested with this responsibility. They could handle it.

Let's start punishing the bad guys, and encouraging the good guys to proceed in their best of land use controls.

I hope, Dudley, this will be of some help.

Sincerely,

Clarence B. Beasley

CBB:bw
xc: Dan Hanrahan
Al Abrahams

KRENIK INC., REALTORS 605 A STREET ANCHORAGE, ALASKA 99501 TELEPHONE (907) 276-3404

KRENIK INC., REALTORS PARKS HWY P.O. BOX 420 WASILLA, ALASKA 99687 TELEPHONE (907) 376-5222

October 25, 1977

Albert E. Abrahams, Staff Vice President
National Association of Realtors
Government Affairs
925 15th Street
Washington, D. C. 200005

RE: Interstate Land Sales Regulations

Gentlemen:

In regards to your call to action dated September 29, 1977, which I was just made aware of, I would like to provide the following information for your use at hearings regarding Interstate Land Sales.

Being from Alaska, we have particular proof that OILSR is regulating IntraState lands sales in that our advertising media does not cross state lines Our newspapers have less than a two percent out of state circulation. I am enclosing a statement from a development corporation, Transac Inc. which we have represented on several occasions on subdivision sales. The Statement speaks for itself.

My company specializes in land sales in the Matanuska Valley of Alaska, which is located fifty miles north of Anchorage. Although we have not had the occasion to do a HUD filing ourselves, many of our clients have I would like to pass on some of the thoughts and experiences some of our clients have had.

I, first, would like to mention that OILSR has only enforced their regulations in Alaska for the past two years. They originally came in with a bang and immediately tried to put a stop to all illegal subdivisions. They even went so far as to issue cease and desist orders and subpeoned developers to Washington, D.C. The developers in our area were not aware of the regulations and did not feel they were in violation since they were selling sales within Alaska and with onsite inspections.

Through our local Association of Realtors and pressures applied through our congressional delegation, OILSR sent a representative to Alaska to give a short talk on the regulations at the local HUD office. All along, the

local HUD office was instructed by OILSR not to give any information out regarding the regulations, but refer all inquires to their Washington, D.C. office. At this particular meeting the consensus of the developers present was they really don't want to be breaking the law and would like to comply, however, the instructions for filing were extremely complicated and ambiguous. They requested that OILSR send a representative to Alaska to hold a seminar on how to file. OILSR responded that they did not have the manpower or the budget to send someone for that purpose. They informed us that we would have to work directly with the Washington, D.C. office like everyone else.

As a result of this, several Charlatans appeared in Alaska who claimed to be experts in HUD filings. One, for instance, a Mr. Bob Andres, charged anywhere from $5,000-$20,000 to do HUD filings for local Developers. OILSR at that time was very tight and granted very few exemptions. In months following, our congressional delegation applied pressures, plus the fact that data was produced to prove our media did not cross state lines and as a result, in recent months OILSR has been more liberal in granting exemptions in Alaska. As it stands right now, the going rate to have someone do a filing for you in Alaska is $1000 for an exemption and $5000 for a complete filing.

In answer to some of your questions on your call to action, I would like to provide the following information.

In regards to the time and cost involved in filing, the regestration fee and the cost of preparing the filing are insignificant when compared to the costs encountered by holding a fully developed subdivision off the market for six months. A current subdivision we are now marketing called Summerwoods Subdivision, was developed by LOMA PRIETA Development Corporation. They started working on the application for an exemption in March of 1977. Between correspondence and unanswered questions and delays of OILSR, the exemption was not granted until September 1977, a period of six months. The cost of holding that one and a half million dollar development off the market for six months must be passed on to the consumer.

In regards to the adverse effects, the OILSR rules and regulations cause the consumer, the following is provided:

We have sold approximately 500 lots to customers in developments of Transac, Inc. They were required to send letters of recision ("Settlement Offer") to the buyers. The value of the lots they had originally purchased had already doubled. When these letters went out we were flooded with calls from buyer. They did not understand what was going on and they thought they were required to sell back

the property at the original purchase price and they thought we were crooked and they did not have the proper title to their property; many threatened legal action; we not only had calls from buyers, but many had hired attorneys to look into the matter. It took many hours of our time to explain to these people what was going on. In order to explain it you just about had to explain all of the OILSR rules and regulations which are hard enough for a developer to understand.

I would also like to mention that I have sold many lots and seen many sold where a property report is given to the buyer at the time of sale I have never seen a buyer read the complete report before he signs the receipt saying that he has received and read a property report before buying Personally, I don't think the property report has any effect on the buyer whatsoever. They look at it as a Government form and a requirement to purchase the property In my opinion, if the buying public was reading the reports they would not have bought the hundreds of millions of junk undeveloped property that we have seen sold in Florida and Arizona.

I feel the only possible way the Government is going to protect the consumer is to set standards for Interstate Land Sales and make it a criminal violation for anyone who violates them. personally do not like this kind of legislation.) This would eliminate the unnecessary filings, paperwork and red tape. There would be no expense or time delay for the honest developer. The Government could spend their time and money on investigating and prosecuting the dishonest ones.

I would also like to point out that in regards to the attached statement from Transac, Inc., it is possible for either their Washington, D.C. attorney or representative of their firm to be available for testimony at the hearing. If you need further information, contact them direct, as I will be on a cruise to the Miami Convention. At the Convention, I will be staying at the Seasons Hotel.

I would also like to mention that I am the Alaska State Chapter President of the Farm and Land Institute and the opinions expressed here are very close to the consensus of our membership.

Cordially,
KRENIK INCORPORATED, REALTORS

Thomas F. Krenik, President

TFK/pr
Enclosure
cc: Audi Moore

The REESE COMPANY, INC.
REALTORS & CONSULTANTS
SINCE 1907

RECEIVED SEP 26 1977

September 23, 1977

Mr. Albert E. Abrahams
Staff Vice President
Government Affairs
National Association of Realtors
925 15th Street
Washington, D. C. 20005

RE: OILSR

Dear Mr. Abrahams:

I enclose the attachments of my misplaced letter of October 11, 1976.

Because the size of my "confession" discourages its research I would point out that the OILSR had to waste their time and our money on an operation that, -

1. Had no mortgage on the land subdivided and gave buyers free and clear title insurance policies.
2. Paved all roads and installed water and gas mains in front of each lot and paid in full for these services before the first lot was sold.
3. Never sold a lot to a purchaser who had not inspected it and usually more than once.
4. Before signing a buyer up furnished him with a voluminous property report printed years before OILSR "invented" such a report.
5. Who averaged sales of less than 10 lots a year since opening in 1964. (The Interstate Land Sales Act said the secretary could exempt "any subdivision....if he finds enforcement....not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited nature of the public offering.")

I can only add to the history that not one lot purchaser to this day, two years later, has exhibited any unhappiness with

2212 THIRD AVENUE NORTH BIRMINGHAM, ALABAMA 35203
(205) 251-0225

Mr. Albert E. Abrahams
Page 2
September 22, 1977

his lot purchase at Mays Bend. And of the 38 purchasers HUD wrote telling them how to get a refund of cost, taxes paid, and interest to date not one has asked for a refund. In fact, all 9 who responded wrote letters of indignation at the OILS actions or of satisfaction with their purchase. (See enclosed)

Sincerely,

Louie Reese MAI, SIR, CPM, CRE

LR/kpb
Enclosures

Route 4, Box 554
Pell City, Alabama 35125
August 12, 1975

Mr. John R. McDowell
Department of Housing and Urban Development
Office of Interstate Land Sales Registration
Washington, D. C. 20410

Dear Mr. McDowell:

Having reviewed a letter from The Reese Company, Inc., Birmingham, Alabama, and the letter from you, relative to the selling of property within Mays Bend, Logan Martin Lake, St. Clair County, Alabama, I can only conclude that someone or group, employed by HUD, is completely without something to do to earn their salary They apparently then have decided to make themselves a job of irritating, or for use of a better verb, infuriating the land owners of Mays Bend and The Reese Company, Inc.

The Reese Company, Inc. did not sell me the lot I purchased, I went to them to buy it. I had completely investigated the sub-division before decided to buy, or even to talk with their agent. discovered in my investigation, from talking with other completely satisfied property owners that there was adequate electricity, gas water, roads, and that title insurance proving free title, would be provided with the purchase of each lot. My mind had been definitely made up before contact with them.

While I do not reside in Mays Bend permanently at this time, I have built a home with the intention of retiring there in some future year. I look forward eagerly to doing this, as each time I go out I find it a happier place to live. We have had little or no vanderlism in this area, due to the many permanent residents (twelve of sixteen homes).

I talked with the agent on two occasions. The first, was with the purpose of being taken onto the property from the water frontage, the second time to sign the contract to purchase. I had no literature mailed to me, no phone calls, or any solitation of any kind.

I do not know the intent of the law (15 USC 1702B), but I feel that The Secretary of HUD should exempt this sub-division from registration under the Interstate Land Sales Act, as few of the lots sold were to people residing outside the State of Alabama. The Reese Company, Inc has made not attempts to sell lots in Mays Ben to non-residents of Alabama by mail advertising or otherwise.

I, as a property owner in Mays Bend, appreciate the interest of HUD in my welfare, but I feel the HUD organization has "stopped preaching and begun to meddle" into the affairs of The Reese Company Inc. and the property owners of Mays Bend. Perhaps as a citizen, I could suggest that there are other means by which to spend my tax dollars, that would be of more benefit to the residents of our community.

Sincerely,

Jean Whitehead

(Miss) Jean Whitehead

cc: Mr. Louis Reese III
Mr. Jim Fing, Jr.
Rep. John Buchanan

June 11, 1975

Mr. Louis Reese
The Reese Company, Inc.
2212 3rd Avenue
Birmingham, Alabama 35203

Dear Mr. Reese:

Just a note to reaffirm the high regard we have for your company and its personnel. Certainly in dealing with us in our purchase of the several lots we own in Mays Bend all transactions have been handled in accordance with the high ethical standards of your company and completely to our satisfaction.

do not want to be critical of HUD and the Interstate Sales Act, for I recognize the necessity of protecting citizens against unscrupulous companies engaged in interstate land sales. On the other hand, I am very sorry you are experiencing difficulty with HUD through failure to comply with a regulation of which, I feel sure, you were either unaware, or thought did not apply to your Mays Bend development. Regretfully, I do not have time to study the regulation in detail, but from what your letter indicates it would seem to me that on the basis of your having made only three interstate sales since commencing the development in 1965, it would come within the exception cited Three interstate sales out of one hundred and fourteen, over a period of ten years with no advertising interstate, would seem to bring Mays Bend within the purview of the exception and intent of the Act, particularly if your company will now comply and register with HUD. Too, since you did not advertise interstate, the four sales must have been made to individuals who had either seen the property or had first hand information from friends who had seen it. Any person who has read the data which your company representative gives to each lot purchaser, who visits the subdivision, or makes prudent inqury by mail, could readily determine that you made no "false and misleading promises regarding the nature of the land and the type of community in which it is located."

Again, I want you to know that my sisters and I are pleased with all aspects of Mays Bend. We are thoroughly enjoying our house there and in fact, should any of the waterfront lots in the First Sector return to you as a result of the HUD controversy, we would like you to contact us so that we may discuss purchase of additional lots.

I hope you will be able, in some way, to resolve this matter without expensive litigation. If there is any way I can be of assistance, please let me know.

Very truly yours,

(Miss) Elloetain Wright
124 Eastwood Drive, Lakeshore
Birmingham, Alabama 35209
House Location - Mays Bend Lots 7 and 8.

SULLIVAN, LONG & HAGERTY
GENERAL CONTRACTORS
INDUSTRIAL, MUNICIPAL AND BUILDING CONSTRUCTION
BUILDING AND GENERAL DIVISION
BIRMINGHAM, ALABAMA
801 FIFTH AVENUE NORTH
BIRMINGHAM, ALA. 35203
TELEPHONE 205/251-6251
REPLY TO
P. O. BOX 2847
BIRMINGHAM, ALA. 35201

August 12, 1975

The Reese Company, Inc.
2212 Third Avenue North
Birmingham, Alabama 35203

RE: Mays Bend Subdivision
Lot No. 142

Gentlemen:

In August 1972 I purchased Lot #142 in your Mays Bend Subdivision for $12,500.00. I am very pleased with this purchase and I would like to express my appreciation for the prompt completion of the paving, gas lines and water lines.

I am still of the opinion that Lot #142 is one of the most beautiful lots on Logan Martin Lake.

Sincerely,

Chas. A. Long Jr.

Charles A. Long, Jr.

CALjr/ss

Weyerhaeuser Company
Dierks Division
P. O. Box 1060
Hot Springs, Arkansas 71901

June 13, 1975
Hot Springs, Ark.

Mr. Louie Reese
The Reese Company, Inc.
2212 Third Avenue North,
Birmingham, Alabama 35203

Dear Mr. Reese:

I have your letter of June 9 concerning the Department of Housing and Urban Development - Mays Bend Subdivision.

For the record, I must be the Purchaser referred to as a resident in the state of Arkansas, furthermore, I have no complaint with respect to the manner in which this lot was sold to me. My dealings with your Company has left nothing to be desired.

If I can be of any further assistance in connection with this matter, please advise.

Yours truly,

O. L. Flemming
305 Mitchell Street
Hot Springs, Arkansas 71901

June 13, 1975

Mr. Louie Reese
The Reese Company
2212 Third Avenue North
Birmingham, Alabama 35203

Dear Mr. Reese:

I received your letter of June 9, 1975, concerning HUD's intervention in your business, and I am most disappointed to learn that another federal bureaucracy has overstepped the authority that was granted by Congress. I will agree with you that, in some cases, the law is beneficial to the purchaser and, in fact, was necessary to protect people from fraudulent operations.

As an owner of one of your lots in the Mays Bend Subdivision located on Logan Martin Lake, I have been most pleased with your company's performance and feel that in no way was there any misrepresentation, pressure, or quick sales efforts. I personally visited the lot several times and, at your salesman's suggestion, got in his boat and approached the property from the lake side to get a good idea as to how the water front looked. I cannot understand HUD's refusal to grant you an exemption in view of your company's performance The streets have been paved, the water system is in, and your company has constructed a nice public boat launch, pier parking facilities, and picnic tables for the sole use of property owners Your company even did some extra grading for me after the lot was purchased and I never received a bill. I have several friends who have also purchased lots and have built homes there I have had nothing but favorable comments from them concerning your company.

Additionally, I believe that your company mailed me a letter after I paid my earnest money and before closing offering me the opportunity to cancel my sale. I could not locate this letter in my file, but I believe my memory is correct.

You may use this letter in any way you see fit, and, by copy of this letter and a copy of your letter which I am enclosing to Representative John Buchanan and Senator John Sparkman, I am asking that they intervene in your behalf with HUD in Washington.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

C. B. McArthur

cc: Representative John Buchanan (with enclosures)
Senator John Sparkman (with enclosures)

Confessions of a land sales "con artist."

As made to Senator Harrison Williams sponsor of a well intended law obviously perverted by bureaucratic ruling.

If we bore you with the length of this epistle, charge it up to our feeling of righteous indignation at becoming entangled in the skeins of one of the Washington bureaucracies which we had read so much about, but, for the first time, fully experienced. And what an experience it was!

As ethical land developers for four generations we stood accused by a division of the Department of Housing and Urban Development (HUD) of selling lots in interstate commerce, and since the law they administer was specifically directed at such activities, with the inference of course that we are conducting a fraudulent, high pressure sales campaign and have cheated our customers at a recreational subdivision, Mays Bend. We deny all these accusations. We think this is proved by the fact that HUD on July 3, 1975 wrote our lot purchasers that because we had not effectively filed under the Interstate Land Sales Registration Act purchasers could void their purchase and receive refund of all payments made. And not one purchaser asked for refund or complained in any way about the deal they had made. However, 8 of the 38 written by HUD wrote letters comfirming their happiness with their purchase.

Under frequent "reminder" of a possible $10,000 fine and two years in the Federal penitentiary HUD has requested that under their interpretation of the law we write all recent lot purchasers at Mays Bend, a high-class ethically sold community of recreational homes on Lake Logan Martin, a letter the exact text to be dictated by them, with no accompanying letter or "item". In it we were to admit out "guilt", and offer to repurchase all lots reimbursing the owner for all principal, interest, taxes, special assessments or property owners association dues. When we catagorically denied any improper dealings with our lot purchasers and refused to admit any such dealings or sign such a letter without at least being able to have our side of the controversy accompany it, HUD then sent the letter out itself as noted above on July 3, 1975, 4 days after we had filed for an injunction in Federal Court to prevent it.

We did write our purchasers that if they contend that any material facts respecting the lot purchased by him were misrepresented to him or concealed from him, or if he has any other grievance with respect to the manner in which his lot was sold to him, we would like to be so advised. If we find that any such complaint has any merit, we will take whatever action shall be necessary to redress the same

But to back up a little we should first explain that the Interstate Land Sales Act was passed with the laudatory purpose of eliminating certain practices in interstate land sales which went beyond that engaged in and thought ethical by established Realtors who believed that their businesses thrived on satisfied customers.

A large segment of this selling involved the subdivision of nearly worthless land in Florida or the west, and sales by mail to eastern people who could ill afford to go so far to inspect the property, which lack of inspection allowed rather wild inferences if not misrepresentations in the selling literature.

Another segment involved on site sales and inspections in which the salesmen by intercom radios and other means persuaded the purchasers that several purchasers were about ready to sign up on the lot being shown unless they signed up at once. All sorts of premiums and cash were offered to get the buyers to the property. Free dinners were held in which enthusiastic stooges reacted glowingly to the sales pitches and talked of immediate mass purchases, etc., etc. Transportation, lodging, etc. were sometimes offered.

In many cases the promoters did not even own the land, or if they did it was subject to heavy mortgages. And/or they had not yet installed utilities and paving, or if they had, they were not paid for.

In all cases the lot prices were very high in order to cover the very heavy "high pressure" advertising and selling expenses, salesmens commissions alone often running as high as 35% of the sales prices. And advertising and promotion often even higher.

If their sales were successful, I presume most of these developers plowed the cash received over selling expenses into the amenities promised and roads, utilities, etc. On the other hand, if the project was a failure, the promoters had little of their own money in the project and could walk away with a shrug and tell those already having bought lots, "too bad about the paving and utilities on your street, our grand plan just didn't work out."

We think it interesting to note that in the July 23, 1973 Sports Illustrated quoted an aide to George Bernstein, OILSR Administrator to the effect, "Around here we rate developers from 0 to minus 10".

Mr. Bernstein himself was more moderate. "The greatest service", he said, "we can perform is to scare hell out of people. We've got to make them stop buying land as if it were a TV set."

Mr. Bernstein is also quoted in Sports Illustrated as saying, "I cut the big red apple and watch the worms crawl out", while at another time he stated that practically all the abuses in land sales were sales by mail where the buyer had not inspected the property.

But why is it that no one in HUD recognizes that there just might be a few honest and ethical land sales people?

The above explanation of the evils the law was aimed at was necessary to illustrate why I think it so foolish for this bureau to be harassing legitimate land sales people, such as we feel we are, rather than using every ounce of their energy on the real "flim flam" artists. But this grasping for more and more power seems to be inherent in bureaucratic government.

Now for our side of the story and the thrust of these remarks which is that a power grasping bureaucracy can, and generally will, make techinical administrative rules to include those in no way involved in the improper conduct at which the Congress directed the enabling legislation.

In 1963 we entered into a partnership agreement with the Mays, an old, well-known, and highly regarded family of Pell City, who owned without any mortgage 1000 acres of land now known as Mays Bend. In addition to agreeing that the Mays family would furnish this land and we would put up all development money, the agreement provided that once all the land value and the development cost was recovered, profits would be divided between the land owner and the developer. And also for the protection of our lot buyers (and of course our reputation) our agreement with the Mays provided that we were to be furnished a title policy insuring a good title free of any mortgage or encumbrance, so that we would, in turn furnish each purchaser such a policy at the time of closing, which we have done on every lot sale.

We then, for cash, graded and paved roads throughout the first recorded Sector of 103 lots plus half a mile of county roads to connect up with county paving. We (again for cash) built a modern water system and mains and extended Alabama Gas mains throughout this sector.

We gave the water system to the lot owners subject only to our recovery of our cost and interest. We recorded restrictions to prevent any amateur construction or trailers, and set up a homeowners association to allow a fair sharing of any improvements the lot owners might care to make to the dedicated park and launch area or otherwise.

All this was done a year before Senator Williams introduced the Interstate Land Sales Act in 1965 and five years before it passed April 26, 1969, and eight years before the March 31, 1972 regulations were promulgated.

The interstate land sales people make much of the property report they devised in 1966. In trying to make full disclosure for our purchasers we printed in 1964 a 14-page single spaced, legal sized property report which had everything we could think of which would interest the purchaser of a lot with a preamble to this effect:

"We would be pleased to have you join the exclusive group at Mays Bend.

We have been in the real estate business sixty years and we think we know enough to leave the 'fast buck' alone and build for long range good will.

Therefore we publish this tedious letter to try to be sure everyone understands before they sign up the important details of this development. We will appreciate your wading through it.

First let us say that we have no way of knowing how fast or in what direction this great 1 000 acre development may turn. We are persuaded that it will be a fast moving residential development in its initial stages. We have at great expense started it off with high restrictions and first class water, gas and paving to please our buyers.

If the population grows to where it is justified we hope to, and reserve the right to, develop non-waterfront land anywhere and waterfront land in Section 15 and the north one-half of Section 23 both in Township 17 South, Range 4 West for shopping centers, commercial areas, service stations, motels, public marinas, yacht basins, retirement centers, apartments, swim and tennis clubs, country clubs, golf courses or other commercial or recreational uses."

Again remember this 14-page document was given in advance to every purchaser beginning six years before HUD "invented" their property report and eight years before the March 31st regulation that it is claimed took us in was promulgated.

Among the 14 pages the report covered:

Facts on the water system and its articles of incorporation.

The Federal Power Commissions regulations as to water level fluctuations.

The building restrictions.

The non-profit Home Owners Association.

Of course it omitted certain things which HUD's many lawyers were able to dream up but would cost a small, low mark-up developer far out of proportion to their worth to keep current.

Some of the HUD required information is:

Distance and details on nearest fire department, police station, garbage dump, hospital, doctor, dentist, post office, shopping center, public transportation.

Distance to, name of and details on nearest elementary, Jr. High and high school.

Present condition of access roads and a cross section and details of construction of streets.

Distance and population and condition of roads to all cities and county seats within 50 miles.

Water system test borings.

Estimated cost of septic tanks, television reception, foundations, and building permits.

Estimated cost of drainage on each lot. Detailed overall drainage pla
Data on annual rainfall, temperature ranges, dangers of hurricanes, tornadoes, earthquakes, mud slides, brush fires, forest fires, avalanches, volcanic eruptions or other natural hazards, unusual noises, proposed industrial developments, animal pens, vehicular hazards, etc., etc., etc. (How could there be worthwhile data on many of these hazards such as tornadoes, earthquakes, forest fires?)
Verification by formal letter of most of above from registered engineers, utility companies or various public officials in charge of roads, water, telephone, gas, electric, drainage.
Financial statements from most of above utilities including an opinion audit (estimated annual cost $3000 to $7000) on the development.

"Such further material information, documentation and certifications....necessary in the public interest"

This is only a sample. These instructions on the statement of record alone run to 14 tremendous pages each of which was the equivalent in words of 3 of these pages and in places quite technical.

Is there any wonder that reliable people as quoted hereunder estimate the cost of compliance at $20,000 to $50,000. And the property report must be reworked every 12 months or so. If you sell 8 lots per year how much must be added to the price of each?

We printed our property report and did all the other things mentioned as in the case of the title policy, for the protection of our buyers and to convince any skeptics of the legitimacy and viability of Mays Bend as a development eight years before HUD's regulation requiring i

And the subdivision and utilities all built and paid for before the first sale. Does this really sound like the kind of high pressure operation the law intended HUD to be concerned with? If it did then our very slow sales as follows did not confirm it. Our subdivision map went on record in May, 1964. We sold no lots in this year, we sold only 2 in 1965, 6 in 1966, 9 in 1967, 6 in 1968, 3 in 1969, 6 in 1970, 10 in 1971, 22 in 1972, 41 in 1973, 8 in 1974 before being warned by HUD in mid October to stop selling pending a determination of our case. Does that sound like high pressure selling or just maybe a legitimate merchant building up his good will?

In the latter part of 1972, through the press we begun to hear of extanded new regulations of the original Land Sales Act and were concerned

In April 1973, we inquired of the Birmingham Association of Home Builders as to the Interstate Land Sales Act and Mr. Tinker Cheney, the executive secretary of the Association, told us they had employed attorney James J. Odom, Jr. to look into the matter. After pushing Mr. Tinker several times, he reported on August 29, 1973, that Mr. Odom decided we were not under the act unless advertising nationally.

Nevertheless, in an abundance of caution, on November 23,1973, we called on the local HUD office and were referred to Mr Jerry Holmes who told us that a developer had to have 50 or more applications per year from out of state before he had to register. HUD's Mr.Holmes also said that the 1972 regulations had been superceeded by new ones made in September 1973 (actually dated as of March 31, 1972), but that he hadn't been able to obtain a copy of them yet.

We then, on August 29th and again on November 28,1973 wrote the Brokers Institute of the Association of Realtors to get their views and quoted HUD s Mr Holmes Mr. Robert L. McAllister Director of The National Association of Realtors,State and Urban Affairs Department answered us,

> "The answer to your question is, as I understand it, the same as the HUD officials gave you. However, I have contacted the HUD office of Interstate Land Sales Registration in Washington, D.C., who will be sending me a copy of those regulations. If there is any change in this answer I will let you know immediately."

We never heard further from NAR and knowing we were making no effort to sell outside the Pell City, Birmingham area, our advertising consisting of very occasional ads in these two cities local papers, we assumed that if there is such a thing as intrastate commerce (and the founding fathers seemed to think so) we must be in it and relaxed.

Alas on October 24, 1974, through the property owners, trustee The First National Bank of Birmingham, we received a long questionaire from HUD and advise that we should not sell any more lots.

Our answer made December 27, 1974, set out how different our operation was from those at which the law was aimed, and asked their help to avoid the heavy expense of continued reporting to their agency. We suggested -

> "If we are in interstate commerce, then no business in America is in intrastate commerce. But why then, if there is no intrastate commerce, did the founding fathers even refer to interstate commerce?....
>
> "And on this basis I ask your patience and indulgence in trying to help us survive without the expense of hiring an expensive law firm. (The National Association of Industrial Parks, whose sales volume, in number of sales, is inconsequential in comparison to residential lot sales has estimated the cost of competent reports at $25,000 to $50,000. See December 1974 Real Estate Atlanta).
>
> "I think you will admit that the whole act and the regulations are necessarily very, very complicated and expensive in time and money for a small operation such as we are to be burdened with. The statement of record alone is beyond the grasp of the ordinary layman."

Ms. Donaldson of HUD called a few days after my letter and suggested we fill out a rather complicated form demanding considerable research as an application for exemption. This we did and included the required $100 filing fee. During this phone conversation I suggested that we should get down to fundamentals. If HUD would send an inspector to Mays Bend we would take as much time off as it took to get him in contact with each of our purchasers for their private interviews. And we would pay all HUD's expenses.

It is interesting to note that throughout the brief the government filed defending our first legal action in an attempt to get an injunction) there was the inference that the government had made a thorough investigation, when as a matter of fact all the "incriminating information" was extracted from our straight forward answers propounded to us in their questionaires.

I am firmly convinced that if they had accepted our offer to come see if any fraudulent, improper or unethical practices were taking place they would have granted us the registration exemption to quote the Act for the reason that the registration was "not necessary in the public interest and for the protection of the purchasers by reason of the small amount involved or the limited character of the public offering."

Their brief said, "In October 1974 OILSR learned that sales were taking place at Mays Bend and began an investigation of those sales activities" when strictly speaking they learned of it from us when the First National Bank Trustees for the land owners forwarded to us a HUD letter of October 24, 1974 notifying them they might not be in compliance and suggesting no further lot sales be made until a determination was made. On October 31, 1974 we answered the HUD questionaire which had accompanied the letter.

In fact, no on-the-spot investigation other than questions propounded by mail was ever made.

Their brief further stated

Plaintiff...."did not seek an exemption from OILSR until early 1975 after OILSR had begun its investigation" Again their investigation, consisted of mass questions and answers by mail only.

But the inference was there, we were hiding and through their investigative talents they caught us.

As mentioned in answer to our letter of December 27, 1974, quoted above, Ms. Donaldson of HUD called and suggested we apply for an exemption which required a lot of work and a $100 fee.

Our application for exemption was denied February 27, 1975.

Among the grounds for denial they cited an arbitrary administrative rule (not a part of the law itself) that no exemption would be given if 5% of the lots were sold interstate in any one calendar year.

In this regard we think it interesting that in 9 of the 11 years of sales we did not sell sufficient lots to where one interstate sale would not have put us in violation of this administrative ruling.

But far more important, when ordered to stop selling lots October 24, 1974, we had already sold 8 lots and since we were about ready to open a new sector it is conceivable that had we sold 3 more lots before the year end we would not have violated this 5% rule which we knew nothing about at the time. (This is not to deny we could have known.) But who can keep up with everything coming out of Washington today? The largest businesses with floors full of lawyers and CPAs don't seem to be able to. And as per HUD's Mr. Holmes and the National Association of Realtors response from HUD the beaurocracy can't keep up either.

Thus perhaps as a direct result of their ordering us to cease selling in 1974 we failed to sell enough lots in 1974 to qualify for their exemption.

The second reason we were denied the exemption was that we had an architectural control committee controlled by ourselves. We are at loss to understand why this control obviously set up to produce maximum value in the development was harmful to our lot buyers who had the same financial interest we did in maintaining these values. And our financial

interest was substantially larger. As a matter of fact, experienced developers are generally less likely to be unduly restrictive or capricious than lot owners themselves where any interpretation is needed. But everything that could be spelled out was already mandatory in 4 pages of legal size, single spaced restrictions which were of record since May 19, 1965, 4 years before the law was passed and 5 years before the new regulation which HUD claimed put us under the act were promulgated.

Does it really make sense that after trying to spell out in the restrictions every conceivable problem that might come up, on the rare unforeseen problems the developer controlled architectural control committee would be capricious or unduly restrictive on the lot buyer and thus lose a sale? Can you visualize such action unless in fact it was necessary to protect the value of prior buyers lots as well as the developer's remaining lots?

But far more important the Architectural Control Committee was set up by restrictions recorded and made mandatory May 19,1965, four years before the law was passed April 26, 1969. We might dispense with this architectural control committee in sectors developed in the future, we are persuaded to the detriment of lot buyers in these sectors. But what do we do with the 42 unsold lots in the sectors where we are bound by restrictions already of record?

And the third reason we were denied the exemption was that somehow it was fraudulent or improper for us to sell lots down to the water's edge subject to the Federal Power Commission's required flood easement. In one of our subsequent Federal Court cases our attorney got no answer when he asked Judge, these flood easements are required by the same U.S. Government now taking exception to it. If you were buying a lake front lot would you prefer we deed you the whole lot subject to the easement, or a lot down to the flood easement and only a right to cross the flood easement and get to the water

Actually, the easement was to allow the owner to get to the water just as a utility easement. And the Federal Power Commission used it as a means of letting the public have access to the water and still protest the Power Co. Most people had felt that the past policy of allowing the Power Co. to buy as much of the shoreline as they wished was an undesirable public policy. On most prior power empoundments the Power Co owns most of the lakefront land and will not sell the home sites but leases them for 15 years and raises the rents as they please. (Nearby examples: Lakes Lay, Mitchell and Martin).

In other words the Federal Government's own effort through the Federal Power Commission to make power empoundments more useable to the public is interpreted by HUD as detrimental to that same public.

It isn't as if we concealed the easement. To the contrary we put it on the map of record and warned every purchaser from 1964 in writing that his house must be built above this easement. And the health and zoning people required every lot to have an adequate house site above the easement before approving our map of record.

We would like NOW to review all 3 of the Mays Bend sales which by considerable stretch of imagination might be called interstate sales.

First, the 1974 sale which got us over the 5% limit, Mr. J.L. Fleming bought Lot 53, not from us but from L.M. Edwards who had purchased the lot from us. This lot was next to Mr. Fleming's brother's house (Thomas A. Fleming). The next year on May 3, 1974, without our realizing the sale had such awesome significance, Mr. J.L. Fleming bought a lot from us adjoining his original purchase. Does this really sound like we sold this lot in interstate commerce? Unfortunately, unknown to us Mr. J.L. Fleming was a native of Georgia.

Although irrevalent since these sales did not violate the regulation and did not effect our exemption, because neither indicate any effort to sell interstate and are in fact questionable interstate sales we briefly outline the circumstances of the other two out of our 114 lot sale that might be called interstate sales.

Our first possible interstate sale was in 1967 before the law was even passed and was no more an interstate sale than the above. Mr. B.J. Estrem was transferred by his employer Montsano Chemical Co. to Anniston, Alabama, a town 25 miles east of Mays Bend. Without any off-the-site solicitation he appeared at Mays Bend, inspected and bought a lot, built his permanent home on it and lived in the house for several years until retransferred. But when did he become a resident of Alabama? When he was transferred, when he went to work, when we built a house? No wonder you need good and expensive lawyers if you have to deal with government!

Our only other sale, not obviously interstate either, was to Colonel Richard A. Naldrett of Atlanta who bought in 1972. Since we hadn't advertised out of state, direct mail, newspaper, or otherwise, when answering HUD we inquired of Col. Naldrett as to how he had become interested in Logan Martin and Mays Bend. He wrote us, "We have friends who live on the lake. We liked this property so we looked for something comparable." (emphasis ours). Anyway he also appeared on the property without prior solicitation and inspected and bought a lot.

Do these three sales sound like an interstate sales campaign to you? Assuming all three were in fact clear cut interstate sales overall our interstate sales were .026% (3 out of 114).

I really need not comment on the fact that Bill Thompson, Jim King, Jr., Louie Reese III, Mrs. Sallie Robinson or Miss Mary Arminda Mays, all of whom at one time or another talked to prospects on Saturday or Sunday afternoons, hardly qualify as high pressure salesmen. Their prospects walked and rewalked on the lots they selected before buying. And then 2/3rds of the 69 families buying lots in the first two sectors indicated their satisfaction with their lots by making heavy investments in houses on them. Does the fact that we only manned our sales office on Saturday or Sunday afternoons and seldom both, and almost never showed a lot midweek sound like a high pressure sales organization?

I will stress however that not one buyer has ever expressed to us his dissatisfaction with his purchase, much less complained of misrepresentation or that he was not in every way handled fairly. But 8 buyers have after hearing of our trouble taken the time to write us of their confidence in our sales methods.

We have never tried to sell our lots as being desirable land speculations, although they have appreciated in value, sticking strictly to the truth that they were desirable recreational home sites with the paving and water already in and paid for and that there was no mortgages or liens on the lots.

I think it interesting that although we had given HUD complete information late in April, I received a certified mail summons to appear before HUD in Washington on May 6, 1975 and to bring all records. By this time it was apparent that we were headed down the long road to spend a lot of money, and we had previously employed a local attorney, Mr. Marvin Cherner, who after getting into the matter advised that we also employ a Washington attorney, Mr. Langhorne Keith of Hogan and Hartson. Mr. Keith promptly acknowledged to HUD the receipt of the summons and inquired why? Mr. Keith was told the summons was issued because we had not furnished a list of our purchasers which list in fact had been mailed to the proper person in HUD in January, three

months before. While resubmitting a copy of same, HUD admitted to Mr. Keith receipt of the list in January, 3 months before the summons, but now claimed the summons must still stand because we had not submitted on a second subdivision we handle which they again later admitted had been in their hands through Cabaniss, Johnston, Gardner, Dumas & O'Neal for several months. In fact, this matter had been back and forth to the extent that Cabaniss & Johnston had already received a denial of exemption on April 25, 1975 before the summons was issued. We had also, so they said, failed to file for exemption on Irondale Industrial Park which they again later admitted was filed on January 2, 1975, five months before the summons.

Meanwhile, the original summons was not enough apparently. For a week before I was to appear in Washington and a week after HUD had received a mail receipt for the summons and Mr. Keith had acknowledged its receipt by phone I was served a duplicate summons in my office in the presence of my employees and customers by one who identified himself as a U.S. Marshall, presumably to indicate to everyone in town that I had committed some horrible federal crime.

Such is the power of the Federal Bureaucracy today. And to illustrate their inherent obsession for ever more power, I might note that HUD tried by regulative interpretation to include industrial parks under their "protective" arm. But the National Association of Industrial Parks and The Society of Industrial Realtors, a substantial part of the membership in which is industry, persuaded the Congress that the real estate people in IBM, General Electric, Ford and other large companies who buy practically all the industrial park lots were "perhaps" more sophisticated than their benefactors in HUD, and needed no "big brother protection". And the Congress under strenuous HUD objection amended the act to spell out a specific exemption for Industrial parks.

Thus in the case of this third and last "reasons" for the subpoena we were in fact already entitled to exemption by the new law exempting Industrial Parks.

But here we were still unable to sell lots until over 20 months of effort to persuade HUD that we are not operating an interstate lot sales scheme. And even after offering to pay their inspectors expenses to come see our buyers, the final arbiter of our trustworthiness.

Of course, all HUD has to do to bring most developers to their knees is to continue to insist no sales be made and to continue to require endless and expensive red tape submissions and litigation which they can afford and then wait. Obviously, a large high pressure organization with its big sales volume, big mark-up, and big expense budget, can stand this "heat" far better than the small ethical operator selling at a slow pace at prices set in the ligitimate rather than the high pressure market where often lots sell for 100% or more above their value in the ligitimate market. But unfortunately, it is easier for the high pressure people to comply with all HUD's expensive red tape just because their prices are much higher relying as they do on salesmanship rather than value for sales.

If HUD is able to destroy the value market but not the high pressure market, and they have failed in the latter so far, the public will just have to pay more.

And while on the subject of cost to the public we would note that by law we would be exempt if we sold only to home builders. Is the public better off to be forced to buy from a home builder? You may be sure the house will cost more if it's impossible to get a number of bids.

In spite of our being sure that our hands were completely clean at least insofar as the intent of the law to stop fraudulent land and lot sales was concerned it was not an easy decision to match our meager means against the awesome financial and legal facilities of the U.S.

Government. (The annual appropriation pending in August 1975 for the Office of Interstate Land Sales is $2,700,000.00). We read repeatedly what the registration cost is in money, not to mention paper work, sweat and tears (believe me!).

To quote a few sources:

"....Registration proved to be both expensive (about $20,000-$35,000) and time-consuming (three to nine months to complete). These expenses increase our risk and exposure: the capable developer must pass these costs on to the end user." William B. Hare, Jr., Regional Vice President of the National Association of Industrial Parks in July 1975 Real Estate Atlanta.

Another developer wrote us:

"Our initial fee to the attorneys in Washington is $5,000; and if we have to go to a complete registration, it is our opinion that the fee will go to $25,000. If we are able to get an exemption, we estimate our total fees in Washington at $15,000. In addition to this, I have personally had to spend $2,800 with my own attorney advising me as to how to deal not only with my principal but with Washington." He continues:

"In the first part of July, we received from our Washington counsel a 150-page document which is the outline which we are supposed to use in developing our registration which we have been asked to fill out just in case that's the direction we intend to go. I have one person full-time on our staff doing nothing but this work. So, even though we are a completely urban subdivision, having sold 98.8% of our lots to town residents, our cost will be considerable to prove ourselves 'innocent' or not needing to be under the jurisdiction of the act." End Quote

Incidentally, the local HUD office led this developer to believe he also was not covered. When HUD can't keep up with their own activities what chance do local people have?

And our own local attorney, Mr. Marvin Cherner, now a circuit judge, says registration will cost us a minimum of $15,000 and must be brought up to date everytime a road is paved on the way to the nearby schools, or the nearest MD moves, or the hospital changes the breadth of its services.

Finally, we reluctantly decided that we could not afford to pay even $20,000., or $2000 per lot, to sell 10 lots a year. Thus we "bit the bullet" and went into Federal Court on June 30, 1975 at which time we filed an injunctive proceeding

Having already been delayed in making any sales for 8½ months ~~already~~ it is of little consequence except to show why only a fool would try to deal with HUD without good lawyers since HUD lawyers will use every technicality or means to delay a decision to put financial pressure on the developer. The action was filed June 30,1975 requesting service on HUD. The hearing was set for July 18, 1975. On July 17, 1975 HUD's lawyers asked for a resetting of the hearing to a later date on the grounds that HUD had not been served. The hearing was postponed until July 29,1975. At the hearing we learned that HUD had in fact been served on July 12, 1975, five days before lack of service was used as grounds for delay. And it would seem that a July 12,1975 service of a paper filed June 30th was itself strangely late.

Of course the 3 Washington Lawyers who defended the Government in Judge Sam Pointar's Court, as well as John R. McDowell the administrator of the OLS, try to make little of the cost and technical problems of registration.

In their brief Mr. McDowell stated that many developers make the filings themselves, and the lawyers in verbal argument belittled our lawyers' recommendation that we also associate specialists in this field, the Washington law firm of Hogan and Hartson whom they labeled the "most expensive law firm in Washington."

Mr. Cherner wasn't trying to hire us the "most expensive" but these people who he had never heard of were recommended by other lawyers as the best in this field. And it's pretty obvious I think that we needed the best.

Thus the very HUD lawyers who get so voluminous and super technical in their writing of the implementing regulations that people dealing with them must hire $60-an-hour lawyers to try to decipher, then try to tell you that anyone can handle their own registrations. But doesn't their record so far and their maze of technical records and maneuvers warn anyone with normal intelligence that they better get the best legal advice every step of the way?

And don't forget that these same Governmental lawyers will in court, as in our case, use every comma in their own regulation to trap you.

Too late to help us perhaps, but it does appear that the Congress is becoming aware of this problem in the tendancy of the bureau's to attempt to expand their power far beyond the intent of Congress. Several recent laws have provided for future review of rules and regulations promulgated under the act to "insure the intent of Congress is not exceeded."

A quote from Senator Dominick is interesting, "There are already enough governmental regulations for them (small business) to contend with. They shouldn't have to hire a lawyer just to know what their rights are."

Thomas Ehrlich Dean of the law school of Stanford University when asked the question, "It's not only the number of laws that people complain about. They also complain about the way the laws are written- that they are very difficult to understand This same feeling applies to opinions by courts. Wouldn't it help if the legal language were clarified so the average person could understand what it means?"

"A. You're right that this is a problem, and it's one that is widely criticized. I think law schools should put a high premium on the simple declarative sentence--which seems to get lost all too frequently."

And he further commented,"....Congress to, contibutes to this glut (of court fights and laws) which I call legal polution. We see the effects in our university. To prove our compliance with all the federal rules and regulations requires a huge staff, an enormous amount of paper work, and thousands of hours of expensive lawyer work."

In closing, we would like to comment that all this excess regulation (U.S. News & World Report, June 30,1975) is estimated to cost consumers $130 000,000,000 in added cost to what they buy.

And to quote President Ford who describes it as "excessive Government regulations that stifle productivity eliminate competition, increase consumer costs and contribute to inflation

Says the President: "I want small business released from the shackles of federal red tape I want to end unnecessary, unfair and unclear regulations-and needless paper work.

Mr. Ford places the annual cost to consumers of unnecessary and wasteful regulatory policies at $2000 per family

Obviously, the intent of Congress in stating the secretary could exempt "any subdivision....if he finds enforcement....not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited nature of the public offering" was to encourage the exemption of lot sales of a different character from the massive high pressure sale by mail.

And to our method of operation the only real substantive objection HUD could find was that one lot sale of doubtful intrastate character put us in violation of HUD s arbitrary "5% in any one year" rule, and that a year in which HUD cut off our sales leaving us less than the one year in which to overcome the 5%.

We think their entire position full of the ridiculous and absurd technicalities for which Washington bureaus are now becoming notorious.

To quote Walter E. Grinder, Professor of Economics of Rutgers University, "It is not until the people begin to catch on to the nature of the systematic plunder (by the state) and until the people begin to challenge this colossal con game that the state does in fact turn brutish."

In view of the many quotes above, the people and President Ford are beginning to "catch on" that the state is turning brutish.

To put it another way our firm has certainly been the victim of what Professor Helmut Schoek, the Austrian sociologist, in his study of social behavior calls "the pleasure felt by the powerful man in the power that enables him to be unjust.

To also quote Senator William J. Fulbright on the Interstate Land Sales Act, "The burdens of this legislation fall equally on the good as well as the bad operators and this is what inevitably happens when Government seeks to single out an industry and subject it to a kind of prophylactic method of regulation, instead of defining and punishing certain illegal acts.

Representative Philip Crane has pointed out that many federal agencies are all in one combination of prosecutor, judge and jury and that contesting their rulings can be more expensive than it is worth. Even if a businessman wins his case in court, he must pay attorney's fees and litigation costs, expenses often far in excess of the fine he would have paid for pleading "no contest." Also even if he has successfully cleared himself of one charge, he faces the possibility that the agency will continue to search for violations in an effort to achieve vindication.

Thus, as stated by Mr. Crane, we are now faced with the reality that compliance by coercion rather than compliance based on the merits of the case is becoming the rule, not the exception

Well, after spending $6,400.81 in legal fees alone and on the advice of this counsel we gave up and on July 8, 1976 were forced to accept an on-site exemption by making the following face saving concessions to the bureaucracy.

1. We hold an election of members of the Architectural Control Committee.
2. Rather than conveying the lots in the normal way with the Power Company's flood easement set out as an exception we convey only down to the Power Company easement and give the lot purchaser an easement across the Power Company's easement.
3. We obtain affidavits from each purchaser that they have personally inspected the lot and send them to OILSR at the end of each year (We had never sold a lot that the buyer did not walk over and in most cases several times)
4. When we have sold 299 lots we must go out of business or comply with the very expensive property reporting originally demanded.

Of course, the only reason we were able after over 20 months to work out this compromise was that OILSR was persuaded that they were about to write some new case law under most unfavorable circumstances, i.e. their persecution of a thoroughly ethical land sales company.

Respectfully submitted,

Louie Reese

LR/ejr

P.S. If she means it, it is heartening to read the following quotes from HUD Secretary Carla A. Hills.

"There is no industry in America that is not encumbered by more regulations that it can handle and more than is needed to get the job done."

"(There is) A jumble of overlapping-often conflicting-codes and regulations provided by benevolent bureaucracies at every level of local and national government."

"When government gets into the act, the consumer pays the price. And once into the act, the government hardly ever gets out, and the consumer continues to pay."

"The likely benefits of any federal regulation must be carefully weighed against the costs of such experiments."

Secretary Hills. "My whole approach to this condominium regulation is a cost balance. What are the benefits that I am buying for the consumer? How much do they cost?
I can assure you that if we lay on a responsibility, it will be passed through and the consumer will pay for it."

Mr. Lundine, "I tend to agree with you about being as concerned with overregulation as I am with no regulation at all."

"Highly technical and voluminous disclosure statements are complicated, costly, and, as we found during our study, often not read by the buyer."

Mr. AuCoin. Thank you very much, Mr. Roberts.
We will now hear from Mr. Smith.

STATEMENT OF HERMAN J. SMITH, VICE PRESIDENT, NATIONAL ASSOCIATION OF HOME BUILDERS, ACCOMPANIED BY ROBERT D. BANNISTER, SENIOR STAFF VICE PRESIDENT, AND GARY PAUL KANE, ASSOCIATE LEGISLATIVE COUNSEL

Mr. Smith. Thank you, Mr. Chairman.

I am Herman J. Smith, and I am a homebuilder from Forth Worth, Tex., and I am testifying today on behalf of the 103,000 members of the National Association of Home Builders. Accompanying me is Robert D Bannister, senior vice president, and Gary Paul Kane, associate legislative counsel.

We certainly appreciate the opportunity to testify.

Interstate Land Sales Act passed and we supported it, and the intent for which it was passed. Since then we have run into the same problems that the Congressman from San Antonio was talking about. We have a problem understanding why a legitimate subdivision within a city, that has all of the protections of the local government, and has only intrastate sales has to be governed and brought under the jurisdictions of OILSR.

The Congressman explained he has not received an answer to that question, and neither have we. This is a classic example of how an administrative agency can distort the purpose of well-intended legislation over a period of years.

OILSR's involvement in regulated jurisdictions is the area that most concerns our homebuilders. OILSR has extended its jurisdiction from undeveloped lots in remote parts of the country to the sales of fully improved or development lots in metropolitan areas where land development activities are heavily regulated.

For example, in most of our areas—I would say this is true in Portland and Fort Worth and other areas that we are concerned about—before a builder can even sell a lot he must gain approval from local and State governmental entities.

Mr. AuCoin. Do you think it would be true in Florida and Michigan, as well?

Mr. Smith. I believe it would.

I know it is true in Orlando and Battle Creek.

The builder's plans must be reviewed by planning and zoning authorities, environmental review boards, departments of public works, public health and engineering, local utility districts, school boards, city councils, county supervisors. We can go on and on and on with what happens in the local jurisdiction that has the controls within their area.

There is another oddity here. Even in cases where an FHA lot is approved, or in an area where VA loans are approved or where Farmers' Home loans are approved, we still must file and receive an exemption from OILSR if the subdivision was over 50 lots. In some cases these requirements are within the same Government department.

OILSR's intrusion into this process generally comes in the form of a letter or subpena sent to the builder, sometimes after house and lot sales have commenced. The builder is compelled to appear in person in

Washington, D.C. We have several cases of where a builder received a letter that scared him to death. He did not go to the State capital or his local city hall, he had to go all the way to Washington, D.C. He had to appear on something that, very frankly, he knew little about, because the letter was very brief.

As Mr. Roberts said, our people mainly are made up of small entrepreneurs; 52 percent of our 103,000 homebuilders has 6 or less employees. They can hardly afford to pay, as the Congressman from San Antonio said, $20,000, to have a subdivision registered—approved by OILSR in an area already having regulations.

We see OILSR's intervention into local regulated jurisdiction as a classic example of wasteful and unnecessary Government overregulation. Consumers receive no benefit whatsoever, and builders incur substantial hardships.

NAHB strongly believes that OILSR should have no authority even to question subdivisions regulated by local jurisdictions.

In previous hearings in the House and Senate committees, I have heard a lot of testimony from others. I have never heard one comment that a legitimate subdivision that has been approved by the various local agencies, are having problems that would require OILSR involvement. In fact, I heard Senator Proxmire say that he receives approximately 1,000 letters a day letting him know how his constituents feel about what is going on in Wisconsin. He does not remember receiving a single letter on the subject that we are talking about; that is, consumer misrepresentation within a regulated jurisdiction.

What are the effects on consumers? When confronted with uncertain filing requirements, potential delays, cost of a protracted dispute, and the potential civil and criminal sanctions, many builders—and I might add, most builders—are simply refusing to sell lots whatever to individuals; they only sell to other builders. This can prevent a family which does not yet want to be tied to a particular builder from buying a lot in a good neighborhood either as an investment or as a future homesite. Those families who do purchase from the second builder pay a higher price for the land as a result of paying two builders' markups.

We believe that Federal involvement in the development of houses should be kept to a minimum. This area of law traditionally has been a concern of State and local governments and should continue under their auspices.

OILSR regulations that came out on June 1 are over 300 pages, and again restress and reiterate some areas of regulation. If we were to go through these new regulations—and our lawyers have expensively gone through them for us back home—we find that, for example, in one area these new regulations require that at least 30 percent of the lots in the subdivision must be improved with roads and electricity before we file. You can see where we not only have the expense, as Congressman Gonzalez talked about, of the filing but we have on top of the $20,000 he was talking about, the expense of time delay, and that is getting more expensive every day. Every time the Federal Reserve meets it gets more expensive.

And consequently, we are looking at a considerable amount of money while we are awaiting some answer from a bureaucrat in Washington on whether our subdivision is exempt or not.

So, very candidly, we just flat do not register with HUD.

Testimony last week at HUD hearings in Dallas reflected that in Dallas County only two subdivisions, to their knowledge, had filed. Neither one of those were in the city limits of Dallas, which meant they were selling their lots to builders only. Consequently, before an individual can buy, there is another price tier that can run anywhere from $500 to $2,000 on the lot in that area.

The home buyer pays for it. Normally, they pay for it over a period of 30 years, as they make their mortgage payments. Additionally, home buyers cannot take competitive bids from several builders which could also be another cost.

One of the things we need more of right now in our larger cities are more construction lots coming on stream for competitive purposes, not the elimination of the small homebuilder, the small developer, entrepreneur. Forcing him out of the business only brings the large corporate builders into the business.

This is the one thing that has driven lots up within our jurisdictions faster than anything I know.

NAHB strongly supports the provisions of S. 2716, now incorporated as section 715 of S. 3084, the HUD authorization bill.

I will not get into the details of the Minish bill and others. I will say, in studying Congressman Minish's testimony, a couple of points that he makes that he thinks would be good, and we concur. We concur with the attorneys general that have testified in these areas.

I hope you have in front of you subchapter 3 of section 715 of S. 3084, which was approved by voice vote in the Senate.

Mr. AuCoin. This is the Sparkman amendment?

Mr. Smith. Yes, sir.

Pertaining to regulated jurisdiction exemption.

If you will carefully read that you will note that Congressman Minish's problem of installment contract method has been addressed. The contract of sale requires delivery of a warranted deed to the purchaser within 180 days of the signing of the contract, and it would normally take that long to get the improvements finished.

A policy of title insurance or title opinion is issued, so it doesn't drag out.

A second provision in the Minish bill requires the developer to promise to provide basic services, such as water, sewage disposal, and so forth.

If you will note, in subchapter 3, the real estate must be situated on public highway which has been built to a standard acceptable to the municipality or county, and a bond or other surety acceptable to the municipality or county for the full amount of the cost.

It goes ahead and mentions: At the time of closing, potable water, sanitary sewage disposal, and electricity have been extended to the real estate or the municipality or county has agreed to install such facilities within 180 days.

In other words, this amendment exempts legitimate subdivisions within a city that has these jurisdictions where bonds are posted—and I might add, bonds are a surety acceptable to the Government, not just any bond and not just the developer's own bond. We believe this type of subdivision should be exempted from going through the $20,000 OILSR filing process that the Congressman was talking about.

Mr. AuCoin. It would, under this amendment?

Mr. Smith. Yes, it would, under this amendment.

You will note that in contrast to the Interstate Land Sales Act, which is merely a disclosure statute, local ordinances and reviews protect the customer by substantial requirements, and that is not changed in the Sparkman amendment.

It will probably clear most of the legitimate subdivisions and developers in the cities where we are actually trying to build housing for the consumer at a price the consumer can afford.

The Sparkman-Tower amendment insures that the consumer will obtain a fully improved lot which can be used as a homesite.

We support it 100 percent and appreciate the opportunity to appear in front of your subcommittee, and would be pleased to answer any questions you might have.

[Mr. Smith's prepared statement on behalf of the National Association of Home Builders and a copy of amendment to section 715 of S. 3084 follow:]

STATEMENT OF

THE NATIONAL ASSOCIATION OF HOME BUILDERS

before the

SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

HOUSE OF REPRESENTATIVES

on

INTERSTATE LAND SALES ACT REFORM

Mr. Chairman and Members of the Subcommittee:

My name is Herman J. Smith, and I am a home builder from Fort Worth, Texas. I am testifying today on behalf of the more than 103,000 members of the National Association of Home Builders (NAHB), the trade association of the Nation's home building industry, of which I am Vice President and Secretary. Accompanying me today is Robert D Bannister, Senior Staff Vice President, and Gary Paul Kane, Associate Legislative Counsel.

We appreciate this opportunity to present our views on the Interstate Land Sales Full Disclosure Act, legislation proposed to amend that Act and regulations recently proposed by the Office of Interstate Land Sales Regulation (O.I.L.S.R.).

Enforcement of the Act by O.I.L.S.R.

NAHB supported passage of the Interstate Land Sales Full Disclosure Act in 1968 as a reasonable means to protect consumers against certain deceptive and fraudulent sales practices used by a minority of unscrupulous land developers in their interstate marketing of generally undeveloped real estate. A major ploy in the marketing of this land was usually the fact that it was sold to purchasers who were unable to inspect the lot site because of its remoteness or the buyer's geographical separation from the land's location. Many of the potential buyers were purchasing property in anticipation of retirement, or as second home sites, and often relied heavily upon the representations of the seller.

A classic example of how an administrative agency can distort the purpose of well intended legislation can be observed by studying what O.I.L.S.R. did to the Act between the time of its enactment in 1968 and today. We believe that a growing number of transactions for the sale of lots are being brought within the ambit of the Act that were never intended by the Congress to be covered when it passed the legislation. O.I.L.S.R., in our judgment, has vastly expanded its jurisdiction through administrative regulation to the point it is creating financial

and business hardships on professional home builders, is needlessly increasing the cost of land and housing to the consuming public, and is wasting tax dollars through unnecessary and duplicative regulation.

50 Lot Exemption Situation

For example, the Act specifically exempts lots on which there is a residential structure or where a contract obligates the land seller to construct such a structure within two years. The Act also exempts small subdivisions of fewer than 50 lots.

One situation which arises is where the builder of a 70 lot subdivision constructs and sells homes on 60 lots. Under the statute these should all be exempt sales. However, to close out the subdivision or because of unsolicited interest from consumers, the builder sells the remaining 10 lots to individuals. O.I.L.S.R. has taken the position that the Act's 50 lot exemption does not apply in this case, and that the builder must file for registration, counting the lots both on which homes were and were not built.

Regulated Jurisdictions

Perhaps, the major concern of our members is that O.I.L.S.R. has extended its jurisdiction from undeveloped lots in remote parts of the country, to the sales of fully improved or developed lots located in metropolitan areas where land development activities are already heavily regulated.

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In most of these "regulated jurisdictions", before a builder can sell even a single lot, he must gain approval from myriad local and state governmental entities. His plans must be reviewed by: planning, zoning and environmental review boards; departments of public works, public health and engineering; local utility districts and city councils or boards of supervisors. Generally, lot sizes must meet certain minimums, soil compaction and/or percolation requirements must be met, the land cannot lie in an environmentally sensitive area or too close to an airport flight pattern, and plans must show access for fire equipment. And, in virtually all cases, the builder must either complete roads and provide water, sewer and electrical service in conformance with local controls, or post a bond or letter of credit covering the cost of such improvements.

O.I.L.S.R.'s intrusion into this process generally comes in the form of a letter or subpoena sent to the builder sometime after house and lot sales have commenced. The builder is compelled to justify in person in Washington, D.C., or in writing his failure to file for registration or exemption. And, ultimately such a filing, in fact, may be required. Sales of further lots may be suspended in the interim, and in some cases, the builder may be required to send letters of recission to all purchasers offering to buy back their lots and homes at the original selling prices.

In the current market of rising real estate values, letters of recission are generally not accepted. But a letter suggesting difficulties with the federal government clearly affects the

builder's credibility with past and potential purchasers and may affect the marketability of later lots.

We see O.I.L.S.R.'s intervention into the "regulated jurisdiction" situation as a classic example of wasteful and unnecessary government overregulation. Consumers receive no benefit whatsoever, and builders incur substantial hardships. NAHB strongly believes that O.I.L.S.R. should have no authority even to question subdivisions in these jurisdictions.

Effect on Consumers

When confronted with uncertain filing requirements, the potential delays and costs of a protracted dispute, and the potential civil and criminal sanctions, many builders are simply refusing to sell any lots whatever to individuals; they will sell only to other builders. This can prevent a family which does not yet want to be tied to a particular builder from buying a lot in a good neighborhood either as an investment or as a future home site. Those families who do purchase from the second builder pay a higher price for the land as the result of paying two builder's mark-ups.

NAHB is deeply concerned about the rising cost of new housing and the decreasing ability of many American families to afford to purchase this housing. A leading cause of the increased price of housing is the substantial rise in land prices. A principal reason land has become so much more expensive is because of increasing regulatory controls by all levels of government

restricting the use of land and thereby diminishing the supply of developable building sites. We believe that Federal involvement in the development of housing should be kept to a minimum. This area of law, traditionally has been a concern of state and local governments and should continue under their auspices. O.I.L.S.R.'s intervention into the home building process represents an unnecessary additional eschelon of government, which serves only to increase costs to the builder and ultimately to the consumer, without increasing consumer protection.

O.I.L.S.R. Regulations of June 1, 1978

The proposed regulations issued June 1, 1978, do nothing to improve the present situation. Under the regulations , O.I.L.S.R. continues to intervene in the process of reviewing even fully improved subdivisions in cities and counties with substantive subdivision regulations.

Section 1710.15 proports to provide an exemption for primary homesites. As a practical matter, this is an exemption few, if any, builders will use. First, in order to obtain the exemption, a builder still must make a detailed filing with O.I.L.S.R. and specifically obtain approval from the Secretary. The filing must include each of the following items:

(1) an application for exemption;

(2) a comprehensive statement;

(3) a developer's affirmation;

(4) a sample copy of the acknowledgement of on the lot inspection;

(5) a sample copy of the purchase or lease agreement;

(6) a sample copy of the deed;

(7) a general plan of the subdivision, including a map and a plot;

(8) a copy of the escrow agreement or irrevocable letter of credit required to assure completion of recreational facilities;

(9) where applicable, documentation that: (a) roads have been or will be built to local standards and the local authority will accept responsibility for maintenance (b) adequate precautions have been approved to prevent flooding; (c) potable water is available on a year round basis; and (d) the land is approved for the installation of septic tanks.

As we stated before, we do not believe any filing should be required for improved subdivisions. Builders will be no more encouraged to file under these regulations than they are under current procedures.

Second, before the application for exemption can be filed, at least 30% of the lots in the subdivision must be improved with roads and electricity, and provision must be made for water and sewer. Since lot sales cannot begin until the exemption is approved, this means the developer must finance the cost of improving at least 30% of the subdivision for the period it takes to construct the improvements, prepare and submit the application, and receive the Secretary's approval. Even under favorable conditions, this could mean that the developer would be paying the financing charges for three, four, five, or even six months without any revenues. This could place a financial strain on many small business home builders, and certainly would discourage them from selling lots to individuals and thereby subjecting themselves to the Act.

In any event, it is the consumer who will end up paying the added cost for these unnecessary delays in the form of higher housing costs.

Finally, the regulations provide that the primary homesite exemption does not extend to subdivisions on which the Secretary has evidence or information that the approval of the exemption would not be in the public interest. This provision may raise questions of constitutional due process since no standards are provided to regulate the Secretary's discretion, and since there is no requirement that the applicant be notified of the specific information the Secretary relied on in rejecting the application. We believe this provision and provisions like it are subject to substantial abuse and should be stricken from the regulations.

Proposed Minish and HUD Bills

It is extremely difficult for us to understand the rationale for proposed legislation which would increase the jurisdictional and enforcement powers of an agency which has demonstrated a tendency to go beyond the bounds of its statutory jurisdiction and disregard Congressional intent and purpose.

Accordingly, we oppose the provisions of the bills of both HUD and Congressman Minish. We find most objectionable the provisions in both bills which authorize the HUD Secretary to issue cease and desist orders and to levy civil penalties of up to $5,000 per violation. The HUD Secretary through O.I.L.S.R. has already imposed unreasonable burdens on home builders, requiring

appearances in Washington, detailed written explanations, letters of recission and even repurchases in some cases. In an area where the Secretary has repeatedly abused her discretion it seems inappropriate to grant her the power to force a builder to stop lot sales altogether or to impose, without judicial review, an extremely onerous fine. We find these provisions most unacceptable.

S. 3084

NAHB strongly supports the provisions of S. 2716, now incorporated as Section 715 of S. 3084, the HUD Authorization bill. We believe this legislation represents a positive step toward correcting the hardships to home builders and consumers alike caused by O.I.L.S.R.'s overreaching jurisdiction.

The exemption of the greater of 5% of a builder's sales or 5 lots a year is especially beneficial to smaller home builders who may, without solicitation, inadvertantly sell a few lots to out-of-state purchasers. Such builders may have only a vague notion of the applicability or requirements of the Land Sales Act, and imposing a registration or exemption filing on them would create an unreasonable burden.

The 100 mile exemption is most helpful to the builder operating near the borders of one or more other states. People living within the 100 mile radius should have easy access to the property and should be able to ascertain the facts necessary to make an informed decision on the purchase of a lot. The fact that a state border lies between the prospective purchaser and the property should not in any way impede the purchaser's examination.

And we fully support the Sparkman-Tower amendment to S.3084 which would exempt from the filing and disclosure requirements the sale of fully improved lots developed in compliance with the subdivision regulations of the municipality or county in which the subdivision is located. In contrast to the Interstate Land Sales Act which is merely a disclosure statute, local ordinances and reviews protect the consumer by substantive regulation. The Sparkman-Tower amendment also ensures that the consumer will obtain a fully improved lot which can be used as a homesite.

Support of S. 3084

We ask that the members of this Subcommittee who serve as conferees on the HUD Authorization bills accept the provisions of Section 715 of S. 3084 without modification or amendment.

Regulated Jurisdiction Exemption

Sec. 715 of S.3084 is amended as follows:

The following language is added to subsection (b) of Section 715:

(3) the sale or lease of real estate which is located within a municipality or county whose governing body specifies minimum standards for the development of subdivision lots taking place within its boundaries, when:

A. The subdivision meets all local codes and standards and is either zoned for single family residences or in the absence of a zoning ordinance, is limited exclusively to single family residences.

B. The real estate is situated on a paved, public street or highway which has been built to a standard acceptable to the municipality or county or a bond or other surety acceptable to the municipality or county in the full amount of the cost of the improvements has been posted to assure completion to such standards, and that authority has accepted or has agreed to accept the responsibility of maintaining the public street or highway.

C. As of the time of closing, potable water, sanitary sewage disposal and electricity have been extended to the real estate or the municipality or county has agreed to install such facilities within 180 days. For subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round or that the land is approved for the installation of septic tanks.

D. The contract of sale requires delivery of a warranty deed to the purchaser within 180 days of the signing of the sales contract.

E. A policy of title insurance or title opinion is issued in connection with the transaction showing that at the time of closing, title to the real estate purchased or leased is vested in the seller or lessor, but nothing herein shall be construed as requiring the recordation of a lease.

F. Each and every purchaser or his or her spouse has made a personal on the lot inspection of the real estate which he purchased or leased, prior to the signing of a contract to purchase or lease.

G. There are no direct mail or telephone solicitations or offers of gifts, trips, dinners, or other such promotional techniques to induce perspective purchasers or lessees to visit the subdivision or to purchase or lease a lot.

Mr. AuCoin. Mr. Smith, thank you for your testimony. I am serving as chairman of the homeownership task force of the Housing and Community Development Subcommittee, and we have been looking into specific imbalance of government regulation and other factors on homeownership costs, and you have indicated at least two very specific ways in which additional costs are passed along, and I appreciate that contribution, as well as the full body of your testimony.

Do I understand you to say that with the adoption of the Sparkman amendment, you would be supportive of the Minish legislation?

Mr. Smith. I will say that we are fully in support of subchapter 3 of the bill, which is the Sparkman amendment. I am not saying we are in favor of all of the Minish HUD proposal in their bill.

Mr. AuCoin. So even with the adoption of the Sparkman amendment, you would not be in a position to support the Minish bill?

Mr. Smith. Certain aspects of it we could, yes, others we couldn't. I would say the Sparkman amendment addresses many of his concerns.

Mr. AuCoin. What would be left in the Minish bill that would necessitate your continued opposition?

Mr. Smith. Well, frankly, although it does not affect homebuilders, we are concerned about the 40-acre limitation. We are concerned about the small farms being subdivided for the purposes of a 10-acre tract of ground or a 20-acre tract of ground. Although our builders are not there, a lot of us would like to own a little place out in the country, and we think this is overkill. We don't think that is necessary.

Mr. AuCoin. If the Sparkman amendment were adopted, given the track record of the agency in the interpretation of the original statute, stretching it as it has to intrastate developers, do you have any reason to believe that the Sparkman language would be recognizable in its application if it was finally adopted?

Mr. Smith. Let me say this.

We sure would be pleased if that came back to a committee in Congress to be looked at before the regulation went into effect.

I could not say that they would not take that 1 page and end up with 500 pages of regulations that would again overkill; no, sir, I could not say that.

Mr. AuCoin. I wish we could offer a standard amendment to every bill we pass, and that is that this act shall be wisely and responsibly administered. Boilerplate language. That would be so great, if we could do that.

I want to call the panel's attention to a comment in Congressman Minish's statement before the subcommittee, I believe it was yesterday. He was referring to the Nelson bill and said that in its present form it is an unwise proposal because it will exempt some of the worst interstate developers in the country from the requirements of the Interstate Land Sales Full Disclosure Act.

One of the specific loopholes that he described—and he described it as a loophole—was the provision for the 100-mile radius exemption that, as you know, is the exemption that exempts sales to people who live within 100 miles of the developer. And I am quoting from Mr. Minish now:

> It is a lot-by-lot exemption which means no matter how big the developer is, he may sell to anyone within 100 miles of his development without being covered by the Federal law.

And then he gave an example of some of the nightmares that would occur, and he cited the Pocono Mountains of Pennsylvania. Within 100 miles of that area are the metropolitan areas of New York City, northern New Jersey, and Philadelphia, and I am quoting from his testimony:

> Taken together, these three areas represent a market of over 20 million people. Under the Nelson bill, none of these people would be protected by the Federal law if they bought lots in that particular area.

He cited a specific example in that area in which 365 lots were sold to people from New Jersey; 30 of the buyers were his constituents. And most of the other lots were bought by residents of Philadelphia and New York. And among other things, the particular development promised improvements such as sewage disposal and water and it was never completed, and the development concealed from prospective buyers a dispute with the local township authorities, which made the development unable to clear title to the lots sold, and it used high-pressure sales tactics and committed other consumer abuses.

What do you have to say about that, any of you, in terms of the wisdom of keeping the 100-mile radius?

Mr. ROBERTS. With reference, Mr. Chairman, if I may specifically, since I did address myself to the Nelson bill perhaps more than either of the other two panelists.

Under the Nelson bill's 100-mile exemption, the New Jersey people who are involved in the Pocono Mountains matter may have come under that exemption. However, whether it be 100 miles or a mile or 1,000 miles, fraud is fraud, and fraudulent acts can be prosecuted, and they are punishable.

In this case, had the Nelson exemption been in effect, OILSR's right to prosecute would not have been affected in any way. As a matter of fact, the enforcement aspect would be strengthened because under the Nelson exemption the developer would be required to subject himself to the jurisdiction of the courts of the States from which the buyers came, in this case, the New Jersey courts. And whether or not Pennsylvania or the Justice Department wanted to prosecute on behalf of the defrauded buyers, the defrauded buyers would have had recourse in their own New Jersey courts, which they may not have under the present statute.

So, in effect, the Nelson 100-mile radius exemption would have really strengthened the enforcement provisions of the act, had it been in effect at the time of the Pocono situation.

One other thing I think that we might want to examine is the difference between the product that is being offered. In supporting the Nelson provisions of S. 3084, the product that we are talking about principally is the primary residence homesite, and although resort properties and others may fall within that purview, it is the small developer or the individual primary homesite subdivision that we are trying to get relieved from the pressures of this act.

But to repeat, the Nelson provisions would have strengthened the enforcement powers that would have been available to the people who were hurt in the Pocono Mountains case.

Mr. AUCOIN. Let me ask one final question, and then turn the Chair back to Mr. Gonzalez. The Minish bill contains a provision permitting rescission at any time up to 3 years if certain conditions are not pres-

ent: If the contract was signed on the same day the contract was offered, if the developer provides financing, and so forth. I understand that the industry has stated that this would dry up financing. I am wondering if any of you gentlemen could amplify that for the record, because I think it is an extremely important point to bring out for the record.

Mr. BELIN. Yes, sir, that is correct. The problem with the 3-year rescission period is the fact that there would be no market for loans to the developer on the paper that would be generated, whether it be only contracts of sale or a deed or whatever type of instrument is used by the developer.

Mr. AUCOIN. Why would there not be a market?

Mr. BELIN. Well, the investor, in effect, would have a sale that was in limbo for a 3-year period.

Mr. AUCOIN. So you would have a cloud over the paper?

Mr. BELIN. That is correct.

Mr. AUCOIN. With that cloud over the paper, it is difficult to find an investor; is that what you are saying?

Mr. BELIN. It would be impossible. It really constitutes a 3-year option for the buyer. And in addition, according to the accounting principles regulations, neither the seller nor the lender could count it as a sale.

Mr. AUCOIN. I appreciate that.

Mr. Smith, did you want to respond?

Mr. SMITH. Mr. Chairman, if that went into effect, I wish you also would instruct the bank examiners that this was still a good loan, because we would have problems of ever getting the individual buyer to go to the bank for the first 3 years and being able to borrow any amount of money on that lot that could be clouded.

Mr. AUCOIN. Well, I think it is an important point, and it is one I wanted to make sure showed in the record of this hearing.

Mr. Abrahams, did you want to speak to that?

Mr. ABRAHAMS. Just to add one other thought to Mr. Roberts' comments on the Pocono matter. I sat there in hearings of Congressman Joseph G. Minish's own subcommittee on this subject, and he had the HUD people in, the OILSR people in front of him, and flayed them alive, if that is not an unfair statement. Because they simply—because they had all the powers and the authorities under existing law to prosecute the obvious—what appeared to us to be obvious fraud intent of the developers in that particular resort. Property registration and property reports are not a protection in themselves.

I think the main point here is that the criticism that the Congressman directed to both HUD and the Justice Department for failure to prosecute really stands on its own. The issue drawn by the Nelson amendment really is not the issue at hand in this case. The fact is that fraud can be prosecuted if the will is there on the part of the agencies to do so. And, as I think Mr. Roberts said, the attorney general—the attorney general of New Jersey—testified at those hearings that his State law was quite strong in its protection of consumers.

Again, to reiterate what Mr. Roberts said, the provision of the Nelson amendment requires the seller of the lot to make himself available to the court jurisdiction of the State of the buyer. In this case, New

Jersey law of considerable strength would have applied and resulted in substantial prosecution had the Nelson amendment been in effect.

Mr. AuCoin. Well, I appreciate that clarification, Mr. Abrahams.

I have no further questions, and I want to thank the panel for their testimony.

Mr. Kelly.

Mr. Kelly. I thank you, Mr. Chairman.

Mr. AuCoin. We are under the 5-minute rule.

Mr. Kelly. Which 5-minute period are we going to use? [Laughter.]

I think probably, if we are going to be able to revoke these land sales contracts, that we should have a law that would apply that to everything, to automobiles and politicians. In other words, just so that the public would really be protected, would you gentlemen think that that would at least have logical symmetry, that if we are going to do it in the land situation, we should do it for everything, and especially for politicians? Or would you rather not comment on that? [Laughter.]

When there are provisions like for travel costs and attorney's fees and all of these things, isn't it a fact that you can wind up the developer actually paying claims and paying money and really being held hostage by the law in certain instances, and then the consumers just picking up the bill for it, when you start trying to give this kind of protection? Is that a reasonable statement?

Mr. Belin. I think so.

Mr. Kelly. And that this business about there is not enough fee involved for a lawyer, so the attorney general can just bring suit on behalf of the public, this is just an invitation for litigation, because one of the reasons that people don't do a lot of suing that is not justified is because they don't want to waste their money. And so if it doesn't cost any money, well, why not? And isn't that another increment to be considered in this, and isn't that going to add to the overall burden and expense?

Do you all agree with that?

Mr. Smith. Yes, sir.

Mr. Roberts. Absolutely.

Mr. Belin. Yes, sir.

Mr. Kelly. Do you, Mr. Belin, agree that probably the size of the company should not be a criteria for anything?

Mr. Belin. I agree. It should not be.

Mr. Kelly. And, Mr. Smith, would you agree with the proposition that when the elephant of Government starts stomping around doing all of this good stuff for everybody, that it is almost invariably the small businessman's concern that is damaged the most?

Mr. Smith. Yes, sir, I believe it is.

Mr. Kelly. And it is a little ironical that, while the elephant is stomping around, he has a trumpet going about how he loves little business and how he hates big business. But it is the little people that really are damaged the most by improvident regulations of this type. Isn't that a fair statement?

Mr. Smith. Yes, sir. We have enjoyed all of that protection we can stand.

Mr. Kelly. I think that is probably pretty nearly true.

Is there an opinion afloat in the industry that if the Federal Land Sales Board were simply just abolished, that there is more than adequate law available to prosecute everybody in connection with fraudulent land sales through the FTC, the SEC, the FBI, the Attorney General, and whoever else might be able to get in on the act through interstate fraud and so forth, criminal regulatory agencies?

Mr. ROBERTS. I am not sure that I would answer that completely in the affirmative, Congressman Kelly, because there are areas within the land subdivision development market in the industry, that, as proven by some of the examples that have been cited here today, where reasonable regulation, but with perhaps local enforcement, would be in order. But certainly as you have pointed out there are many interstate laws under which consumers can be protected.

Mr. KELLY. What I am really asking is that between the ability of the State to protect against fraud and the ability of the Federal Government, through the use of the mails for fraudulent purposes and the telephone and the SEC, there is a whole array of protections just in the criminal code. And then the SEC and the FTC, and when you have got through all of that, isn't the whole subject of interstate fraud just covered like a blanket anyway?

Is there anyone contending that that is not so, between the States and the Federal Government, without any consideration?

Mr. INGERSOLL. Congressman, I think you make a very valid point, that there is blanketing of this industry by one agency over other agencies.

Mr. KELLY. Are you an attorney?

Mr. INGERSOLL. Yes.

Mr. KELLY. And what is your name?

Mr. INGERSOLL. William P. Ingersoll.

Mr. KELLY. And do you know of any particular loopholes that the law wouldn't cover, even if the Federal Land Sales Board did not exist?

Mr. INGERSOLL. Well, in the areas of fraud, I think that you are correct. The Securities Act and the Federal Trade Commission Act would apply to any type of fraudulent transactions that I have seen in this industry. In the area of disclosure, I think that the Interstate Land Sales Act does provide some additional protections that maybe those acts do not provide.

Mr. KELLY. What area was that?

Mr. INGERSOLL. In the area of disclosure, making certain representations, by requiring that representations be made to people at the time of sale. I think that has been the primary benefit of the Interstate Land Sales Full Disclosure Act.

Mr. KELLY. Well, there's no reason why the States could not do that, is there?

Mr. INGERSOLL. No, there is not. In fact, it is our determination that most of the States do that the present time.

Mr. KELLY. And the States normally don't design the law in such a way that their State or their territory constitutes a sanctuary for interstate crooks?

Mr. INGERSOLL. No, I don't know of any State that would want to do that.

r. KELLY. I would not want any of you to go on record about this, it is entirely possible that this whole land sales phenomena came

about because some do-gooding politician, about election time, wanted to demonstrate that he was saving the world for his constituents, and that there would not be any other rationale for it to exist at all, based on what we have discovered here.

So I will just say that, Mr. Chairman, and not jeopardize the witnesses. But, Mr. Chairman, that is something that the committee ought to consider, is: Couldn't we do without this mess entirely? I mean, now that we are all trying to save the Nation from regulatory control and stagnation and strangulation and inflation and all of this other stuff. This would be a really great opportunity for this committee.

Let me ask the witnesses just one more question: Would any of you feel as though that, if the Federal Land Sales Board was going to go out of business at sundown tomorrow, that you would feel that the consuming public would be in great danger from the standpoint that there isn't enough law and law enforcement agencies to protect them, if they would just start enforcing the laws we have? Do any of you feel that way? [No response.]

Thank you, Mr. Chairman.

Mr. GONZALEZ [presiding]. Well, Mr. Kelly, thank you.

I think, in all fairness to the witnesses, the question was kind of loaded. [Laughter.]

That is about as mild as I can put it.

But thank you very much, gentlemen.

I regret very much that we have these limitations as to the use of this room. We still have about 7 minutes. I understand that the limit is 1:45. But I gathered from the statements that you submitted, the common fear that seems to pervade almost every witness pro or con, and from the beginning when the legislation was first being prepared and fears were expressed, that the Federal agencies involved would extend enforcement efforts beyond interstate transactions.

And I think what I see reflected in your statements, particularly Mr. Smith's, is that, look, what's really uppermost now in our minds and is troubling us is this incursion more and more into these areas that are already pretty heavily regulated locally such as the single-home transaction. I think you were here when I referred to an example from my own experience. A builder or developer was selling to an officer of the armed services, and found himself confronted with this problem.

And it seems to me that that is a proper area of concern, and I think it is brought out very well in your statements, particularly Mr. Smith's statement, where he states that—I was trying to refer to the exact page. In any event, Mr. Smith referred to this intrusion, really, because it appears to mean that the Federal agency has come into what otherwise would really be defined as an intrastate, wholly intrastate, operation.

Am I wrong in that conclusion?

Mr. SMITH. No, sir, Mr. Chairman. You are exactly right. For example, in San Antonio, where you have several subdivisions that exceed 50 lots in size, not only does this developer have a problem, he cannot sell to the Army personnel without exemptions, according to our counsel. The fact that the military personnel cannot buy because that has not gone through the exemption process means that he would probably purchase later from a builder because that builder has not

been exempt that purchased the lot from the subdivider. Consequently, your constituent would be paying more money for the lot. And we think he should have that right as an informed consumer to purchase the lot directly from the builder, provided that it met the requirements of your city of San Antonio.

That is the reason that we have supported—NAHB supports the Nelson bill, all of section 715, because in the event of fraud on out-of-State buyers, as the attorney general from New Mexico mentioned—the New York purchaser can be protected by the New York attorney general. And so, consequently, we have protection for the out-of-State buyer. We think that the individual buyer in San Antonio and Fort Worth is well protected now, because of the many codes and ordinances he has to go through, and we do not think that your constituents should have to go through an exempted filing of the amount of money you spoke of a while ago.

And I mentioned while you were out that on top of that $20,000 is the carrying expense of the subdivision lying dormant while the subdivider is awaiting approval on the national level.

Mr. GONZALEZ. So that actually, I think our biggest problem or dilemma is: How do you define in the law, in the statute, in the bill, this differentiation between the purely intrastate and what you ordinarily would consider an interstate transaction? Because the thing that I noticed was that, in the particular cases that came to my attention in the area that I am familiar with, every one of these men were not interested at all in any kind of interstate kind of activities. They were wholly and completely local, and I doubt they would be recognized, even by their fellow associates in the business, outside of the San Antonio area.

And this is—I think this is the main problem, as I see it, that has developed, and would be a continuing problem here. These problems clearly reveal other issues as to size limitation and so forth. The difficulty of national legislation, when you have the situation of the dense East and North and the sparsely settled areas of Nevada, such as the attorney general was describing, will always present difficulties.

But this other problem, which I think really imposes inequitable restraints and burdens, is what I see as our continuing dilemma here.

Mr. SMITH. As I testified to Congressman Minish, I would hope you could help us separate the wheat from the chaff. And it is defined in the Nelson bill, in our opinion, and we don't think we should take an elephant gun after a jackrabbit.

Mr. ABRAHAMS. If it would not be inappropriate just to comment, Mr. Chairman, I believe that both State attorneys general made our case for us repeatedly. Although they paid lipservice opposition to the Nelson amendment, when any kind of questions and answers developed, if I may say, in each case they said: It isn't going to be the New Mexico or Nevada folks who are going to be defrauded. It is not the people in our State and our areas who are going to be fooled by this worthless land. They are worrying about the folks coming down from the frozen North to the beautiful Southwest and Southeast, and not having adequate protection, because of distance and several other considerations. In my opinion they proved the case for the intrastate and local exemption, which was what I think Senator Nelson had in mind.

Mr. GONZALEZ. Well, those dramatic cases, which generally did involve a sophisticated fraudulent practice, almost always were associated with something that we considered or defined as large or extensive and not local; local only in the sense that they were coming in to speculate on local land.

But I think that that is our dilemma here, and there is no question in my mind that you have very well and very competently reflected the experience of your individual members on some of the questions that we have to express ourselves to.

And now, as I understand it, the Senate bill incorporated this amendment that I believe the Home Builders Association had.

Mr. KELLY. Mr. Chairman?

Mr. GONZALEZ. Yes?

Mr. KELLY. The second bells have rung.

Mr. GONZALEZ. Well, Mr. Kelly, we had better get going. I think there is no alternative, in view of our time limitation here, but to thank you very much, gentlemen. And we hope we will have a continuing relationship during the course of these hearings. And the subcommittee will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 1:45 p.m., the hearing was recessed, to reconvene at 10 a.m., on Thursday, August 3, 1978.]

33-716 O - 78 - 30

THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AMENDMENTS

THURSDAY, AUGUST 3, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT,
Washington, D.C.

The subcommittee met at 10:30 a.m. in room 2128 of the Rayburn House Office Building, Hon. Thomas L. Ashley (chairman of the subcommittee) presiding.

Present: Representatives Ashley, Gonzalez, AuCoin, Hannaford, and Brown.

Also present Representative S. William Green of the State of New York.

Chairman ASHLEY. The subcommittee will come to order.

This morning we resume the taking of testimony on the Interstate Land Sales Full Disclosure Act amendments. Our first witness will be Patricia M. Worthy, Administrator, Office of Interstate Land Sales Registration, Department of Housing and Urban Development.

We are delighted to have you with us this morning.

Also on the panel will be Edward D. Steinman, Acting Assistant Director, Division of Marketing Abuses, Federal Trade Commission, accompanied by John M. Tifford, staff attorney in the land sales program.

Ms. Worthy, would you proceed with your testimony, please.

STATEMENT OF PATRICIA WORTHY, ADMINISTRATOR, OFFICE OF INTERSTATE LAND SALES REGISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ACCOMPANIED BY PETER RACE, OFFICE OF GENERAL COUNSEL, AND ALAN KAPPELER, DEPUTY ADMINISTRATOR

Ms. WORTHY. Mr. Chairman, it is with great pleasure that we can appear before you this morning.

I have with me to my left Peter Race from the Office of General Counsel at the Department, and to my right, my deputy, Alan Kappeler.

We are here this morning to discuss with you various legislative proposals to amend the Interstate Land Sales Full Disclosure Act. Bills have been introduced by Congressman Minish, the administration and Senator Nelson, the latter being incorporated into S. 3084 which passed the full Senate.

The Interstate Land Sales Full Disclosure Act took effect a little over 9 years ago. The act was new; precedent was lacking; staff v

inexperienced in its new discipline; aspirations as to breaking ground were high; enthusiasm in the relatively new concept of "consumer protection" was spirited, and the desire to execute the congressional mandate was clearly evident.

After 9 years of operating the program, we are able to see clearly what has been its strengths and its weaknesses. Experience has been profitable, and improvements have in some measure been due to trial and error.

In administering the act, we have been effective in carrying out the congressional objectives of providing full disclosure to lot purchasers. There have been over 8,600 filings with the Department covering over 5,250,000 lots in subdivisions. Purchasers and potential purchasers have had the benefit of a property report fully informing them about the subdivision in which they bought or considered buying a lot.

The Department has also been active in serving as an intermediary between purchasers and developers in helping resolve thousands of consumer complaints. In the last year alone, HUD has reached settlements with developers in which refunds have been offered to purchasers from contract obligations amounting to approximately $133,500,000.

Further, HUD has successfully used its statutory authority to pursue a number of flagrant violators with civil and criminal action, initiating 26 injunction cases against 54 companies and 82 individuals.

The Department has also instituted 1,100 administrative proceedings against developers who have omitted facts or made misleading statements in their filings. These actions help to insure that purchasers get full and accurate disclosures.

The Office of Interstate Land Sales Registration staff members have been keenly aware that in the enforcement of the act's provisions and requirements, competing interests of the regulated industry and the purchasing public have had to be considered.

We believe that enactment of the administration program, together with the regulations recently proposed, will result in overall balanced improvement in the administration and in the furtherance of the goal of protecting the interests of purchasers.

At the same time, we believe that the legitimate concerns and interests of land developers will be addressed and enhanced.

Like many of the Members of Congress, the Department recognizes the problems of small developers in complying with the registration requirements of the act.

The 50-lot threshold in the act is very low, technically subjecting to jurisdiction many people whose entry into the land sales business is minor or only temporary and who have no conception that Federal law might apply to them.

We have recommended that a simple means of reducing the coverage of the act would be to amend the definition of "subdivision" by increasing the numerical threshold to 100 lots from the present 50 lots. For the reasons stated above, we do not favor the Minish proviso to lower the threshold figure of 50 to 40 lots.

The administration's bill proposes that the act should be amended to cover lots of up to 40 acres in size rather than the present 5 acres. Purchasers have complained to us about sales practices perpetuated in the sale of tracts over 5 acres in size, but we have been prevented

from taking any action because of the exemption in the current statute.

A significant number of developers are selling large acreage parcels located in remote areas of the desert or mountains which have little potential for residential use or investment. We have found no correlation between lot size and buyer sophistication when mass marketing techniques are being used. We believe that purchasers should be given the facts about this land.

The administration would exempt the sale of real estate pursuant to court order with certain added precautions.

Many developers of large subdivisions have gone into bankruptcy and continue court-sanctioned sales, exempt from the registration requirements. Buyers in these situations also need protection. Bankruptcy courts are concerned primarily with the interests of creditors rather than the interests of lot purchasers.

The administation would repeal the provision that exempts lots solely on the basis that the purchasers have made an onsite inspection and the lot is free of liens. This exemption has been a problem area for both the Department and developers. Not only has the language been subject to misinterpretation, but our view is that the exemption does not provide sufficient protection for purchasers. This lack of protection is compounded by the fact that statutory exemptions apply across the board and exempt the particular land sales operation from the antifraud provisions of the act as well as from the registration provisions.

The administration would also allow a cooling-off period of 14 days instead of the present 3 business days. Based upon our experience, purchasers should have more time that the 3 days permitted under existing law to revoke a contract.

Extending the cooling-off period should be one of the strongest deterrents in the act to the use of high pressure sales techniques and misrepresentations by salespersons.

A 14-day cooling-off period as proposed by the administration is realistic and should be adequate to give consumers sufficient opportunity to evaluate their purchase decisions and would bring the Federal requirements into line with cooling-off periods found under several State laws.

The administration would amend the act to provide that unless the Secretary has accepted State property reports, the Federal property report will be used in lieu of any State disclosure document. Although approximately 20 States already accept the HUD property report as their own, purchasers in some cases now receive the HUD property report and the State report for the State in which the property is located and the State report from the purchaser's home State as well.

By getting only one uniform property report, the purchaser would be spared the confusing duplication that now exists. This proposal would also assist developers selling in more than one State since they would not have to go to the time and expense of preparing and filing more than one report.

The administration proposes fuller recovery provisions under the civil liabilities section. Restrictions on the amounts recoverable in civil actions have been a significant problem by makng it uneconomical for purchasers to bring suit for fraud or misrepresentation. Both the

administration and the Minish bills would include in the amount recoverable attorney's fees and appraisal costs.

Both bills also propose amending the civil suit section to provide purchasers with a remedy when a developer fails to fulfill promises made in the property report. One of the most common and flagrant areas of abuse in land sales is a tendency for many developers repeatedly to defer completion dates for utilities and recreational amenities or simply to fail to build them at all.

The administration bill would lengthen the statute of limitations of the existing law for consumers from 2 years for voidability for nondelivery of a property report and from 1 to 3 years for fraud to a maximum of 4 years for voidability and 3 years after discovery for fraud. These periods generally would not be affected by delivery of a deed or by the sale or assignment of the sales contract or agreement to a third party.

We believe changes such as these are essential in giving consumers the full protection of the act. These proposals recognize that many purchasers buy on long-term installment contracts and may not have any right to use their land for many years. The developer's obligations may extend well beyond the current statute of limitations.

More importantly, purchasers often do not know of a misrepresentation until the dates have passed for completing promised amenities or facilities.

Both the administration and the Minish bills would allow the Secretary to issue a cease-and-desist order for serious violations of the act. The Secretary's ability to issue cease-and-desist orders would enhance OILSR's ability to act quickly to curtail such practices.

Both bills also contain civil penalties provisions. The proposal to allow civil penalties after an administrative hearing is parallel to remedies found in many other Federal laws and is specifically recommended by the Administrative Conference of the United States as a sanction for Federal administrative agencies.

This sanction is expected to be a significant deterrent to developers who heretofore were willing to risk engaging in violations of the act.

The Senate bill would, like the other bills, amend the limitations period. Although it recognizes the problems of the purchaser whose rights presently may be cut off by the assignment of the sales agreement, the major problem of time would be compounded by an absolute remedy cutoff of 3 years after the purchaser signs the contract.

The land sales industry makes extensive use of long-term land installments sales contracts which provide that title will not be vested in purchasers until after the last contract payment is made.

In many cases, subdivision improvements, amenities and utilities, are not scheduled for completion until 2, 3 or more years in the future. Therefore, large time periods elapse before a purchaser may realize damage from the developer's failure to complete.

The Senate bill proposes to amend the "onsite" exemption to exclude from the meaning of "liens, encumbrances and adverse claims" U.S. land patents or Federal grants and reservations similar to U.S. land patents.

A land patent is a grant, in this context usually an instrument conveying title to public land from the Federal Government to a private party. When the Government conveyed land in most of the Western States, it reserved the right to construct ditches and canals on that land.

HUD agrees that the actual effect of land patent reservations for ditches and canals upon individual lot purchasers is negligible. We support repeal of the onsite exemption entirely but if it is retained, the Department would prefer that the language be rewritten so that it would be more clear.

The main purpose of the Senate bill, as we understand it, is to address the problems experienced by small developers with essentially local operations in meeting the requirements of the Interstate Land Sales Full Disclosure Act. This Department is sympathetic to that purpose.

In addition to recommending legislation to double the minimum size of a subdivision covered by the act from 50 to 100 lots, we are taking steps administratively to alleviate the problems. We do not, however, consider it desirable to do this in a manner which could sacrifice the larger consumer protection aspects of the existing law.

It is our opinion that the proposed amendments do not in fact accomplish what they seek to accomplish. The bill is aimed at exempting small intrastate developers, yet would exempt subdivisions where all of the sales are made out of State.

Further, the bill provides no numerical lot ceiling and would, therefore, allow exemptions for subdivisions of thousands of lots.

The Department is presently engaged in litigation right now in Texas in an injunction case involving severe consumer abuses including fraud and failure to build roads and to give good title to the land, in the sale of over 3,500 lots near Dallas.

In our reading that subdivision would be exempt under the proposal of the Senate.

Features common to both exemptions are their self-determining nature and their provisions—limited in one case—for onsite inspections and lien-free sales.

The act already contains an exemption based in part upon a purchaser's onsite inspection of a lot similar to the Senate proposal. While HUD recognizes that an onsite inspection has value to prospective lot purchasers, many complaints received by OILSR cause us to doubt seriously that inspections afford consumers the disclosure protection intended by the act. At least one-third of all purchasers who complain to HUD made onsite inspections prior to signing a contract.

Few lot purchasers are familiar with local land-use laws, nor are they so knowledgeable as to be able to see that the ground won't allow sufficient percolation to be suitable for septic systems, or that the water supply is inadequate or perhaps unfit for consumption, or that roads are improperly constructed or have no provision for maintenance; that the utility companies cannot supply service at reasonable cost, or that the land is prone to flooding.

Further, an onsite inspection reveals nothing of a developer's ability or intentions to carry through on performance of his promises and representations.

As far back as 1964, this point was addressed by an official of the then Florida Installment Land Sales Board before a Senate subcommittee hearing to determine the need for a land sales law. I quote:

> It has been our experience that people who see the property are the ones that are defrauded the greatest. They are subjected to the hard sell. They are subjected to a salesman in a closed room where there is no regulation of what the salesman has to say other than by complaint against him later.

Just as importantly, the free and clear requirement of the exemptions in the Senate bill pertains to a self-determining exemption. HUD's experience with the existing free and clear exemption provision in section 1403(a)(10) of the act which requires a HUD determination is that many developers do not qualify for the exemption upon their initial submission because the land is not free and clear of liens, encumbrances or adverse claims as specified in the statute.

Furthermore, of those subdivisions which do qualify for the exemption, a disturbing percentage do not operate subsequently as required by the statute for continuing qualifications for the exemption. An exemption based upon voluntary compliance with a free and clear requirement is fraught with peril for both developers and consumers.

The proposed exemptions, even though self-determining, would require the developer to file a form with HUD for every sale affirming that the developer had complied with the requirements for the exemption in the case of nonresidents and giving the developer's name and address, a legal description of the subdivision and the developer's signature.

One proposed exemption is for transactions with purchasers who live within 100 miles of the subdivision where the purchaser resides in a State other than where the subdivision is located. The other exemption is for intrastate subdivisions, defined as a subdivision where during the year no more than 5 percent of the total lots sold, or a maximum of five lots, whichever is greater, were sold to nonresidents of the State where the subdivision is located.

Any number of sales could be made to nonresidents who lived within 100 miles of the subdivision, and these would not be counted toward the 5 percent or five lots.

Although nonresidents would receive some information through a written statement of reservations, taxes and assessments, residents will have no such safeguards.

Sales can be made to resident purchasers who do not make on-site inspections, and the land can be heavily encumbered by liens, encumbrances, and adverse claims, even to the extent that the resident purchasers have no chance of ever obtaining clear title.

A fundamental problem with the 100-mile provision is its lack of a realistic rationale. It has nothing to do with the size of the subdivision, the abuses that may have occurred, the character of the subdivision or the manner in which it was promoted.

This provision could exempt many large subdivisions fraught with chicanery such as those encountered by the Department in the Poconos which are marketed in New Jersey, New York, Pennsylvania, and Virginia subdivisions marketed in the Washington, D.C., metropolitan area.

For example, Captain's Cove, a 3,000 lot subdivision was marketed using direct mail, telephone solicitation, free gifts, and dinners generally within a 100-mile area in Virginia, Maryland, and the District of Columbia. The developer was convicted for mail fraud, and we received hundreds of complaints from purchasers about the developers failure to build promised facilities and to disclose lack of dredging permits necessary to make the land buildable.

Under the Senate proposals, these sales could be exempt and purchasers would receive no disclosures. We would be happy to supply

the subcommittee with other examples of potentially exempt subdivisions that have histories of consumer abuses.

The exemptions proposed contain several pitfalls for the developer as well as for the potential purchasers.

HUD's experience in administering the act indicates that the more complicated an exemption provision, the more subject it is to misinterpretation. It is not fair to developers to make an exemption available when it contains potential pitfalls which could result in that developer's unintentional violation of Federal law. It follows that a primary goal for exemptions should be simplicity, particularly in the case of self-determining exemptions.

We do not oppose the concept of an exemption for fully improved lots where all local codes and standards are met prior to initiating sales. We have proposed an exemption in our regulations similar to that in the Senate bill. However, we would recommend that the language be reviewed for clarification.

On June 1, 1978, we republished for comment comprehensive amendments to the land registration and exemption regulations. For the reasons stated a moment ago, though some of the regulatory exemptions are self-determining, the complex ones require submission to HUD.

In developing these regulations, we have kept the small developer and the specialized developed in mind. The results are, in tandem with the administration's proposals, eminently workable.

We have proposed seven new regulatory exemptions related to the character of the subdivision, as opposed to an arbitrary mileage or location or percentage-of-sales factor. As such, the regulations are easier for a developer to use in determining if he is exempt and are much more meaningful in protecting the prospective purchaser.

Specifically, the regulations would exempt scattered sites. A developer selling lots in various locations may be entitled to an exemption if there are less than 50 lots per site, even though the total number of lots in all sites exceed 50. This exemption would also cover brokers.

Our primary homesite exemption would be available when not more than 300 lots were offered in the subdivision or scattered site and if there were assurances of completion of various improvements. A third exemption would apply to small subdivisions offered to a local market, where there was limited promotion.

This exemption would allow small developers located near State borders to sell without the cumbersome 5 percent out-of-State restriction found in our present regulations.

Another proposed exemption that was originally issued to ease the problem for builders selling left-over lots has been liberalized to increase from 5 to 10 percent the number of lots in the subdivision that may be sold as raw lots without registration.

We have also recognized the burdens that registration can place upon very small operations. An exemption has been proposed that would allow a developer to make up to 12 lot sales per 12-month period without registration.

In all of these regulatory exemptions, the privilege of exemption would be from the registration requirements only. Fraud and misrepresentation occurring in the sale of lots in these exempted subdivisions could still be enjoined, and developers could still be subject to prose-

cution and purchasers would still have legal remedies for unlawful conduct.

In conclusion, I would like to express again my concern to the subcommittee that the administration's land sales proposals have been deleted from the HUD bill. We feel that our recommendation to raise the threshold of the act from 50 to 100 lots in conjunction with our proposal of new regulatory exemptions will meet the concerns of both the industry and the Congress with respect to the small developer.

In our regulatory proposals, the Department places utmost importance on the character of the subdivision and identifying those circumstances where consumers are adequately protected or where registration would be an unneeded burden on the developer.

We extend our availability and willingness to work with the committee to assist in preparing legislation that meets both the needs of the consumers and developers and the concerns of the Congress.

At this time, we would be pleased to answer any of your questions.

[Ms. Worthy's prepared statement, on behalf of the Office of Interstate Land Sales Registration, appears along with the following table submitted by the Office entitled "Statement of Record Filings":]

STATEMENT OF

PATRICIA M. WORTHY

ADMINISTRATOR

OFFICE OF INTERSTATE LAND SALES REGISTRATION

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BEFORE THE

SUBCOMMITTEE ON HOUSING

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

AUGUST 3, 1978

Mr. Chairman

It is with great pleasure that we appear before this committee to discuss with you various legislative proposals to amend the Interstate Land Sales Full Disclosure Act. Bills have been introduced by Congressman Minish, the Administration and Senator Nelson, the latter being incorporated into S. 3084 which passed the full Senate.

The Interstate Land Sales Full Disclosure Act took effect a little over nine years ago. The Act was new; precedent was lacking; staff was inexperienced in its new discipline; aspirations as to breaking ground were high; enthusiasm in the relatively new concept of "consumer protection" was spirited, and the desire to execute the Congressional mandate was clearly evident.

After nine years of operating the program, we are able to see clearly what has been its strengths and its weaknesses. Experience has been profitable, and improvements have in some measure been due to trial and error.

In administering the Act, we have been effective in carrying out the Congressional objectives of providing full disclosure to lot purchasers. There have been over 8,600 filings

with the Department covering over 5,250,000 lots in subdivisions. Purchasers and potential purchasers have had the benefit of a proporty report fully informing them about the subdivision in which they bought or considered buying a lot.

The Department has also been active in serving as an intermediary between purchasers and developers in helping resolve thousands of consumer complaints. In the last year alone, HUD has reached settlements with developers in which refunds have been offered to purchasers from contract obligations amounting to approximately $133,500,000. Further, HUD hes successfully used its statutory authority to pursue a number of flagrant violators with civil and criminal action, obtaining 91 indictments against individuals and companies and initiating 26 injunction cases against 54 companies and 82 individuals. The Department also has instituted several hundred administrative proceedings against developers who have omitted facts or made misleading statements in their filings. These actions help to ensure that purchasers get full and accurate disclosures.

The Office of Interstate Land Sales Registration (OILSR) staff members have been keenly aware that in the enforcement of the Act's provisions and requirements,competing interests of the regulated industry and the purchasing public have had to be considered.

In considering additional legislative changes we will give our views and state our preferences concerning proposals in the Senate and the Minish bills and we will offer our reasons why we fully support the legislative changes proposed by the Administration.

We believe that enactment of the Administration program together with the Regulations recently proposed, will result in overall balanced improvement in the administration and in the furtherance of the goal of protecting the interests of purchasers. At the same time, we believe that the legitimate interests of land developers will be enhanced.

DISCUSSION OF ADMINISTRATION AND MINISH PROPOSALS

Like many of the members of Congress, the Department recognizes the problems of small developers in complying with the registration requirements of the Act.

50-LOT THRESHOLD

The 50-lot threshold in the Act is very low, technically subjecting to jurisdiction many people whose entry into the land sales business is minor or only temporary and who have no conception that Federal law might apply to them.

From a survey of non-registered, non-exempt subdivisions, we learned that over half contain fewer than 100 lots. Moreover,

our experience shows that in the smaller subdivisions, there are usually less agressive sales programs, most of them are local in nature and the probability of consumer abuse is minimal. Staff time would be better spent on the larger subdivisions for which high volume sales requirements often invite misleading sales practices.

We have thus recommended that a simple means of reducing the coverage of the Act would be to amend the definition of "subdivision" by increasing the numerical threshold to 100 lots from the present 50 lots. For the reasons stated above, we do not favor the Minish proviso to lower the threshold figure of 50 to 40.

40-ACRE LOTS

The Administration's Bill proposes that the Act should be amended to cover lots of up to 40 acres in size rather than the present five acres. Purchasers have complained to us about sales practices perpetrated in the sale of tracts over five acres in size, but we have been prevented from taking any action because of the exemption in the current statute. A significant number of developers are selling large acreage parcels located in remote areas of the desert or mountains which have little potential for residential use or investment. We have found no correlation between lot size and buyer sophistication when

mass marketing techniques are used. We believe that purchasers should be given the facts about this land.

COURT ORDER EXEMPTION

The Administration would exempt the sale of real estate pursuant to court order, as the present law allows, provided the Secretary has determined such sale to be in the public interest.

Many developers of large subdivisions have gone into bankruptcy and continue court-sanctioned sales, exempt from the registration requirements. Buyers in these situations also need protection. Bankruptcy courts are concerned primarily with the interests of creditors rather than the interests of lot purchasers.

ON-SITE EXEMPTION REPEAL

The Administration would repeal the provision that exempts lots solely on the basis that the purchasers have made an on-site inspection and the lot is free of liens. This exemption has been a problem area for both the Department and developers. Not only has the language been subject to misinterpretation, but our view is that the exemption does not provide sufficient protection for purchasers. This lack of protection is compounded by the fact that statutory exemptions apply across the board and exempt the particular land sales operation from the anti-fraud provisions of the Act as well as from the registration provisions.

At present, if a lot buyer has personally inspected the lot which is free and clear of liens, encumbrances and adverse claims and has signed an acknowledgment of receipt of a copy of a statement showing restrictions, reservations, taxes and assessments, the sale is exempt--but certain information must still be filed by developers.

Since the criteria of this exemption are relevant to proposals in the Senate bill, I will comment further when discussing that bill. At this point, it is sufficient to say that our primary purpose in seeking repeal of this exemption is that even when all the qualifications for exemption are met, purchasers will have little knowlege about the subdivision and, therefore, need adequate disclosure information.

FRAUD AMENDMENTS

The Administration would improve the anti-fraud provisions of §1404 of the Act by specifically prohibiting omissions of material facts as well as misrepresentations of material facts. Also, the proposal deletes language requiring actual reliance by the purchaser on the misrepresentation. Among other things, this change should help in utilizing securities case law in land sales enforcement cases. The Minish bill contains the same provision.

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COOLING-OFF PERIOD

The Administration would also allow a cooling-off period of 14 days instead of the present three business days. Based upon our experience, purchasers should have more time than the three days permitted under existing law to revoke a contract. Extending the "cooling-off" period should be one of the strongest deterrents in the Act to the use of high pressure sales techniques and misrepresentations by salespersons. A 14-day cooling-off period as proposed by the Administration is realistic and should be adequate to give consumers sufficient opportunity to evaluate their purchase decisions and would bring the Federal requirements into line with cooling-off periods found under several State laws. We believe that the 30 day voidability provision found in the Minish bill is too lengthy and may upset the proper balance between the seller and the buyer.

The Minish bill also proposes a three-year right for purchasers to void sales made on developer-financed long term installment contracts or where sales are made in the same day as the contract is presented. We favor the thrust of this proposal which would minimize problems for installment purchasers, but believe it unworkable because of difficulties developers would encounter in seeking financing, but will be pleased to work with the Committee to develop workable language in this area.

8

REGISTRATION FEE

The Administration would remove the limit for fees chargeable for registration--at present $1,000. The Secretary should have the authority to set fees to more closely relate to the workload created by large developments and to more equitably distribute the fee burden.

EXCLUSIVE FEDERAL PROPERTY REPORT

The Administration would amend the Act to provide that unless the Secretary has accepted state property reports, the Federal Property Report will be used in lieu of any state disclosure document. Although approximately 20 states already accept the HUD Property Report as their own, purchasers in some cases now receive the HUD Property Report and the stata report for the State in which the property is located and the state report from the purchaser's home state.

Receipt of voluminous documentation discourages purchasers from reading the myriad of facts contained in each and may confuse the consumer so much that he relies solely on the salesman's statements. By getting only one uniform Property Report, the purchaser would be spared the confusing duplication that now exists. This proposal would also assist developers selling in more than one state since they would not have to go to the time and expense of preparing and filing more than one report.

9

CIVIL LIABILITIES

The Administration proposes fuller recovery provisions under the civil liabilities section. Restrictions on the amounts recoverable in civil actions have been a significant problem by making it uneconomical for purchasers to bring suit for fraud or misrepresentation. Both the Administration and the Minish bills would include in the amount recoverable attorney's fees and appraisal costs. Additionally, the Administration bill specifies certain criteria to be considered by courts in determining damages.

Both bills also propose amending the civil suit section to provide purchasers with a remedy when a developer fails to fulfill promises made in the property report. One of the most common and flagrant areas of abuse in land sales is a tendency for many developers repeatedly to defer completion dates for utilities and recreational amenities or simply to fail to build them at all. The Administration's Bill would allow suits for failure to carry out obligations in the property report, and the Minish bill would permit purchasers to bring suit for the purpose of securing specific performance of the contract and any other promises made in connection with the sale or lease.

STATUTE OF LIMITATIONS

The Administration bill would lengthen the statute of limitations of the existing law for consumers from two years for voidability for nondelivery of a property report and from one to three years for fraud to a maximum of four years for voidability and three years after discovery for fraud. These periods generally would not be affected by delivery of a deed or by the sale or assignment of the sales contract or agreement to a third party.

The Minish bill would extend the limitations period across the board to three years after discovery, subject to a cap of seven years after the sale or lease.

We believe changes such as these are essential in giving consumers the full protection of the Act. These proposals recognize that many purchasers buy on long-term installment contracts and may not have any right to use their land for many years. The developer's obligations may extend well beyond the current statute of limitations. Purchasers often do not know of a misrepresentation until the dates have passed for completing promised amenities or facilities, or until they finally get title to the land. For these reasons, purchasers are often precluded from obtaining relief under the current Act. Either proposal would be an improvement, though we prefer the Administration's recommendation primarily because it provides for rights that survive passage of title and transfer of the sales documents.

CEASE AND DESIST

Both the Administration and the Minish bills would allow the Secretary to issue a cease and desist order for serious violations of the Act. The Secretary's ability to issue cease and desist orders would enhance OILSR's ability to act quickly to curtail such practices.

CIVIL PENALTIES

Both bills also contain civil penalties provisions. The proposal to allow civil penalties after an administrative hearing is parallel to remedies found in many other Federal laws and is specifically recommended by the Administrative Conference of the the United States as a sanction for Federal Administrative Agencies. This sanction is expected to be a significant deterrent to developers who heretofore were willing to risk engaging in violations of the Act.

The Minish bill contains several proposals beyond those recommended by the Administration. For example, we believe purchasers can benefit by the parenes patriae right to sue contained in the bill and generally support that concept.

DISCUSSION OF SENATE PROPOSALS

STATUTE OF LIMITATIONS

The Senate Bill would, like the other bills, amend the limitations period. Although it recognizes the problem of the purchaser whose rights presently may be cut off by the assignment of the sales agreement, as the Administration bill does, the major problem of time would be compounded by an absolute remedy cut-off of three years after the purchaser signs the contract.

The land sales industry makes extensive use of long-term land installment sales contracts which provide that title will not be vested in purchasers until after the last contract payment is made. In many cases, subdivision improvements (amenities and utilities) are not scheduled for completion until two, three or more years in the future. Therefore, large time periods elapse before a purchaser may realize damage from the developer's failure to complete. That is why the Administration's bill, except for the overall cap for non-fraud, proposes in its amendment to the statute of limitations section to measure the limitations period from discovery of the violation. A purchaser could pay thousands of dollars for a piece of property under a contract with a term of 5, 7, or commonly, even 10 years but would be foreclosed from legal redress if improvements scheduled for completion five years--or even three-- from the time the contract is signed were never completed. Moreover, even if a clearcut case of fraud

were established, the finality of the Senate proposal would preclude the application of equitable doctrines to allow the action if the suit were filed 37 months after the contract.

ADMINISTRATIVE PROCEDURES

The Senate bill proposes to amend the Act by adding two clauses dealing with administrative procedures, the first of which states present agency practice. Although the Act does not so require, rulemaking does in fact conform with the Administrative Procedure Act. 24 CFR 1720.15, 1720.20 and 1720.25 of the current Regulations do in fact follow the language of the Administrative Procedure Act. All adjudicative hearings required by the Act are conducted in accordance with all the requirements of the APA, including hearings on deficiency letters as a result of the examination of registrations.

The second clause apparently requires the Secretary to promulgate rules of procedure for all adjudicative proceedings not required by law to be determined on the record after notice and opportunity for hearing. The rules provide that prompt notice must be given of any adverse action or final disposition, such notice or the entry of any order to be accompanied by a statement of legal authority "and other written reasons." This appears to apply to exemption decisions, which might fall within the APA definition of adjudication, but are not required by statute to be determined on the record.

In exemption request cases OILSR does give prompt notice of adverse actions or other final dispositions to the affected party, along with a written statement of legal authority or other reasons for the disposition. Codification of these procedures would not be difficult and we do not oppose such a proposal. If the proposal is meant to extend beyond exemption determinations, clarification is needed because--frankly--we cannot discern its objective.

PATENT RESERVATIONS

The Senate Bill proposes to amend the "on-site" exemption to exclude from the meaning of "liens, encumbrances and adverse clains" United States land patents or Federal grants and reservations similar to United States land patents.

Because of the controversy that has arisen over this matter, it is important to focus on the obstacle sought to be overcome. First, a land patent is a grant, in this context usually an instrument conveying title to public land from the Federal Government to a private party. When the government conveyed land in most of the western states, it reserved the right to construct ditches and canals on that land. This patent reservation prevented a number of western subdivisions from qualifying for this exemption.

We, therefore, recommend that any new legislation in this area be limited to correcting the problem at hand. For example, land that is subject to a flooding reservation in the Army Corps of Engineers, may not be suitable for building. That kind of reservation is not the type of interest that should be permitted in the offering of an exempt subdivision. It might well not be, but the question is whether that kind of encumbrance would qualify as a Federal grant or reservation "similar to United States land patents." There can be no definitive answer under the proposed language. HUD agrees that the actual effect of land patent reservations for ditches and canals upon individual lot purchasers is negligible. We support repeal of this examption entirely, but if it is retained, the Department would prefer a well-defined amendment.

INTRASTATE AND 100 MILE EXEMPTIONS

The main purpose of the Senate bill, as we understand it, is to address the problems experienced by small developers with essentially local operations in meeting the requirements of the Interstate Land Sales Full Disclosure Act. This Department is

sympathetic to that purpose. In addition to recommending legislation to double the minimum size of a subdivision covered by the Act from 50 to 100 lots, we are taking steps administratively to alleviate the problems. We do not, however, consider it desirable to do this in a manner which could sacrifice the larger consumer protection aspects of the existing law.

It is our opinion that the proposed amendments do not in fact accomplish what they seek to accomplish. The bill is aimed at exempting small intrastate developers, yet would exempt subdivisions where all of the sales are made out of state. Further, the bill provides no numerical lot ceiling and would, therefore, allow exemptions for subdivisions of thousands of lots. The Department is engaged in litigation right now in Texas in an injunction case involving severe consumer abuses including fraud and failure to build roads and to give good title to the land, in the sale of over 3,500 lots near Dallas. In our reading, that subdivision would be exempt under this proposal.

There is, incidentally, a technical problem in that the proposed exemptions do not reflect the recent floor amendments introduced by Senator Sparkman changing the definition of liens, encumbrances and adverse claims in the on-site exemption (§715(a)(2) of the Senate Bill).

Features common to both exemptions are their self-determining nature and their provisions--limited in one case--for on-site inspections and lien-free sales.

on-site inspections

The Act already contains an exemption based in part upon a purchaser's on-site inspection of a lot similar to the Senate proposal. While HUD recognizes that an on-site inspection has value to prospective lot purchasers, many complaints received by OILSR cause us to doubt seriously that inspections afford consumers the disclosure protection intended by the Act. At least one-third of all purchasers who complain to HUD made on-site inspections prior to signing a contract.

Few lot purchasers are familiar with local land use laws, nor are they so knowledgeable as to be able to see that the ground won't allow sufficient percolation to be suitable for septic systems, or that the water supply is inadequate or perhaps unfit for consumption, or that roads are improperly constructed or have no provision for maintenance; that the utility companies cannot supply service at a reasonable cost, or that the land is prone to flooding. Land subject to flooding, for example, might be dry at the time of inspection. These inspections, by the way, usually are done

under the skilled guidance of the salesman. Further, an on-site inspection reveals nothing of a developer's ability or intentions to carry through on performance of his promises and representations.

Moreover, it is not clear whether the on-site inspections set out as a safeguard for the proposed exemptions are intended to take place before the time of sale or at some other unspecified time. HUD always advises that people should not buy land sight unseen under any circumstances, but we do not believe that a site inspection benefits purchasers to the extent that they no longer need disclosure.

As far back as 1964, this point was addressed by an official of the then Florida Installment Land Sales Board before a Senate subcommittee hearing to determine the need for a land sales law. I quote:

> "It has been our experience that people who see the property are the ones that are defrauded the greatest. They are subjected to the hard sell. They are subjected to a salesman in a closed room where there is no regulation of what the salesman has to say, other than by complaint made against him later."

Hearings on Interstate Mail Order Land Sales Before the Subcommittee on Frauds and Misrepresentations affecting the Elderly of the Senate Special Committee on Aging, 88th Cong., 2nd Session., pt. at 165 (1964).

Obviously, the same types of misrepresentation can be accomplished in a telephone sales operation. The point is, however, that an on-site inspection is not a panacea for the problems created by certain elements in the industry.

Self determining

Just as importantly, the free and clear requirement of the exemptions in the Senate bill pertains to a self-determining exemption. HUD's experience with the existing free and clear exemption provision in Section 1403 (a)(10) of the Act which requires a HUD determination is that many developers do not qualify for the exemption upon their initial submission because the land is not free and clear of liens, encumbrances or adverse claims as specified in the statute. Furthermore, of those subdivisions which do qualify for the exemption, a disturbing percentage do not operate subsequently as required by the statute for continuing qualification for the exemption. An exemption based upon voluntary compliance with a free and clear requirement is fraught with peril for both developers and consumers.

The proposed exemptions, even though self-determining, would require the developer to file a form with HUD affirming that the developer had complied with the requirements for the exemption in the case of nonresidents and giving the developer's name and address, a legal description of the subdivision and the developer's signature. It appears that the exemptions are conditioned upon

this written form. However, HUD is given no authority to grant or withhold exemption approval so the paperwork requirement would be fruitless. Practically speaking, there may be nothing HUD can do even if problems surface later on, since the purchasers' complaints often do not surface until two or more years after their purchase, when their rights under the Act probably will have expired, and the developer may be in default of his obligations or possibly in bankruptcy. Neither injunctive action nor criminal prosecution could serve as a remedy for the aggrieved purchaser.

substantive provisions

One proposed exemption is for transactions with purchasers who live within 100 miles of the subdivision where the purchaser resides in a state other than where the subdivision is located. The other exemption is for intrastate subdivisions, defined as a subdivision where during the year no more than five percent of the total lots sold, or a maximum of five lots, whichever is greater, were sold to non-residents of the State where the subdivision is located. Any number of sales could be made to non-residents who lived within 100 miles of the subdivision, and these would not be counted toward the five percent or five lots. Although non-residents would receive some information through a written statement of reservations, taxes and assessments, residents will have no such safeguards.

Sales can be made to resident purchasers who do not make on-site inspections, and the land can be heavily encumbered by liens, encumbrances and adverse claims, even to the extent that the resident purchasers have no chance of ever obtaining clear title.

A fundamental problem with the 100-mile provision is its lack of a realistic rationale. It has nothing to do with the size of the subdivision, the abuses that may have occurred, the character of the subdivision or the manner in which it was promoted. This provision could exempt many large subdivisions fraught with chicanery such as those encountered by the Department in the Poconos which are marketed in New Jersey, New York and Pennsylvania, and Virginia subdivisions marketed in the Washington, D.C. metropolitan area. For example, Captain's Cove, a 3,000 lot subdivision was marketed using direct mail, telephone solicitation, free gifts and dinners generally within a 100-mile area in Virginia, Maryland and the District of Columbia. The developer was convicted for mail fraud, and we received hundreds

of complaints from purchasers about the developer's failure to build promised facilities and to disclose lack of dredging permits necessary to make the land buildable. Under the proposals, these sales could be exempt and purchasers would receive no disclosures. We would be happy to supply the Committee with other examples.

The exemptions proposed contain several pitfalls for the developer as well as for the potential purchasers. For example, a purchaser may say that he lives in a town which is his mailing address when he in fact lives outside the town and 105 miles away from the subdivision. Moreover, the Department's present regulations contain a five percent provision, and we have found that developers often fail to stay within that limitation during the year. Even if the developer inadvertently fails to comply with these criteria, he might expose himself to civil liability to past and future purchasers.

HUD's experience in administering the Act indicates that the more complicated an exemption provision, the more subject it is to misinterpretation. It is not fair to developers to make an exemption available when it contains potential pitfalls which could result in that developer's unintentional violation of Federal law. It follows that a primary goal for exemptions should be simplicity, particularly in the case of self-determining exemptions.

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HOMESITE EXEMPTION

We do not oppose the concept of an exemption for fully improved lots where all local codes and standards are met prior to initiating sales. We have proposed an exemption in in our regulations.similar to that in the Senate bill. However, we recommend there be some firming-up of the language.

This exemption would be somewhat novel to the Act, and we would expect fairly broad usage. Consequently, we prefer that it be initiated on a regulatory instead of a statutory basis so that we may exercise some oversight on its progress.

PROPOSED REGULATIONS

On June 1, 1978, we republished for comment comprehensive amendments to the land registration and exemption regulations. For the reasons stated a moment ago, though some of the regulatory exemptions are self-determining, the complex ones require submission to HUD. In developing these regulations we have kept the small developer and the specialized developer in mind. The results are, in tandem with the Administration's proposals, eminently workable.

We have structured the regulatory exemptions towards the character of the subdivision rather than some arbitrary mileage or location or percentage of sales factor. As such, the regulations

are easier for a developer to use in determining if he is exempt and are much more meaningful in protecting the prospective purchaser.

Specifically, the regulations would exempt scattered sites. A developer selling lots in various locations may be entitled to an exemption if there are less than 50 lots per site, even though the total number of lots in all sites exceed 50. This exemption would cover brokers and sales of parts of subdivisions.

Our primary homesite exemption would be available when not more than 300 lots were offered in the subdivision or scattered site and if there were assurances of completion of various improvements. A third exemption would apply to small subdivisions offered to a local market, where there was limited promotion. This exemption would allow small developers located near state borders to sell without the cumbersome five percent out-of-state restriction found in our present regulations.

Another proposed exemption that was originally issued to ease the problem for builders

selling left-over lots has been liberalized to increase from five to ten percent the number of lots in the subdivision that may be sold as raw lots without registration. We have also recognized the burdens that registration can place upon very small operations. An exemption has been proposed that would allow a developer to make up to 12 lot sales per 12-month period without registration.

In all of these regulatory exemptions, the privilege of exemption would be from the registration requirements only. Fraud and misrepresentation occurring in the sale of lots in these exempted subdivisions could still be enjoined, and developers could still be subject to prosecution and purchasers would still have legal remedies for similar unlawful conduct.

CONCLUSION

In conclusion, I would like to express again my concern to the Committee that the Administration's land sales proposals have been deleted from the HUD Bill. We feel that our recommendation to raise the threshold of the Act from 50 to 100 lots in conjunction with our proposal of new regulatory exemptions will meet the concerns of both the industry and the Congress with respect to the small developer. In our regulatory proposals, the Department

places utmost importance on the character of the subdivision and identifying those circumstances where consumers are adequately protected or where registration would be an unneeded burden on the developer.

We extend our availability and willingness to work with the Committee to assist in preparing legislation that meets both the needs of the consumers and developers and the concerns of the Congress.

At this time we would be pleased to answer any of your questions.

Neighborhoods, Voluntary Associations and Consumer Protection
Office of Interstate Land Sales Registration
Number of Subdivisions by Lot Size As of June 30, 1978

STATEMENT OF RECORD FILINGS

	Subdivisions		Lots	
	Number	% of Total	Number	% of Total
0-50.....	455	8.99%	16,112	.30%
51-100.....	648	12.79%	58,006	1.08%
101-200.....	1,004	19.83%	174,554	3.25%
201-300.....	485	9.58%	142,329	2.65%
301-400.....	455	8.98%	193,352	3.60%
401-500.....	272	5.37%	146,626	2.73%
501-1000.....	782	15.44%	653,639	12.17%
1001-2000.....	485	9.57%	790,059	14.71%
2001-3000.....	203	4.01%	596,707	11.11%
3001-4000.....	134	2.65%	556,425	10.36%
4001-5000.....	41	.80%	241,153	4.49%
5001-25,000.....	90	1.77%	814,229	15.16%
25,001-50,000....	6	.11%	262,100	4.88%
50,000 +.....	6	.11%	725,609	13.51%
TOTALS.....	5,066	100.00%	5,370,900	100.00%

Neighborhoods, Voluntary Associations and Consumer Protection
Office Of Interstate Land Sales Registration
Initial Filings By Lot Size
Calendar Year 1975-1977

	1975		1976		1977	
	No. of Subdivisions	% of Total	No. of Subdivisions	% of Total	No. of Subdivisions	% of Total
0-50	35	8.05%	46	12.28%	50	15.28%
51-100	89	20.69%	71	19.30%	36	11.11%
101-200	130	29.89%	52	14.04%	91	27.78%
201-300	50	11.49%	39	10.53%	22	6.94%
301-400	50	11.49%	65	17.54%	18	5.56%
401-500	30	6.90%	13	3.51%	32	9.72%
501-1,000	25	5.75%	58	15.79%	50	15.28%
1,001-2,000	15	3.45%	26	7.01%	27	8.33%
2,001-3,000	10	2.29%	...	...	...	...
3,001-4,000	...	...	...	...	...	...
4,001-5,000	...	...	...	...	...	...
5,001-25,000	...	...	...	...	...	...
25,001-50,000	...	...	...	...	...	...
50,000 +	...	...	...	...	...	...
TOTALS	434	100.00%	370	100.00%	326	100.00%

NOTE: This table does not include consolidation filing data

Chairman ASHLEY. Thank you, Ms. Worthy. Since the passage of the act in 1968, you referred several cases to the Justice Department for prosecution. Could you give the number referrals and prosecution?

Ms. WORTHY. This comes in two areas. We have 21 cases referred to the Justice Department; 19 of those cases were initiated by OILSR; 2 were initiated by the U.S. attorney. Of those 21 cases, there were 16 indictments; 5 of those cases were declined prosecution by the U.S. attorney.

Chairman ASHLEY. There were 16 indictments?

Ms. WORTHY. That is correct.

Chairman ASHLEY. And what was the disposition on trial?

Ms. WORTHY. There were 16 indictments. And I am sorry I did not hear the second part of your question.

Chairman ASHLEY. What was the outcome of the indictments?

Ms. WORTHY. We have two pending. Two were acquittals. And the rest were convictions.

Of those 16 indictments, in terms of principles, there were 95 individuals that were indicted.

Chairman ASHLEY. How many companies?

Ms. WORTHY. We can give you that information and submit it for the record. We do not have that at this time.

Chairman ASHLEY. Yes, that would be good, because I do not think it makes a whole lot of difference how many individuals there were. I am not overwhelmed by the record here in terms of enforcement. If this situation is as worthy of congressional attention as witnesses insist it is, then I am at somewhat of a loss to understand why practically two cases per year on the average have been referred to the Justice Department for prosecution.

[In response to the above question of Chairman Ashley, Ms. Worthy submitted the following answer for inclusion in the record:]

RESPONSE FROM MS. WORTHY

Since 1971 when the Office's first criminal indictment was returned 25 companies have been indicted under the Interstate Land Sales Full Disclosure Act.

Ms. WORTHY. Mr. Chairman, in addition to those cases that we directly referred to the U.S. attorney's office, there were an additional 27 cases that we have referred to the Inspector General's office over in the Department of Housing and Urban Development.

Of those 27 cases, 12 were declined by the U.S. attorney, and 15 of those cases are presently active.

Now, in addition to those 15, we have another 14 cases active presently that our Office is specifically working on. There was a period of time, which I was going to explain, where we handled our investigations directly and then refered them to the U.S. attorney. That was the first number we gave you.

In 1975, we entered into an interagency agreement with our Inspector General's office, so now we refer all our cases to them, and they, in fact, do the investigating and refer them to the U.S. attorney's office, so that, in addition to those 16 indictments that we mentioned to you, we have presently 29 active cases under investigation.

Chairman ASHLEY. So that the 16 indictments represented cases that were referred by OILSR without going through your Inspector General's office?

Ms. WORTHY. That is correct.

Chairman ASHLEY. And so that the 21 cases were referred between 1969 and 1976?

Ms. WORTHY. Between 1971 and 1975 OILSR referred 21 cases for possible prosecution.

Chairman ASHLEY. And how many cases have been referred by the Inspector General since 1975?

Ms. WORTHY. We have referred 12 of the 27 cases that were referred by the Inspector General that went over to the U.S. attorney, have been declined; and, therefore, we have presently 15 cases that are active.

Chairman ASHLEY. Why were the 12 declined?

Ms. WORTHY. Well, there are various reasons, Mr. Chairman. We could give the specific rationale that we have received on all of those declinations. But they were declined. Either the U.S. attorney was overburdened or did not find——

Chairman ASHLEY. I think the subcommittee would like to know why they were declined.

Ms. WORTHY. Then we will get that information and submit it.

[In response to the above question of Chairman Ashley, the following answer was furnished for the record by Ms. Worthy:]

RESPONSE FROM MS. WORTHY

I have prepared a brief summary of the respective U.S. Attorney's conclusions in each of these twelve cases. They are as follows:

1. Sherwood Forest (Pennsylvania).— The United States Attorney in Newark declined to prosecute because the case lacked jury appeal since, according to the United States Attorney, principals did not personally profit by funds improperly diverted from improvement escrow accounts.

2. Trailwood Lakes (Kentucky).—The United States Attorney in Louisville declined to prosecute because sales were made four years previously and consumers were seeking civil remedies under State statutes.

3. Stony Point (Oklahoma).—The United States Attorney in Tulsa declined to prosecute because the principal in the matter was shot to death and civil remedies were being pursued under State laws.

4. Lake of the Pines (Pennsylvania).—The United States Attorney in Newark declined to prosecute because the matter lacked jury appeal.

5. Spring Valley (Oklahoma).—The United States Attorney in Oklahoma City declined to prosecute because sales were four years old and the principal misrepresentation concerning improvements lacked appeal.

6. Lake Chaparral (Kansas).—The United States Attorney in Topeka declined to prosecute because he felt a forged document submitted to OILSR resulted in no harm to the Government or to purchasers.

7. Hickory Hills (Ohio).—The United States Attorney in Cincinnati declined to prosecute because the matter lacked jury appeal.

8. Heritage Shores (South Carolina).—The United States Attorney in Columbia declined to prosecute because in his opinion there was not sufficient evidence of fraud.

9. Allyson Acres (Oklahoma).—The United States Attorney in Tulsa declined to prosecute since in his opinion the testimony of purchasers who bought lots two years previously would be somewhat stale and because in his opinion misrepresentation concerning the investment potential of the land and promised improvements lacked jury appeal.

10. Aspen Hills (Utah).—The United States Attorney in Salt Lake City dropped the prosecution when the developer took steps to fulfill promised representations concerning improvements.

11. Consolidated Mortgage Corporation (Arizona).—The Inspector General dropped the criminal investigation when that Office learned that the subject company was under investigation by the Department of Justice Arizona Strike Force, and was indicted under securities fraud but was later acquitted.

12. Renegade Resort (Tennessee).—The United States Attorney in Nashville investigated under the Land Sales Act, but the principals were indicted under Small Business Loan fraud.

Ms. WORTHY. In addition to those cases, Mr. Chairman, as indicated in our testimony, we have also had some 90 noncriminal actions, 20 of which were injunctions and the remaining being in subpena enforcement cases, and we also initiated 11,000 administrative proceedings within the Department, all of which fall under the category of enforcement activity.

Chairman ASHLEY. What is the allocation of personnel within OILSR with respect to the primary functions on the administration? That is to say, you have registration, field investigations, and enforcement; is that right?

Ms. WORTHY. That is correct. We have four divisions, we have presently. Our ceiling is 106. We have in the examination division 24; in the policy division 20; in our enforcement division 28; and in our field review division 31.

As I am sure you know, Mr. Chairman, there is a proposed——

Chairman ASHLEY. Give me those numbers again, please.

Ms. WORTHY. In the examination division 24; in our policy division, which handles our filings, that is 20; in the enforcement division that is 28; and in the field review division, we have 31.

Chairman ASHLEY. Has there been a shift in this allocation, or has that been fairly steady? Has there been any shift, for example, since 1973 or 1974?

Mr. KAPPELER. Mr. Chairman, there have been small shifts between enforcement and the examination division. In 1973 the examination staff probably approximated 28 people, and we switched a few people because we had some reduction in new filings coming into the Office since 1973.

Chairman. ASHLEY. What do the field review offices do?

Ms. WORTHY. Those are individuals, Mr. Chairman, who, in fact, go out on the road and do the on-site inspections and check the local files. They do approximately 1,000 on-site inspections a year.

In addition to that, they do approximately about 3,000 visits or trips to subdivisions. And that comprises about what they do, but they are generally responsible for pulling together information from the subdivisions themselves and reporting that information back to the respective divisions in Washington.

Chairman ASHLEY. Well, I can understand your concern. I have been discussing with counsel the action by the Appropriations Committee that would result in a diminution of personnel by some 20 or thereabouts.

Ms. WORTHY. That is correct, Mr. Chairman.

Chairman ASHLEY. And that, of course, I suspect, would be felt in each of your primary functions.

Ms. WORTHY. Yes. As you know, Mr. Chairman, we are required by the law to review registrations within a 30-day time period, which means that we have to at least maintain that division who handles registrations intact, so we would have to substantially take a cut from the enforcement and the field review divisions.

Chairman ASHLEY. If the exemption were lifted from 51 to 100, how would that affect your personnel requirements?

Ms. WORTHY. You are saying the number of filings?

Chairman ASHLEY. Yes.

Ms. WORTHY. It would be difficult to determine right now how it would affect the number of filings.

Chairman ASHLEY. Well, the need for personnel presumably be somewhat less, at least in the registration operations.

Ms. WORTHY. That is correct.

Chairman ASHLEY. But not 20.

Ms. WORTHY. No.

Chairman ASHLEY. Is there any reason why any land developer should be exempt from the fraud provisions of the statute?

Ms. WORTHY. Mr. Chairman, I would not want to see anyone exempt from fraud provisions. That is one of the concerns we have with one of the Senate proposals, is that because of the various exemptions and the numbers of people affected by the exemptions, more specifically the 100-mile radius, that large numbers of individuals who are buying land would, if at a later date it was determined that fraud had been perpetrated against them, would not have any remedies available under the act.

Chairman ASHLEY. Under the Senate proposal, it is my understanding, that they are exempt only from the registration and not from the fraud.

Ms. WORTHY. Yes, there has been a change apparently in the language. That is correct.

Chairman ASHLEY. Under the HUD proposal, you would exempt them, even from the fraud provisions, subdivisions of less than 100 lots. Is that correct?

Ms. WORTHY. Yes, Mr. Chairman.

Chairman ASHLEY. What about those poor souls that might get bilked? Why should that developer escape from the fraud provisions?

I can see why, for a variety of reasons, it might not be necessary for registration, but why do we say that they have carte blanche to do anything they want?

Ms. WORTHY. Mr. Chairman, in our decision to request an increase of the threshold to 100 lots, we did make—we went through a very soul-searching experience because we understand very much the needs of those individuals who buy land, even if they buy in a small subdivision.

The decision to come forward with that recommendation was based purely on the fact that we have limited resources and that we felt that in order to better utilize what we do have available, which is the 28 people in enforcement——

Chairman ASHLEY. That is a terrible rationale, it seems to me.

Why don't you leave the developers guessing as to where your resources are going to be directed? In other words, include all developers of subdivisions of any size and let the developer wonder where your investigatory and your prosecution resources are going to be directed.

Doesn't that make better sense? To play a sort of shell game out there? You see my point?

Ms. WORTHY. Yes, I do, Mr. Chairman.

Chairman ASHLEY. What is your response?

Ms. WORTHY. The only response we have to that is that—two things: We have attempted to eliminate some of the problems and potential fraud problems by requesting or proposing the elimination

of the exemption of the onsite inspection, because in those particular sales situations, those purchasers who buy and inspect onsite do not have the benefit of the fraud provisions, so that where we have taken it away from some we have given at least that protection to others.

With respect to the increasing of the threshold to 100, the answer to that is that we again have made that policy determination that we want to direct our attention to the larger subdivisions, and, I must admit——

Chairman ASHLEY. But can't you do that without this proposed change, as far as the application of the fraud provisions are concerned?

Ms. WORTHY. Well, Mr. Chairman, if that is possible, we would be more than willing to work with the committee to develop language that would assure us of that, as well as afford the protections of the fraud provisions to all purchasers. We would be more than willing to sit down and discuss it.

Chairman ASHLEY. Many complaints, I understand, have been received about the way OILSR has applied the principle of common promotional plan in the past.

I wonder if you would be good enough to explain your interpretation of that statutory language and just what "common promotional plan" means and how this principle has been applied in the past and how the proposed regulatory change dealing with the scattered-site test subdivisions would conform with the statutory intent.

Ms. WORTHY. The way the statute reads, Mr. Chairman, is that if, in fact, you are selling lots in more than one site or subdivision and you have been using a common facility—for example, the same personnel, the same realtor handles it, it is advertised together—that we are assuming it all falls into one common promotion.

Then, we require that you register all of those lots, and we add up all of those lots to determine whether or not you come within the jurisdiction of the act.

One of our proposed regulations is the "scattered-site regulation" or exemption that says that if you have these sites and the lots on these sites are less than 50, then we will not add all of these lots up, these sites, if these sites are named differently, even though you might perhaps have the same salesperson handling the selling of these properties.

Chairman ASHLEY. If they are named differently?

Ms. WORTHY. Yes. For example, if you have a subdivision A and a subdivision B, and, of course, they are not contiguous, and each of these subdivisions have less than 50 lots, then we will not now put them all together and add them up, and we will not require you to register.

Chairman ASHLEY. They could have, though, a common sales staff and common advertising?

Ms. WORTHY. Yes, they could have a common sales staff; that is correct, Mr. Chairman.

Chairman ASHLEY. The only thing is they would be named differently?

Ms. WORTHY. That is correct. And may not be contiguous.

Chairman ASHLEY. I do not understand this. Why do you say that? If they go to the trouble of naming—which they are bound to do—these scattered sites with different names, why should that make all the difference?

Ms. WORTHY. Mr. Chairman, again, the purpose of the act and the Congress setting a threshold of 50 lots, it is our understanding from the mandate of Congress, that you wanted us to look at those situations where we felt that if it was a small offering, something of less than 50 lots, and we determined it was not in the public interest, that we had the responsibility and the authority under the law to promulgate regulations that would eliminate or exempt these particular developers from coming under the requirements of the act in our regulations.

And it was our determination that if, on each of these particular sites, they were selling less than the 50 lots that you had, Congress had, imposed in the act, that they, in fact, were a small offering in the intent of the legislation, and that, therefore, it was our opinion that these individual developers should be exempt.

Chairman ASHLEY. Mr. Brown?

Mr. BROWN. Thank you, Mr. Chairman.

Ms. Worthy, what is the purpose of the Interstate Land Sales Registration Act? Is it intended that an out-of-State purchaser should, in effect, be put in a better position than an in-State purchaser?

Ms. WORTHY. It is our understanding that the purpose of the act is to make sure that individuals who buy undeveloped land, when that land is being sold in a subdivision of more than 50 lots, that we must provide that information, that purchaser with enough information to allow him to make an intelligent decision about that land.

Mr. BROWN. But, now, it does not cover all purchasers. It only involves purchasers that in some way have become aware of the project or the development through use of the vehicle of interstate commerce; is that not correct?

Ms. WORTHY. The act says that if the developer is selling more than 50 lots and he is using the mail——

Mr. BROWN. Well, that is the point right there. I am saying that it does not apply if you do not use a vehicle of interstate commerce—the mail, the phones, et cetera.

Now, if those things are not used for an in-State purchaser and the developer does not engage in interstate commerce, that purchaser does not have the benefit of the act; does he?

Ms. WORTHY. I am sorry?

Mr. BROWN. If the vehicles of interstate commerce are not used, the purchaser does not have the protection of the act.

Ms. WORTHY. Use of the vehicles of interstate commerce is not an exclusive variable in determining jurisdiction. The language of the act also states that any use of the mails whether directly or indirectly, may bring about Federal coverage under the act.

Mr. BROWN. And the act is primarily a disclosure statute; is that not correct?

Ms. WORTHY. That is correct, sir.

Mr. BROWN. Why do we, then, go into many things such as the performance of the developer with respect to promises made, and establish different recourses for a purchaser covered by the act?

Why does that person have additional remedies that an instate purchaser or a purchaser of an intrastate development does not have?

Throughout your testimony, you talk about promises not kept, about facilities to be installed, and all of those kinds of things. Now, if the

project was not in interstate commerce, this statute would not apply to those promises; would it?

Ms. WORTHY. What I talked about in my testimony was one of the proposed legislative changes that the administration has put forward because of the fact that we get a great many complaints—it seems to be one of the worst problems—is the fact that developers fail to complete.

Now, if you are asking me the question as to whether or not or is it fair that one group of individuals receive that benefit and another group not, I can only say it was the wisdom of this Congress to enact that act, and if they, in fact, want that benefit for all purchasers, then we would be more than willing to attempt to carry out that mandate of Congress.

Mr. BROWN. Have you received any complaints that really are not covered by the act or that where basically interstate commerce is not used?

Ms. WORTHY. Yes, we do. And we can supply the subcommittee with examples of that.

Mr. BROWN. Percentagewise, how many?

Ms. WORTHY. For clarification, are you talking about individuals who are within the State involved in a development that is intrastate, or are you talking about purchasers who do not even fall within the act at all?

Mr. BROWN. Well, you have to make a determination as to whether or not you fall within the act. I mean, are those occasions where basically the nexus for coverage by the act is not there? Where there is no utilization of interstate vehicles that bring that development under the act.

Ms. WORTHY. There would be no way that we would have any record of purchasers who have bought that were not under the act.

Mr. BROWN. Well, Ms. Worthy, what I am saying is I think that anyone that feels that he has been had in connection with the purchase of real estate would probably look for Federal solutions. So, I am sure that probably everyone would contact your Office and see if they were not covered by the protections of this act, even though they were not protected because it was purely an intrastate transaction.

Ms. WORTHY. We have many cases where purchasers have written and complained, and we have had to advise them that that particular subdivision in which he has bought did not have to register with our Office. Yes, we have instances of those.

I do not have the exact numbers of those. I could not even give you a guesstimation on that.

Mr. BROWN. You see, the only point I am making is that we started this out primarily as a disclosure act, and it just seems to me we are getting into, in effect, a Federal law covering real estate transactions.

Ms. WORTHY. I must agree that, because the threshold of the act is 50 lots and because you said any use of the mail, directly or indirectly, yes, we do cover a large number of subdivisions and sales transactions.

And that is why we have proposed that the threshold be increased to 100 lots, and we have promulgated new regulations that provide substantial exemptions.

But I can only say that we are attempting to carry out what we perceive to be the clear mandate of Congress.

[In response to the above question of Congressman Brown, Ms. Worthy furnished the following answer for inclusion in the record:]

RESPONSE FROM MS. WORTHY

From time to time, OILSR receives complaints from consumers where their particular purchase of land is not covered by the act. In virtually each of these instances, the subdivision or the transaction has been specifically exempted by Sections 1403 (a) (1)–(10) of the Act. Earlier in OILSR's history, we received many complaints from consumers who purchased land prior to the statute's enactment. Now, 9 years later these prior purchaser complaints are much less frequent. However in all cases, even though the particular transaction is not covered, OILSR will make inquiry to the developer in case more recent buyers are affected by the alleged problem.

Our experience has shown that nearly 100 percent of the developers offering 50 or more lots who sell land primarily to residents of that same State are covered by the provisions of the act. This interpretation of the act's jurisdiction and its legislative history has been consistently supported by Federal Court opinions. In *Wiggins* v. *Lynn* (406 Supp. 338), it was held that with respect to subdivisions in each of which there were more than 299 lots located entirely within Texas and as to which less than 5 percent of sales in any 1 year were made to nonresidents of the State of Texas, the developer would be enjoined . . . from selling or leasing lots without satisfying the requirements of the Interstate Land Sales Full Disclosure Act. In *Gaudet* v. *Woodlake* (399 F. Supp. 1005), the court ruled that "the statute contains no exemption for sales to resident of the State where the land is located. It does not turn on the residence of the buyer or the seller, but makes it unlawful for any developer, or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails to sell or lease any lot in any subdivision unless a Statement of Record with respect to such lot is in effect. . . ." Further, the opinion reads that "The Act itself provides 10 exemptions in 15 USC 1702, and these are amplified in the regulations 24 CFR 1700 et seq., but nowhere is there a statutory exemption because the land is sold solely to residents of the State in which it is located." In *McCown* v. *Heidler* (527F. 2nd 204), a court ruled that "The general purpose of the Land Act was, of course, to prohibit and punish fraud in such land development enterprises as we here consider and the Act should be interpreted to attain that end. Such an act should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes."

In this regard for the record, I am enclosing samples of these cases involving this issue. As a result. there have been very few, if any, "in-State" complaints that have not been covered by the protections of the act.

As to the number of the complaints that OILSR receives where the buyer and the property are located in the same State, I can provide the Committee with the following information. Approximately 60 percent of OILSR's indictments have involved land sales where the vast majority of buyers were local or in-State residents. In approximately 55 percent of the cases currently under investigation by OILSR because of complaints from purchasers, nearly all lot buyers are in-State or local residents. Further, just recently, OILSR initiated a computer profile system of consumer complaints. Findings from the first 100 complaints collected have shown that approximately 65 percent of them were from purchasers who bought property in the State in which they reside. The average size of the subdivision involved in these "in-State" transactions is approximately 1844 lots.

Bonnie Maud WIGGINS, Individually, and as Administratrix and Substitute Trustee of the Estate of Barney Wiggins, Deceased

v.

James T. LYNN, Individually, and in his capacity as Secretary of the Department of Housing and Urban Development, and George K. Bernstein, Individually, and in his capacity as Interstate Land Sales Administrator of the Department of Housing and Urban Development.

No. B-74-80-CA.

United States District Court, E. D. Texas, Beaumont Division.

April 25, 1975.

Order July 31, 1975.

Suit was brought against Secretary of Department of Housing and Urban Development and against interstate land sales administrator of the Department for injunctive relief restraining the enforcement of regulation governing requests for exemption order. The District Court, Joe J. Fisher, Chief Judge, held that with respect to subdivisions in each of which there were more than 299 lots located entirely within Texas and in which less than five percent of the sales in the subdivisions in any one year were made to nonresidents, developer would be enjoined from selling or leasing lots and from using any means or instruments of transportation or communication in interstate commerce to sell or lease lots without satisfying requirements of Interstate Land Sales Full Disclosure Act, and that as to subdivisions each of which had less than 299 lots and in which sales were limited to less than five percent in any one year to nonresidents, developer would be required to comply with registration requirements of the Act and rule and regulations issued pursuant thereto where the lots were sold collectively as part of a common promotional plan containing more than 300 lots and developer did not seek exemption order.

Order accordingly.

1. Trade Regulation ⇐864

With respect to subdivision in each of which there were more than 299 lots located entirely within Texas and as to which less than five percent of the sales in any one year were made to nonresidents of the state of Texas, developer would be enjoined from selling or leasing lots, from using any means or instruments of transportation or communication in interstate commerce, and from selling or leasing lots without satisfying requirements of Interstate Land Sales Full Disclosure Act. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.; 28 U.S.C.A. § 1331.

2. Trade Regulation ⇐861

With respect to subdivisions each of which had less then 299 lots and with respect to which sales were limited to less than five percent in any one year to nonresidents of the state of Texas, developer would be required to comply with registration requirements of Interstate Land Sales Full Disclosure Act where the lots were sold collectively as part of a common promotional plan containing more than 300 lots and developer did not seek exemption order. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.; 28 U.S.C.A. § 1331.

Richard R. Morrison, III, Daniel, Morrison & Strahan, Liberty, Tex., for plaintiff.

Roby Hadden, U. S. Atty., Dennis R. Lewis, Asst. U. S. Atty., Beaumont, Tex., for defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JOE J. FISHER, Chief Judge.

FINDINGS OF FACT

1.

Plaintiff, Bonnie Maud Wiggins, Individually, and as Administratrix and Substitute Trustee of the Estate of Barney Wiggins, Deceased, is a citizen of the State of Texas and originated this action on March 27, 1974, against James T. Lynn, Individually, and in his capacity as

Secretary of the Department of Housing and Urban Development, and against George K. Bernstein, Individually, and in his capacity as Interstate Land Sales Administrator of the Department of Housing and Urban Development, both of whom are citizens of Washington, D. C. This action is based upon diversity of citizenship and involves a federal question, and the Plaintiff seeks injunctive relief against Defendants, restraining the enforcement of Section 1710.14, (24 C.F.R. 1710.1, et seq.), issued by the Defendants effective March 31, 1972.

2.

On April 26, 1974, Defendants answered Plaintiff's complaint and by way of counterclaim filed on May 13, 1974, seek a permanent injunction restraining Plaintiff from continuing to operate in violation of the Act.

On August 29, 1974, Plaintiff answered Defendants' counterclaim and by way of a supplemental petition, seeks a declaration that Plaintiff's subdivisions made the subject of this lawsuit are exempt from registration requirements under the Act.

3.

Plaintiff is the widow of Barney F. Wiggins of Polk County, Texas, who died on November 19, 1970, leaving Plaintiff and four minor children surviving. During the lifetime of the said Barney F. Wiggins and about 1960, he began purchasing and developing tracts of undeveloped real estate in several Southeast Texas Counties, namely, Polk, Liberty, San Jacinto, Tyler and Hardin, that were within easy driving distance of the heavily populated metropolitan area of the Texas Gulf Coast, namely, Houston, Beaumont, Baytown and Pasadena. Plaintiff's subdivisions vary in size from 25 lots in Corrigan Heights to over 3,000 lots in Lake Run-A-Muck. The lots average in size about 50 feet by 125 feet, and the average price range is Three Hundred Ninety-Nine and No/100 ($399.00) Dollars to Five Hundred Ninety-Nine and No/100 ($599.00) Dollars per lot.

4.

The Defendant, James T. Lynn, is the Secretary, of Housing and Urban Development; the Defendant, George K. Bernstein, is the Administrator of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development.

5.

The following described tracts of land are situated in the State of Texas, are owned by the Plaintiff, and are "subdivisions," as that term is defined by 15 U.S.C. § 1701(3):

(1) Putman's Landing
(2) Wild Country Lake Estates
(3) Thunder Mountain
(4) Nugent's Cove
(5) Crystal Lakes
(6) Eagles Nest
(7) Town Bluff
(8) Wayward Wind Oasis
(9) Corrigan Heights
(10) Hoot Owl Hollow
(11) Hardin's Hideout
(12) Old Stag Ridge
(13) Weaver's Cove
(14) Horseshoe Lakes Estates
(15) Sam Houston Lakes Estates
(16) Old Snake River Lakes Estates
(17) Lake Run-a-Muck
(18) Natasha Heights *

6.

All of the lots in all of Plaintiff's subdivisions are offered for sale as a part of a common promotional plan under the name of Wiggins Land Company, an assumed name under which Plaintiff does business. Plaintiff employs approximately seven (7) clerical personnel and currently uses the services of approximately five (5) or six (6) salesmen who work on a commission basis.

7.

All lots in all subdivisions are sold only after an on-site personal inspection by the prospective purchaser. The salesmen

* A Corporation in which 100% of the stock is owned by the Plaintiff.

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have been instructed not to sell lots to anyone having an address outside the State of Texas.

8.

The advertising brochures of Plaintiff were directed entirely to the surrounding local market and were distributed either at the Livingston office of Plaintiff or by mailing in response to telephone request. From the records of Plaintiff only one telephone call was received from outside the State of Texas requesting an advertising brochure of Plaintiff for the period of 1969 to the middle part of 1978.

9.

Plaintiff has never engaged in any direct mail advertising schemes to sell lots, never engaged in any scheme or plan using the telephone for lot sales and never transported prospective purchasers to subdivisions by any means for the purpose of selling lots.

10.

All of Plaintiff's subdivisions are wooded, have dirt and some oil streets, and small lakes suitable only for fishing. There are no marinas on any of the lakes, there are no concrete swimming pools, no golf courses or tennis courts, or other such attractions normally associated with large subdivision offerings designed to attract prospective purchasers from great distances and across state lines.

11.

Plaintiff's advertising, consisting of an occasional use of radio ads over Houston station KIKK and small classified ads in the *Houston Post* and *Houston Chronicle*, was concentrated in the northeastern section of Houston. As a result "90% or better" of all lot sales in all subdivisions were to Houston residents. Plaintiff has also advertised in the East Texas Eye, a newspaper owned by Plaintiff with some interstate circulation.

12.

Since 1969 there have been 5451 lots sold in Plaintiff's subdivisions, of which only three lots have been sold to two individual purchasers who were residing out of the State of Texas.

13.

The Interstate Land Sales Full Disclosure Act was passed by Congress on August 1, 1968, and its effective date was April 28, 1969. On April 28, 1969, all of Plaintiff's subdivisions listed in the stipulations filed herein, with the exception of Natasha Heights, were developed and sales were well under way.

14.

On March 29, 1969, the first set of Federal Rules and Regulations was issued by Defendants and Section 1710.10 thereof stated as follows:

> 1710.10 Exemption. Unless a method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act, the rules and regulations of this part shall not apply to the following transactions.
>
> (1) The sale or lease of lots where the offering is entirely or almost entirely intrastate.

15.

Plaintiff received a letter dated March 23, 1971, from Defendants signed by Mr. Herbert H. George, Director, Administrative Proceedings Division, Office of Interstate Land Sales Registration, wherein Plaintiff was asked to determine whether or not their lot sales program was within the purview of the Act.

16.

Plaintiff replied to the letter dated March 23, 1971, by letter dated April 29, 1971, signed by Price Daniel, Jr., Attorney, wherein he stated that the Interstate Land Sales Full Disclosure Act was not applicable to Plaintiff's sale of lots in its various subdivisions because the offering of lots for sale is intrastate and, therefore, exempt under the Act and, more specifically, under Section 1710.-10(1) of the Rules and Regulations. Further, in the reply letter dated April 29, 1971, from Price Daniel, Jr., he inquired of Defendants if they needed any further information regarding Plaintiff's exemption to let Plaintiff know.

17.

Defendants did not contact the Plaintiff in any further manner after March 23, 1971, until February 28, 1973, a period of almost two (2) years. Further, during the period between March 23, 1971, and February 28, 1973, the Defendants did not dispute or contest the intrastate exemption claimed by Plaintiff in Plaintiff's letter of April 29, 1971.

18.

During the period of time from March 23, 1971, to February 28, 1973, Plaintiff conducted its subdivisions operations based upon a reasonably good faith belief that the Government's failure to contest or question Plaintiff's claim of an intrastate exemption in its letter of April 29, 1971, amounted to the granting of or acquiescence in the claim to such intrastate exemption.

19.

On March 31, 1972, the Federal Rules and Regulations were amended by Defendants, and Section 1710.14 was added as follows:

Section 1710.14 Regulatory exemptions—exemption order required—limited offering

(a) The Secretary may exempt from the provisions of this part any subdivision or any lots in a subdivision which otherwise would be covered by the provisions of this part, by issuing an exemption order in writing to the effect that the enforcement of this part with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering, if he determines that:

(1) The request for the exemption order is limited to a single transaction; or

(2) All of the following criteria are met:

(i) There are less than 300 lots in the subdivision;

(ii) The subdivision is located entirely within one State.

(iii) The offering of lots in the subdivision is entirely or almost entirely limited to the State in which the subdivision is located.

(iv) The use of all advertising and other promotional means, the distribution of which is within control of the developer or his agents, is confined to the State in which the subdivision is located. All use of billboards and similar signs, telephonic methods of communication and direct mail shall be presumed to be within the control of the developer or his agents.

(v) No more than 5 per cent of the sales in the subdivision in any one year will be made to nonresidents of the State in which the subdivision is located.

The March 31, 1972, Federal Rules and Regulations amounted to a substantial change in the method and procedure whereby regulatory exemptions were obtained.

20.

The Plaintiff received a letter dated February 28, 1973, from Defendants signed by John R. McDowell, Deputy Administrator of the Office of Interstate Land Sales Registration, which stated, in part, as follows:

"Until the subdivisions are effectively filed as required by Section 1404(a)(1) of the Act, it would be advisable that you cease all lot sales in the noted subdivisions."

This was the first official notice of any type that Plaintiff was not in compliance with the Act since its effective date on April 28, 1969.

21.

In March of 1973 and until about November of 1973, Plaintiff, separately and in conjunction with others, made filings pursuant to the Act on the following

subdivisions, which filings became effective:

SUBDIVISION	OWNERSHIP
(1) Wiggins Village #1	Partnership—The Plaintiff and D. Reily
(2) Wiggins Village #2	Partnership—The Plaintiff and D. Reily
(3) Reily's Village	Partnership—The Plaintiff and M. G. Reily
(4) Reily's Landing Partnership	The Plaintiff and D. Reily
(5) Barlow Lakes Estates	Partnership—The Plaintiff and M. G. Reily
(6) White Tail Ridge	No longer owned by the Plaintiff
(7) Natasha Heights Corporation	100% of the stock owned by the Plaintiff
(8) Lake Run-A-Muck	The Plaintiff
(9) Indian Spring Lakes	Corporation—50% of the stock owned by the Plaintiff and 50% by D. Reily

22.

During said period from March of 1973 until November of 1973 the Plaintiff has, in conjunction with others, filed with the Office of Interstate Land Sales Registration the following subdivisions, which registrations have not become effective:

SUBDIVISION	OWNERSHIP
(1) Horseshoe Lakes Estates	The Plaintiff
(2) Sam Houston Lakes Estates	The Plaintiff
(3) Old Snake River Lake Estates	The Plaintiff
(4) Mont Neches	Partnership—The Plaintiff and M. G. Reily

23.

Hardin's Hideout, a subdivision located in Polk County, Texas, was effectively registered with the Secretary when owned by Jobe Wiggins, and it is now owned by the Plaintiff.

24.

Plaintiff received a letter dated September 7, 1973, from Defendants signed by John R. McDowell, Deputy Administrator of the Office of Interstate Land Sales Registration, regarding Hardin's Hideout which states in part as follows:

"This office accepts your statement that the sales operations of the captioned subdivisions was probably intrastate during that period."

25.

The Plaintiff received a letter dated November 7, 1973, from Defendants signed by John R. McDowell, Deputy Administrator of the Office of Interstate Land Sales Registration, which states in part as follows:

"We request that you send a letter to all those persons who purchased lots at the subject subdivision prior to the effective date of its filing and subsequent to March 31, 1972, the date the Act became applicable to the subject subdivision."

26.

Plaintiff was selling or offering to sell lots in Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights Subdivisions on March 31, 1972, without an effective registration with Defendant Lynn, Secretary of Housing and Urban Development. Said Subdivisions of Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights, each with more than 299 lots were located entirely within Texas and less than five (5%) per cent of the sales in said subdivisions in any one year were made to nonresidents of the State of Texas.

27.

The Plaintiff, her attorneys, agents, officers, employees, successors, assigns and any and all persons acting directly or indirectly in concert with her should be restrained and enjoined from selling or leasing lots in Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights Subdivisions and from using any means or instruments of transportation or communication in interstate commerce, or the mails, to sell or lease lots in Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights Subdivisions without satisfying the requirements of the Interstate Land Sales Full Disclosure Act.

28.

Plaintiff was selling or offering to sell lots in Corrigan Heights, Crystal Lakes,

Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions on March 31, 1972, without an effective registration with Defendant Lynn, Secretary of Housing Urban Development. Said subdivisions were exempt under all statutory and regulatory exemptions prior to March 31, 1972.

29.

On March 31, 1972, said Subdivisions of Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout each had less than 299 lots, and sales were limited to less than five (5%) per cent in any one year to nonresidents of the State of Texas.

30.

Plaintiff, her attorneys, agents, officers, employees, successors and assigns should be required to comply with the registration requirements of the Act and the Rules and Regulations issued pursuant thereto with regard to Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions.

CONCLUSIONS OF LAW

1.

This Court has jurisdiction over the subject matter and the parties because of diversity of citizenship between the parties and a federal question has been raised pursuant to 28 U.S.C. Section 1331.

2.

At all times pertinent to this action there was in full force and effect an act of the Congress of the United States referred to as the Interstate Land Sales Full Disclosure Act, 15 U.S.C., Section 1701 *et seq.*, which Act became effective on April 28, 1969.

3.

The Act provides that it shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect in accordance with provisions of the Act, and a printed property report, meeting requirements set forth in the Act, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser.

4.

The Act permits the Secretary of Housing and Urban Development ("the Secretary") from time to time, pursuant to rules and regulations made by him, to exempt from any of the provisions of the Act any subdivision or any lots in a subdivision, if the Secretary finds that the enforcement of the Act with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering.

5.

The Act permits the Secretary, from time to time, to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him by the Act.

6.

In 1969, pursuant to the authority of Section 1702(b), the Secretary issued certain regulations referred to as Section 1710.10(1), Title 24, Code of Federal Regulations which exempted from the operation of the Act the sale or lease of lots where the offering was entirely or almost entirely intrastate.

7.

On January 27, 1972, the Secretary issued new regulations deleting the old

Section 1710.10(1) and creating a new Section 1710.14 exemption pursuant to his discretionary authority under Section 1702(b), which Section 1710.14 became effective March 31, 1972.

8.

Prior to March 31, 1972, Lake Run-A-Muck, Old Snake River, Wayward Wind, Natasha Heights, Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions were exempt from the provisions of the Act because the enforcement of the Act with respect to such Subdivisions was not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering.

9.

Subsequent to March 31, 1972, Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lakes Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions should be exempted from the provisions of the Act pursuant to the regulations issued by the Secretary referred to as Section 1710.14, Title 24, Code of Federal Regulations, under his discretionary authority set forth in Section 1702(b) of the Act.

10.

[1] The Plaintiffs, her attorneys, agents, officers, employees, successors, assigns and any and all persons acting directly or indirectly in concert with her are restrained and enjoined from selling or leasing lots in Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights Subdivisions, and from using any means or instruments of transportation or communication in interstate commerce, or the mails, to sell or lease lots in Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights Subdivisions without satisfying the requirements of the Interstate Land Sales Full Disclosure Act.

11.

[2] Plaintiff, her attorneys, agents, officers, employees, successors and assigns should not be required to comply with the registration requirements of the Act and the Rules and Regulations issued pursuant thereto with regard to Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions.

ORDER MODIFYING CONCLUSIONS OF LAW AND JUDGMENT

On this date, came for consideration the Motion for Modification of the Conclusions of Law and Judgment, filed jointly by the Plaintiff and the Defendants herein, and after considering same, the Court is of the opinion the same should be granted. It is therefore,

Ordered, adjudged and decreed that the Conclusions of Law and Judgment of this Court entered in this cause on April 25, 1975, be modified as follows:

1. Paragraph 9 of the Conclusions of Law will read as follows: "Subsequent to March 31, 1972, Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lakes Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions may be exempted from the registration provisions of the Act pursuant to the regulations issued by the Secretary referred to as Section 1710.14, Title 24, Code of Federal Regulations, under his discretionary authority set forth in Section 1702(b) of the Act."

2. Paragraph 11 of the Conclusions of Law will read as follows: "Plaintiff, her attorneys, agents, officers, employees, successors and assigns should be required to comply with all the exemption re-

quirements of Section 1710.14, Title 24, Code of Federal Regulations, or the registration requirements of the Act and the Rules and Regulations issued pursuant thereto with regard to Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions."

3. The first full paragraph on the 4th page of the Judgment will read as follows: "The Court further finds that Plaintiff was selling or offering to sell lots in Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions on March 31, 1972, without having an effective registration with the Secretary of Housing and Urban Development pursuant to said Act. On said date of March 31, 1972, said Subdivisions of Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout each had less than two hundred ninety-nine (299) lots, each of said subdivisions was located entirely within Texas, the offering of lots in each of said subdivisions was entirely or almost entirely limited to Texas, that the advertising and promoting each of said subdivisions was confined to Texas, and less than five (5%) per cent of the sales in each of said subdivision in any one year was made to nonresidents of Texas. However, the lots were sold collectively as part of a common promotional plan containing more than 300 lots and the Plaintiff did not seek an exemption order pursuant to Section 1710.14, Title 24, Code of Federal Regulations."

4. The second full paragraph on Page 4 of the Judgment will read as follows: "It is, therefore, ordered, adjudged and decreed that Plaintiff, her attorneys, agents, officers, employees, successors and assigns should be required to comply with all the requirements of Section 1710.14, Title 24, Code of Federal Regulations or the registration requirements of the Act and the Rules and Regulations issued pursuant thereto with regard to Corrigan Heights, Crystal Lakes, Eagles Nest, Hoot Owl Hollow, Horseshoe Lake Estates, Nugent's Cove, Old Stag Ridge, Putnam's Landing, Sam Houston, Thunder Mountain, Town Bluff, Weaver's Cove, Wild Country and Hardin's Hideout Subdivisions."

Stanley J. GAUDET, Jr., and Audrey C. Gaudet

v.

WOODLAKE DEVELOPMENT CO.

Civ. A. No. 75-1217.

United States District Court, E. D. Louisiana.

March 5, 1976.

Purchasers brought action against vendors to recover damages and to obtain rescission of land sales under the Interstate Land Sales Full Disclosure Act. The District Court, Alvin B. Rubin, J., held that where the purchasers signed agreement to purchase on April 18, 1973, where vendor's representative signed the agreement on April 19, 1973, and where the acts of sale were executed on May 8, 1974, and October 21, 1974, purchasers' action which was filed on April 22, 1975, was timely; that purchasers would be granted leave to amend their complaint to seek rescission; and that purchasers were entitled to either rescission or damages but not to both.

Judgment for plaintiffs.

1. Trade Regulation ⇐861

If a property report is not furnished, execution of an agreement to sell is a violation of the Interstate Land Sales Full Disclosure Act. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

2. Trade Regulation ⇐864

Statute of limitations for action to rescind interstate land sale begins to run when the agreement is completed. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

3. Trade Regulation ⇐864

Where purchasers of land signed agreement to purchase on April 18, 1973, where vendor's representative signed the agreement to sell on April 19, 1973, where the executed purchase agreements were received by the purchasers on or about April

23, 1973, and where the acts of sales were executed on May 8, 1974 and October 21, 1974, action for damages and rescission under the Interstate Land Sales Full Disclosure Act which was filed on April 22, 1975, and which was based on failure of sellers to provide purchasers with property reports, was timely. Interstate Land Sales Full Disclosure Act, §§ 1402 et seq., 1404(a)(1), 1412, 15 U.S.C.A. §§ 1701 et seq., 1703(a)(1), 1711.

4. Trade Regulation ⇐861

The execution of a deed, or an act of sale translative of title, is itself a violation of the Interstate Land Sales Full Disclosure Act if no property report has been furnished. Interstate Land Sales Full Disclosure Act, §§ 1404(a)(1), 1410(a), (b)(1, 2), 15 U.S.C.A. §§ 1703(a)(1), 1709(a), (b)(1, 2).

5. Trade Regulation ⇐861

Failure of vendor to furnish a report is not a continuing violation of the Interstate Land Sales Full Disclosure Act. Interstate Land Sales Full Disclosure Act, § 1404(a)(1), 15 U.S.C.A. § 1703(a)(1).

6. Trade Regulation ⇐864

If vendors had not furnished property report before execution of purchase agreements, but had furnished a property report before signing the acts of sale, no action to rescind the acts of sale would lie under provision of the Interstate Land Sales Full Disclosure Act to the effect that any contract covered by the Act is voidable at the option of the purchaser when the property report has not been received prior to signing of the agreement. Interstate Land Sales Full Disclosure Act, § 1404(b), 15 U.S.C.A. § 1703(b).

7. Federal Civil Procedure ⇐843

Where purchasers of property had sought rescission, in the alternative, from the start of their action under the Interstate Land Sales Full Disclosure Act, and where vendor was aware that rescission was the primary desire, although court was not, purchasers would be given leave to amend their complaint to seek rescission. Fed.Rules Civ.Proc. rule 15, 28 U.S.C.A.; Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

8. Trade Regulation ⇐864

Purchaser may have either of two remedies, damages or rescission, under the Interstate Land Sales Full Disclosure Act, but not both. Interstate Land Sales Full Disclosure Act, § 1410(c, e), 15 U.S.C.A. § 1709(c, e).

Wiley G. Lastrapes, Jr., G. Phillip Shuler, III, New Orleans, La., for plaintiffs.

Donald A. Meyer, New Orleans, La., for defendant.

ALVIN B. RUBIN, District Judge:

The plaintiffs purchased real estate from the defendant in a transaction subject to the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 et seq. The transaction took place in two stages. First, the parties entered into an agreement to buy and sell. Such an executory contract is customary in Louisiana. Later, title to the property was conveyed in separate instruments, called acts of sale in Louisiana. These are analogous to a warranty deed at common law.[1] The defendant did not at any time provide plaintiffs with a property report as required by § 1703(a)(1) of the Act. The plaintiffs seek to rescind their purchases of three lots that are unimproved. They contended at the outset of the suit that they are entitled to damages with respect to a fourth lot where they had constructed their home, or alternatively to rescission of that transaction as well. Now they express a preference for rescission and seek to amend their complaint accordingly. The defendant was not surprised by this development because it had assumed all along that this was plaintiffs' preference.

The defendant contends that the statute of limitations contained in the I.L.S.F.D.

1. Prior to the trial of this action, the defendant moved to dismiss this action based upon its contention that the Act did not permit rescission of the completed sales. The Court denied the motion. See *Gaudet v. Woodlake Development Company*, E.D.La.1975, 399 F.Supp. 1005.

Act started to run when the purchase agreement was signed and that the action was not timely because it was not commenced within two years of the signing of the purchase agreements.

I.

Plaintiffs signed the agreement to purchase on April 18, 1973. The defendant's representative was not present at the time. He signed it later, and his signature is dated April 19, 1973. The executed purchase agreements were mailed to plaintiffs and received by them on or about April 23, 1973. Plaintiffs commenced this action on April 22, 1975.

The acts of sale of the lots were executed at different times, the first on May 8, 1974, and the last two on October 21, 1974.[2]

[1-3] While the statute was not drafted with Louisiana practice in mind, its principles appear easy to apply. If a property report is not furnished, the execution of an agreement to sell is a violation of the Act. It gives rise to a cause of action to rescind the agreement. The statute of limitations for this action begins to run when the agreement is completed. But the purchaser may decide not to bring this action. Indeed he might later be furnished with a property report and elect not to do so.

[4, 5] The execution of a deed, or an act of sale translative of title, is itself a violation of the act if no property report has been furnished. This violation gives rise to a cause of action under section 1709. Thus, the failure to furnish a report is not a continuing violation of the statute, but the statute may be violated on two occasions by two distinct acts, each of which is a discrete statutory violation. Of course the statute does not recite this primer of remedies. But its pattern is not obscure. Let us spell out how the statute requires this interpretation:

First, as was pointed out in the earlier opinion in this case,[3] section 1703(b) provides, "*Any* contract or agreement . . . covered by this chapter . . . shall be voidable at the option of the purchaser" (emphasis supplied) when the property report has not been received prior to the signing of the agreement. The statute does not imply that there may be only one violation per lot. Section 1703 provides for revocation "until midnight of the third business day following the *consummation* of the transaction, where he has received the property report less than forty-eight hours before he signed the contract or agreement . . . ." This sentence not only extends the purchaser's right to rescind to one situation where he has in fact received the report before the transaction (e. g., where he has received it less than 48 hours before the sale); it further indicates by use of the word "consummation" that Congress intended to allow the purchaser to rescind completed sales. The Act neither states nor implies that a purchaser who has not elected to rescind his initial agreement waives his right to relief with respect to the later contract.

Section 1703(a)(1) requires that the property report be "furnished to the purchaser in advance of the signing of *any* contract or agreement *for sale* . . . by the purchaser" (emphasis supplied). An "act of sale" is certainly a contract "for sale." Had the defendant provided a property report to plaintiffs prior to the signing of the purchase agreements, it would have complied with the statute with respect to whatever came thereafter, the acts of sale as well as the executory agreements, because it would have thereby furnished the property report "in advance of the signing."

[6] Or, to put another case, if the defendant had not furnished a property report before execution of the purchase agree-

2. It is likely that at the time the acts of sale were executed the purchase agreements had lapsed because the agreements required the acts of sale to be executed on or prior to thirty (30) days after acceptance of the streets, and the sales were, in local jargon, "passed," (i. e. executed) at a later time. But that fact does not appear to be controlling. No property report was furnished at either time.

3. See footnote 1, supra.

ments, but had furnished one before the signing of the acts of sale, no action to rescind the acts of sale would lie under section 1703(b). The defendant would thereby have cured the prior violation. See *Bissette v. Colonial Mortgage Corp. of D. C.*, 1974, 155 U.S.App.D.C. 360, 477 F.2d 1245, for a similar holding under the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.). The buyer of property certainly would not have an action to void a purchase agreement when he had no action to void the sale itself.

Nothing in this interpretation of the Act is inconsistent with Judge Smith's decision in *J. B. Hester v. Hidden Valley Lakes, Inc.*, N.D.Miss.1975, 404 F.Supp. 580, and now pending on appeal, Fifth Circuit Docket No. 76-1031. That case involved three groups of designated plaintiffs, each of whom entered into a separate transaction:

(1) On August 7, 1970, the Baileys agreed to purchase by executing a conditional sales contract. After they had made ten payments, a warranty deed was delivered to them.

(2) On September 20, 1970, the Ronzas agreed to purchase by executing a conditional sales contract. No warranty deed had been delivered when suit was filed.

(3) On April 30, 1971, and on April 9, 1972, the Hesters agreed to purchase by executing two conditional sales contracts. No warranty deed of the property covered by either contract had been delivered when suit was filed.

In connection with the *Bailey* and *Ronza* transactions, the court held that the three year "umbrella" limitation of section 1711 applied.[4]

Some of the Hesters' claims related to untrue reports or reports containing omissions, as set forth in Sections 1709(a) and (b)(2). Section 1711 sets forth a statutory limitation of "one year after the discovery of the untrue statement or the omission. . . ." The court held that the Hesters could maintain this claim as, "they have complied with the one-year statute of limitation. . . ."

In connection with the Hesters' claim for rescission brought under section 1709(b)(1), which imposes liability upon a developer selling subdivision lots where no property report has been furnished, the court held the action time barred because it was not brought "within two years after the violation upon which it [was] based," saying:

> The court is of the opinion that this language, in the context of a suit for rescission because of the developer's failure to furnish a property report at or before the time of sale, refers to the date of contract or agreement to purchase. Since *all* of the *purchases* by the named plaintiffs, the Hesters included, predate April 24, 1972 (two years prior to the date of the filing of the complaint), the plaintiffs' claims under 15 U.S.C. § 1703 are barred by the two-year statute of limitations." (Emphasis supplied.)

As to the Hesters, there was no warranty deed to rescind; the rescission could have been granted only with respect to the contract that had been signed, the agreement to purchase. Apparently a warranty deed had been delivered only to the Baileys, and this deed antedated the action by two years.

II.

[7] We now consider the matter of remedy. The plaintiffs sought rescission in the alternative from the start of the suit. The defendant was aware that this was their primary desire although the court was not. The amendment would merely ask the court

4. 15 U.S.C. § 1711 provides:

> No action shall be maintained to enforce any liability created under section 1709(a) or (b)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 1709(b)(1) of this title, unless brought within two years after the violation upon which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

to recognize what the parties knew throughout.

Accordingly, the plaintiffs contend no amendment is necessary. Nonetheless, if that were not enough, plaintiffs made an oral motion to amend the complaint to request rescission on Lot 28, Square "A" at the trial. Rule 15, FRCP provides ample authority for this amendment, and it is granted.

III.

But the right to amend to claim a remedy does not mean the remedy may or should be granted. As pointed out both in this opinion and in the earlier opinion in this case, rescission is a proper remedy. Furthermore, § 1709(c) clearly provides that damages are available in an action based on a violation of § 1703. Whether these remedies may be cumulated, i. e., whether the purchaser may both rescind the sale and claim the damages specified in § 1709(c), is, however, another question.

Section 1709(e) provides:

> In no case shall the amount recoverable under this section exceed the sum of the purchase price of the lot, the reasonable cost of improvements, and reasonable court costs.

This does not imply that the plaintiff should be able to cumulate remedies until he reaches this maximum amount. Congress did set a maximum recovery, but this does not indicate that the maximum amount should be allowed.

Reference to the Securities Act, the conceptual ancestor of the ILSFDA, is not helpful. The value of securities is not enhanced by "improvements." Nor does the legislative history provide guidance. There is no mention of cumulation of the remedies.

[8] In the absence of any authority, then, it seems that the better view is that the purchaser may have either of two remedies, but not both. He may sue to rescind the sale, and simply recover the purchase price paid; or he may seek the damages set forth in § 1709(c).

If counsel for the plaintiffs desires to cite further authority bearing on this problem, he may do so by filing an appropriate motion to reconsider.

Accordingly, the Clerk is directed to enter judgment in favor of the plaintiffs and against the defendant rescinding the sales of Lots 6 and 7, Square N and Lots 27, 29 and 30 of Square A. The matter is referred to the Magistrate to act as Special Master to determine damages incurred in connection with Lot 28, Square A, in accordance with 15 U.S.C. § 1709(c).

Leslie W. McCOWN et al.,
Plaintiffs-Appellants,

v.

James W. HEIDLER et al.,
Defendants-Appellees.

Leslie W. McCOWN et al.,
Plaintiffs-Appellees,

v.

Joseph C. CALDWELL et al.,
Defendants-Cross-Appellants.

Nos. 74-1755, 74-1756.

United States Court of Appeals
Tenth Circuit.

Dec. 22, 1975.

Purchasers of undeveloped lots in real estate development project brought class action against officers of the corporate developers to recover for alleged common-law fraud as well as for violations of the Interstate Land Sales Full Disclosure Act. In addition, plaintiffs sought leave to file amended complaint asserting violations of federal securities laws. The United States District Court for the Northern District of Oklahoma, Frederick A. Daugherty, Chief Judge, rendered summary judgment for defendants, and plaintiffs appealed. The Court of Appeals, Lewis, Chief Judge, held that fact that corporate officers, directors or any participating planners do not literally come within the provisions of the Interstate Land Sales Full Disclosure Act defining a "developer" and an "agent" does not excuse them from liability under the Act, notwithstanding that the Act contains no controlling persons clause and that since, among other things, lots were touted as having investment value the plaintiffs should have been allowed to amend to assert a cause of action under the securities laws.

Remanded.

1. Trade Regulation ⇐861

Officers or directors of corporate developers of real estate project as well as any participating planners could be held liable for violations of Interstate Land Sales Full Disclosure Act, notwithstanding that they did not fall within statutory definition of developers or selling agents. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

2. Trade Regulation ⇐861

General purpose of Interstate Land Sales Full Disclosure Act was to prohibit and punish fraud in land development enterprises. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

3. Trade Regulation ⇐861

Interstate Land Sales Full Disclosure Act is to be liberally interpreted to achieve its goal of prohibiting and punishing fraud in land development enterprises. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

4. Trade Regulation ⇐861

To be meaningful, basic protections of Interstate Land Sales Full Disclosure Act must be leveled against the fraudulent planners and profit makers since, otherwise, the Act would be pragmatically barren. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

5. Statutes ⇐174

No legislative enactment should be rendered ineffective to attain its purpose if such a construction can be avoided.

6. Trade Regulation ⇐861

Fact that Congress rejected a proposed amendment which would have added a controlling person clause to the Interstate Land Sales Full Disclosure Act was not dispositive evidence that the legislature intended to restrict liability to "selling agents"; in any event, directors and officers who participate with a corporation or its "selling agents" in fraud in violation of the Act are guilty of aiding and abetting. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.

7. Securities Regulation ⇐18, 43

Although land, as such, is not a security within meaning of the federal Securities Acts, and although a land purchase contract does not automatically fall within the confines of such Act simply because the purchaser expects or hopes that the value of the land purchased will increase, it does not necessarily follow that land or its purchase negates application of the Securities Acts. Securities Act of 1933, § 2(1), 15 U.S.C.A. § 77b(1); Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).

8. Securities Regulation ⇐13, 42

Interests in real property can constitute "investment contracts" within the definition of a "security" for purposes of the Securities Act and the Securities Exchange Act. Securities Act of 1933, § 2(1), 15 U.S.C.A. § 77b(1); Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).

See publication Words and Phrases for other judicial constructions and definitions.

9. Securities Regulation ⇐12, 42

Characterization of a particular investment as a security within the purview of the Securities Acts should depend not on the form but on the substance and economic reality of the transaction. Securities Act of 1933, § 2(1), 15 U.S.C.A. § 77b(1); Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).

10. Securities Regulation ⇐13, 42

Utilization of purchase money accumulated from sales of undeveloped lot to build promised improvements in real estate development projects was a scheme within the "common enterprise" definition of "investment contract," as that term is used in defining a "security" for purposes of federal securities laws. Securities Act of 1933, § 2(1), 15 U.S.C.A. § 77b(1); Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).

See publication Words and Phrases for other judicial constructions and definitions.

11. Securities Regulation ⇐13, 42

Reliance of an investor on a promoter need not be total before a scheme constitutes an "investment contract" as that term is used in defining a "security" for purpose of Securities Act and Securities Exchange Act. Securities Act of 1933, § 2(1), 15 U.S.C.A. § 77b(1); Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).

12. Federal Civil Procedure ⇐839

Claim that sale of undeveloped lots in real estate project constituted an "investment contract" as that term is used in federal securities law was not wholly frivolous and purchasers should have been allowed to amend complaint to allege securities laws violations where developer touted project as having substantial investment potential, on the 262 agreements for deed some 108 purchasers indicated that they did not expect to reside on their lots and without the substantial improvements pledged by the developers the lots would not have a value consistent with the purchase price. Securities Act of 1933, § 2(1), 15 U.S.C.A. § 77b(1); Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C.A. § 78c(a)(10).

13. Federal Civil Procedure ⇐181

Determination that action seeking recovery for common-law fraud and for alleged violations of Interstate Land Sales Full Disclosure Act in connection with sale of undeveloped lots in real estate development project could preliminarily be treated as class action was not abuse of discretion. Interstate Land Sales Full Disclosure Act, § 1402 et seq., 15 U.S.C.A. § 1701 et seq.; Fed.Rules Civ.Proc. rule 23, 28 U.S.C.A.

Frederic Dorwart, Tulsa, Okl., for appellants.

James C. Lang, Tulsa, Okl., for appellee-cross-appellant, Joseph C. Caldwell.

Hawley C. Kerr and Paul P. McBride, Tulsa, Okl., for other appellees and cross-appellants (Fred S. Nelson, Brian S. Gaskill, Irvine E. Ungerman, Robert S. Rizley and William D. Hunt, Tulsa, Okl., on the briefs for appellees-cross-appellants).

Before Mr. Justice CLARK,* LEWIS, Chief Judge, and HILL, Circuit Judge.

LEWIS, Chief Judge.

The plaintiffs, purporting to represent a class of land purchasers, brought suit against the defendants alleging common-law fraud and violations of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.* The defendants were officers and members of the board of directors of Timberlake, Inc. or Heidler Corporation, the parent corporation.

The plaintiffs purchased lots in Timberlake, a large real estate development promoted by Heidler Corporation and Timberlake, Inc. The developers were obligated to include a large lake, 18-hole golf course, swimming pools, clubhouse, roads, etc. Subsequent to the sales to plaintiffs, both Timberlake, Inc. and Heidler Corporation were adjudicated bankrupt by the district court and receivers were appointed.

The plaintiffs alleged that the two corporations and individual defendants knowingly misrepresented their corporate capacity to complete the development obligations, which misrepresentations operated as a fraud and deceit on lot purchasers in violation of the Interstate Land Sales Full Disclosure Act (Land Act), 15 U.S.C. § 1709(b)(1). The plaintiffs alleged that the Statement of Record and Property Report filed by defendants pursuant to the requirements of the Land Act contained omissions and untrue statements of material facts in violation of 15 U.S.C. §§ 1709(a), (b)(2). The defendants were also alleged to have committed common-law fraud. Subsequently, the plaintiffs filed an Application for Leave to Amend Complaint to allege defendants' violation of the Securities Act of 1933 and the Securities and Exchange Act of 1934 (Securities Acts) and Oklahoma securities laws.

The defendants individually filed motions resisting plaintiffs' certification as a class. Defendants requested dismissal for failure to state a claim upon which relief could be granted, lack of diversity or federal question jurisdiction and failure to join indispensable parties, Heidler Corporation and Timberlake, Inc. Subsequently, the defendants also objected to plaintiffs' attempts to amend their complaint to allege security law violations.

Defendants Larkin Bailey, Paul V. Hartman and Jerald M. Schuman moved that the court enter summary judgment in their favor; the plaintiffs asked the court for summary judgment against those same defendants. The court confronted with the plaintiffs' complaint, plaintiffs' request for class certification and plaintiffs' motion for leave to amend and with defendants' motions to dismiss and with motions for summary judgment as to defendants Bailey, Hartman and Schuman entered an order granting summary judgment for all defendants and dismissing plaintiffs' action.

[1-6] The trial court in granting the benefits of summary judgment to the defendants under the Land Act held that the undisputed facts indicated that defendants were neither developers (Timberlake and Heidler corporations) nor selling agents but were simply officers or directors of the corporate developer. In so doing the trial court interpreted 15 U.S.C. § 1701:

> (4) "developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;
>
> (5) "agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include any attorney at law whose representation of another person consists solely of rendering legal services;

as limiting liability under the Land Act to the two extremities of most complex land development enterprises. The court noted the absence of a "common control"

* Associate Justice, United States Supreme Court, Retired, sitting by designation.

provision in the Land Act and concluded that Congress intended this Act to have a very limited "target of suit." We conclude that the court erred in imposing such narrow limits to liability under the Act.

As Mr. Chief Justice Burger recently observed, new areas of fraud are being constantly conceived, one of which is fraud "connected with the burgeoning sale of undeveloped real estate, until Congress could examine the problems of the land sales industry and pass into law the Interstate Land Sales Full Disclosure Act." *United States v. Maze*, 414 U.S. 395, 406, 94 S.Ct. 645, 651, 38 L.Ed.2d 603 (dictum in dissenting opinion). The general purpose of the Land Act was, of course, to prohibit and punish fraud in such land development enterprises as we here consider and the Act should be interpreted to attain that end. Such an act should be construed "not technically and restrictively, but flexibly to effectuate its remedial purposes." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195, 84 S.Ct. 275, 285, 11 L.Ed.2d 237. The "developer" of a land sale plan is usually a corporate entity which, in a fraudulent scheme as here alleged, ends up defunct and offers no reserve for recovery to those persons defrauded; so, too, the end selling agent, when the development collapses financially, is often long gone or cannot respond pecuniarily. Indeed the actual selling agent may well be a creditor of the developer and an indirect victim of the fraud himself. The basic protection of the Act, to be meaningful, must be leveled against the fraudulent planners and profit makers for otherwise the Act would be pragmatically barren. No legislative enactment should be rendered ineffective to attain its purpose if such a construction can be avoided. *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350–51, 64 S.Ct. 120, 88 L.Ed. 88.

The fact that Congress rejected a proposed amendment which would have added a controlling persons clause is not dispositive evidence that the legislature intended to restrict liability to "selling agents." It should be noted that directors and officers are routinely held liable under the Securities Act apart from the controlling person clause. *E. g., Kerbs v. Fall River Industries, Inc.*, 10 Cir., 502 F.2d 731. In any event directors and officers who participate with a corporation or its "selling agents" in fraud in violation of the Land Act are guilty of aiding and abetting. This court has specifically recognized the civil liability of an aider and abettor under the securities antifraud provisions in *Kerbs v. Fall River Industries, Inc.*:

> Under § 10(b) and Rule 10b–5 knowing assistance of or participation in a fraudulent scheme gives rise to liability equal to that of the perpetrators themselves. . . . Moreover, one who aids and abets a fraudulent scheme may be held accountable even though his assistance consists of mere silence or inaction.

502 F.2d 731, 740 (citations omitted).

We hold, therefore, that plaintiffs' alleged cause of action may properly be leveled against the individual defendants in this case be they officers, directors, or participating planners. Such a construction of the Act, although not specifically so stated, seems to have been taken for granted by other courts, for numerous courts have entertained action under the Act leveled at "controlling stockholders, officers and directors." *Adolphus v. Zebelman*, 8 Cir., 486 F.2d 1323, 1325. *See e. g., Kamm v. California City Development Co.*, 9 Cir., 509 F.2d 205, 206; *Siebert v. Great Northern Development Co.*, 5 Cir., 494 F.2d 510; *United States v. Del Rio Springs, Inc.*, D.Ariz., 392 F.Supp. 226; *United States v. Pocono International Corp.*, S.D.N.Y., 378 F.Supp. 1265.

It follows that the trial court's refusal to exercise pendent jurisdiction over the nonfederal cause of action for common-law fraud, while not erroneous in light of that court's disposition of the federal complaint, should now be reconsidered.

[7] The trial court rejected plaintiffs' efforts to amend the complaint to allege

a cause of action under the Securities Acts terming the effort to be "wholly without merit." The trial court in so holding noted that real property and land purchase contracts are not securities as defined in 15 U.S.C. § 77b(1). We agree that land, as such, is not a security and that a land purchase contract, simply because the purchaser expects or hopes that the value of the land purchased will increase, does not fall automatically within the confines of the Securities Acts. However, we do not agree that land or its purchase necessarily negates the application of the Securities Acts.

[8] The Securities Act of 1933 and the Securities and Exchange Act of 1934 specifically include "investment contracts" within the definition of "security." 15 U.S.C. §§ 77b(1), 78c(a)(10). In *SEC v. W. J. Howey Co.*, the Supreme Court set forth a broad definition of "investment contract":

> The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.

328 U.S. 293, 301, 66 S.Ct. 1100, 1104, 90 L.Ed. 1244. This definition of an investment contract can include interests in real property. *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 64 S.Ct. 120, 88 L.Ed. 88; *Andrews v. Blue*, 10 Cir., 489 F.2d 367, 374–75; *Gilbert v. Nixon*, 10 Cir., 429 F.2d 348, 354. A federal district court has held that a cause of action for fraud under the Securities Acts and the Land Act exists against the promoter of recreational or investment lots. *Tober v. Charnita, Inc.*, M.D.Pa., 58 F.R.D. 74.

[9] The characterization of a particular investment as a security within the purview of securities regulation should depend, not upon the form, but upon the substance and economic reality of the transaction in question. *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 95 S.Ct. 2051, 44 L.Ed.2d 621; *Vincent v. Moench*, 10 Cir., 473 F.2d 430, 435. In following this flexible approach interests in a real estate venture, fractional interests in oil and gas leases, and even contracts for the purchase and maintenance of live beavers have been held, in particular factual contexts, to be securities. *Andrews v. Blue*, 10 Cir., 489 F.2d 367; *Gilbert v. Nixon*, 10 Cir., 429 F.2d 348; *Continental Marketing Corp. v. SEC*, 10 Cir., 387 F.2d 466, *cert. denied*, 391 U.S. 905, 88 S.Ct. 1655, 20 L.Ed.2d 419. In characterizing the purchase of Timberlake lots, the standard set out in *SEC v. C. M. Joiner Leasing Corp.*, must be applied:

> In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. The test rather is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as [the Securities Act of 1933] it is not inappropriate that promoters' offerings be judged as being what they were represented to be.

320 U.S. 344, 352–53, 64 S.Ct. 120, 124, 88 L.Ed. 88 (footnotes omitted). We also note this court's application of that test in holding the purchase of live beavers and their maintenance to be securities, *Continental Marketing Corp. v. SEC*:

> Investment by members of the public was a profit-making venture in a common enterprise, the success of which was inescapably tied to the efforts of the ranchers and the other defendants and not to the efforts of the investors. "[T]he royal road to riches," of which appellant spoke, could be traveled, if at all, only through the structure which had developed from the embryonic state of the Weaver organization of the early 1950's. . . . If the structure collapsed then the purchasers would have little more than a bad investment. Certainly the beavers as mere animals and not as part of the enterprise did not have value consistent with the price many of the purchasers paid.

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> The economic inducement was the faith or hope in the success of the enterprise—the domestic beaver industry—as a whole, and not the value of the animals alone.

887 F.2d 466, 470–71, *cert. denied*, 391 U.S. 905, 88 S.Ct. 1655, 20 L.Ed.2d 419 (footnotes omitted).

In light of the trial court's refusal to allow plaintiffs to amend their complaint, it appears appropriate to consider on appeal the evidence as to the security law violations in the light most favorable to plaintiffs. The proposed amendment sought to add an allegation that:

> The lots in the Timberlake Development were represented as, and sold as, investments. The lots were vacant and the Timberlake Development was substantially undeveloped. The vacant lots were of little value unless, by the sole efforts of Heidler and Timberlake, the development obligations of Heidler and Timberlake were fulfilled. Each of the purchasers of a Timberlake lot invested his money in a common scheme which depended solely upon the efforts of Heidler and Timberlake.

The plaintiff offered to prove the following facts:

> The offer and sale of lots in the Timberlake Development was not only the offer and sale of subdivision lots in a real estate development, but the sale of a contractual promise by Heidler Corporation to improve the project, including the construction of a country club, an 18-hole championship golf course, stables, equestrian center, tennis courts, clubhouses and swimming pools.
>
> The lot purchasers had no control over, or participation in the improvement of the project, but entrusted their monies solely to the management of Heidler Corporation. The lots, absent fulfillment of Heidler Corporation's promises to improve them, had little or no value. Substantial purchase prices were paid for the promised improvements. The lots were purchased in expectation that fulfillment of the promise to improve them by Heidler Corporation would result in a substantial increase in the value of the lots.
>
> The lots were sold as, and purchased for, investment.

We note that affidavits of several lot purchasers indicated that they purchased lots as an investment.

The plaintiffs presented evidence which could show that the sale of Timberlake lots constituted more than the mere sale of real estate. During 1970, Heidler, the organizing genius behind Heidler Corporation and Timberlake, had employees and salesmen attend four-week training sessions by Revac in Denver, Colorado. The defendants in this action, Caldwell and Boggess, also attended. The Revac concept was to market and sell real estate to the public as an investment. Many of the officers and directors of Timberlake and Heidler Corporation reviewed or became familiar with those concepts. For example, Schuman reviewed the Revac Group Investing Manual which set forth the Revac concept:

> There can be no doubt in anyone's mind that the main emphasis of REVAC is on investment. Most brokers across the country have felt that other real estate brokers have been their main competition. This is not so, however, in the field of investment. The main competition the REVAC Associate has for the investment dollar is Wall Street, the stock broker, mutual fund salesman, and insurance salesmen. If we are to pick up the gauntlets hurled by these investment areas, and face their competition, we are going to have a solid program to present which will enable the public to easily make investments in real estate. We will need to present a more solid and professional front than that offered by the securities or insurance fields, as competition is highly organized.
>
> Because the field of investments has been heretofore considerably neglected by real estate brokers, REVAC has established and field-tested many pro-

grams that will help the Associate obtain a foothold and, indeed, an outstanding reputation in the field of investment. Probably no other endeavor in the field of investment real estate offers so much potential for the client and the broker as does real estate syndication. . . .

. . . . . .

There are millions and millions of people in the United States ready, willing, and able to invest small amounts of money. These small amounts of money, once pooled, can become an important factor in the over-all financial field. In order to appeal to these masses, the REVAC Associate should take a very strong look at Group Investing and implement the procedures outlined in this Manual.

In June of 1970, Heidler Corporation, the Tulsa franchise of Revac, held public seminars using the Revac methods, brochures and films to show the advantages of real estate investment. These seminars were advertised to explain real estate investment, "How fortunes are made in real estate," "How to get rich while sleeping," "Why real estate is the one safe, sure, successful investment," etc. Defendants in this case are alleged to have participated in advertising these seminars and lectured at them. The seminars were allegedly used not only to sell real estate through limited partnerships but also to promote the sale of Timberlake lots. Persons attending seminars signed their names and addresses, these were later given to Timberlake lot salesmen.

The General Form For Registration of Securities (Form 10) filed by Heidler Corporation with the S.E.C. states that "Timberlake, Inc., is selling lots to individuals for investment purposes and ultimately for individuals to construct a home and retire, all in a scenic and recreation area." The written instructions to Timberlake salesmen contain passages such as the following:

INVESTMENT PRIVILEGES. Homesite owners will also be given first opportunities for investment on a joint venture or limited partnership basis for all commercial enterprises at Timberlake. This includes commercial parcels, restaurants, service stations and shopping centers, as they are planned and become available.

. . . . . .

RAW, UNDEVELOPED LAND. Some potential clients will say, "But we can buy 40 acres of land near here for the price of a lot at Timberlake" . . . What security will they have on that 40 acres? Will they hire a private policeman to keep out looters when they aren't home, or will they never leave? What about their insurance rates? What about streets, water, swimming pool, golf, country club?

. . . . . .

We, the management of the Heidler Corporation have provided you with the finest investment/ownership package in the nation to sell.

That some Timberlake lot purchasers intended to invest their money rather than reside on the lots is evidenced by the fact that in 1971 on the 262 Timberlake Agreements for Deed, 108 purchasers indicated they did not expect to reside on their lots. The Timberlake brochures, provided prospective purchasers, discussed or presented duplicated items covering such topics as "the secret in speculating in raw land," capital gain and real estate and "fortunes, large and small are being made in land." The brochures touted Timberlake as a "prime investment in a natural setting," an "outstanding investment opportunity" and possessed with recreational assets "to aid your investment [to] grow in value each day." Purchasers received letters from Heidler Corporation complimenting them on their "wise investment" and encouraging them to participate in "many opportunities for future investments." Purchasers also received invitations to "investment seminars" which were advertised to be possibly the "most productive hour" of their lives.

[10, 11] We note that without the substantial improvements pledged by Heidler Corporation and Timberlake the lots would not have a value consistent with the price which purchasers paid. *See Continental Marketing Corp. v. SEC*, 10 Cir., 387 F.2d 466, 470–71, *cert. denied* 391 U.S. 905, 88 S.Ct. 1655, 20 L.Ed.2d 419. The utilization of purchase money accumulated from lot sales to build the promised improvements brings the scheme within the "common enterprise" definition. We also note that in applying the second test of the *Howey* case, "reliance of the investor solely upon the efforts of the promoter," it has been widely held that this reliance of the investor on the promoter need not be total. The Ninth Circuit in *SEC v. Glenn W. Turner Enterprises, Inc.*, held the test to be:

> [W]hether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

474 F.2d 476, 482, *cert. denied* 414 U.S. 821, 94 S.Ct. 117, 38 L.Ed.2d 53. The Ninth Circuit reaffirmed this standard in *Bitter v. Hoby's International, Inc.*, 498 F.2d 183; other circuits have utilized this same standard. *SEC v. Koscot Interplanetary, Inc.*, 5 Cir., 497 F.2d 473, 477–78; *Lino v. City Investing Co.*, 3 Cir., 487 F.2d 689, 692–93. It may be, in the instant case, that an investor who purchased a Timberlake lot, not to build thereon but to hold solely as an investment, could be relying upon the managerial efforts of Heidler Corporation and Timberlake for the management and appreciation of his investment. That other lot purchasers may be interested solely in obtaining a site on which to build their home merely indicates the duality of this "investment/ownership package."

[12] Considering the evidence procedurally presented, the defendants' claim does not appear frivolous or wholly lacking in merit. Weighing this evidence in the light most favorable to defendants in conjunction with the definitions and applications of "investment contract" in *C. M. Joiner Leasing Corp.* and *Continental Marketing Corp.*, we hold there is a factual question as to whether the sale of Timberlake lots constitutes sales of securities. The amendment to allege security law violations must be allowed.

[13] By way of cross-appeal, the defendants urge that the trial court erred in indicating that this action could preliminarily be treated as a class action under Rule 23. Since this question does not reach us in isolation, we hold that there is nothing in this record which indicates that the trial court abused its discretion in such regard. However, we in no way foreclose the trial court's continuing exercise of discretion on this issue.

Other contentions made by the parties are deemed to be without merit or mooted by our decision.

The case is remanded for further proceedings.

JUDGMENT ON DECISION BY THE COURT — CIV 38 (7-63)

United States District Court

FOR THE

WESTERN DISTRICT OF WASHINGTON AT TACOMA

DEC 15 1975

CIVIL ACTION FILE NO. C75-198T

ASSOCIATION OF OUTDOOR RECREATION CLUBS, INC. et al
vs.
SECRETARY, HOUSING AND URBAN DEVELOPMENT, an agency of the United States of America and DIRECTOR, DEPARTMENT OF MOTOR VEHICLES, an agency of the State of Washington

JUDGMENT

This action came on for ~~trial~~ (hearing) before the Court, Honorable William N. Goodwin, United States District Judge, presiding, and the issues having been duly ~~tried~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged Plaintiffs' Motion for injunctive relief denied, Secretary's motion to dismiss is granted. Action is dismissed.

FILED IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
DEC 11 1975
EDGAR SCOFIELD, CLERK
By _____ Deputy

Dated at Tacoma, Washington, this 11th day of December, 1975.

EDGAR SCOFIELD
Clerk of Court

By _____
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ASSOCIATION OF OUTDOOR RECREATION CLUBS, INC., a corporation, OCEAN SHORES OUTDOOR RECREATION CLUB, a non-profit corporation, LEISURE PARKS, INC., a corporation, PERRY-COOPER, INC., a corporation, LAKE MERWIN DEVELOPMENT CO., a corporation, TIMBER TRAILS, INC., a corporation, GOLDBAR DEVELOPERS, a limited partnership, CRESCENT BAR OUTDOOR RECREATION CLUB, a non-profit corporation, et al., Plaintiffs, v. SECRETARY, HOUSING AND URBAN DEVELOPMENT, an agency of the United States of America, and DIRECTOR, DEPARTMENT OF MOTOR VEHICLES, an agency of the State of Washington, Defendants.	CIVIL ACTION NO. C75-198T MEMORANDUM DECISION

For a number of years last past, the Courts of the United States and of the several states have been inundated with claims by purchasers of land that they have been defrauded by developers and promoters who have allegedly induced investments in rights in land through fraudulent and deceptive practices. It is common knowledge that the trend toward recreational developments has mushroomed so that city dwellers have become a lucrative source for promotion of recreational land.

. . . . The Congress of the United States and several states enacted legislation aimed at controlling these sales to prevent frauds in the inducement and to guarantee to the purchasers that developers would comply with promises made at the time of the purchase.

The Interstate Land Sales Act, 15 U.S.C. § 1701 et seq., makes it unlawful for developers to employ any means of transportation or communication in interstate commerce, or of the mails, "to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect" and a printed property report is furnished to the purchaser before he obligates himself in writing. Failure to provide the purchaser with a copy of the property report in advance of his signing a sale or lease agreement renders the contract voidable at his option. 15 U.S.C. § 1703. Noncomplying developers may also be subject to both civil (§ 1709) and criminal (§ 1717) liabilities.

The plaintiffs in this action are developers of what are generally termed camping clubs. The clubs are non-profit associations which purchase tracts of recreational property; the bulk of each tract is subdivided into individual campsites for assignment to members, the remainder is employed for common recreational and sanitary facilities. The division into individual campsites is accomplished by a simple survey and the use of markers. No plat is filed and title to the entire tract remains in the association.

The plaintiffs filed this action seeking to enjoin the defendant Carla A. Hills, Secretary of Housing and Urban Development, from attempting to enforce provisions of the Interstate Land Sales Act against them.

They seek a declaration that the Secretary has no jurisdiction over their activities and that any regulations—

promulgated by the Secretary which purport to grant such jurisdiction are invalid.

The Secretary opposed the plaintiffs' motion for a preliminary injunction on the grounds that the action was prematurely brought, that there is no likelihood the plaintiffs will prevail on the merits and that plaintiffs can show no irreparable harm. At the hearing on plaintiffs' motion, it was decided that the parties should submit the case for final disposition on the merits, since it ultimately presents a rather narrow issue of law.

The Secretary has contended throughout that this action was prematurely brought because the plaintiffs have never sought an exemption order or advisory opinion pursuant to 24 C.F.R. §§ 1710.14 and 1710.15. (The Act also provides a specific procedure for review of the Secretary's determination, at first instance, in the Courts of Appeals. 15 U.S.C. § 1711.) On the other hand, the plaintiffs wish to avoid, if it is unnecessary, the burdensome preparation incidental to a request for an advisory determination. Too, it appears from the documents on file with the Court that most, if not all, of the plaintiffs' developments are either too large or too widely advertised to qualify under the available exemptions.

Since the basis of the plaintiffs' claim is that sales of the particular form of property represented by membership in their associations are not subject to regulation under the Land Sales Act, the Court finds that the controversy is actual and ripe for determination under the Declaratory Judgment Act, 22 U.S.C. § 2201.

Substantively, the question presented is whether a camping club membership constitutes a "lot in any subdivision" within § 1703(a). That section provides:

> "It shall be unlawful for any developer or agent, directly or indirectly to make use of any means or instruments of transportation in interstate commerce, or of the mails (1) to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect in accordance with § 1706...."

The Act defines the term "subdivision" in § 1701(3) to mean:

> "...any land, located in any state or in any foreign country which is divided or proposed to be divided into fifty or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional scheme...."

The term "lot" appears in both the statute referring to jurisdiction granted to the Secretary and in the definition of subdivision, but is not itself defined within the Act. The Secretary, in 1973, adopted a rule defining "lot" to include

> "any portion, piece, division, unit, or undivided interest in land if such interests include the right to exclusive use of a specific portion of land." 24 C.F.R. § 1710.1(h).

The plaintiffs contend, first, that the Secretary's definition of "lot" is broader than the traditional scope of that term and extends her regulatory powers into areas not contemplated by Congress.

So far as the Court can see, the traditional definition of the word is not a confining one. Black's Law Dictionary terms it "Any portion, piece, division or parcel of land."

§ 1718 of Chapter 42 provides,

> "The Secretary shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon [her] elsewhere in this chapter."

When the administrator's empowering provision is so phrased, the validity of a regulation will be sustained so long as it is reasonably related to the purposes of the enabling legislation. When the statutory language indicates a congressional intent that the Act should be enforced so as to

curtail attempts at evasion, courts should show even greater deference to the informed experience and judgment of the agency. Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973). This law contains no general statement of purpose. However, the preamble to § 1702(a) demonstrates that Congress did not intend the Act to be read so restrictively as to render it inoperable:

> "Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to [certain enumerated exemptions]."

The Court is satisfied that the Secretary's definition of "lot" to include undivided interests in land only when such interests include the right to exclusive use of a specific plot of land was reasonable in light of the Act's remedial purpose and the Secretary's expressed desire to avoid evasions. See 38 F.R. 23866 (1973).

It further appears that the plaintiffs' activities fall within the scope of the definition. There can be no dispute that membership in a camping club carries with it, at least indirectly, an undivided interest in real property owned by the association. But the plaintiffs argue that, under the terms of membership, members acquire no right to exclusive use of a specific portion of land.

Examination of the exhibits discloses one paramount fact: Each membership in all these clubs is tied to a particular campsite with defined bounds. Some of the offering circulars specifically mention that members acquire, with specified limitations, "exclusive" rights to "perpetually" occupy the site which is assigned under the membership agreement; others do not go so far. But any doubt as to the intent of these agreements is dispelled by the fact that, in every instance, the membership contract designates a

particular site for the use of the purchasing member, and the price of a membership varies according to the desirability and size of the designated site. Moreover, memberships are in all cases freely alienable, subject at most to the approval of an association board or committee, and the sale of one's membership effects a transfer of the accompanying campsite. Apart from the shared access and common facilities -- which today accompany many forms of land development -- the whole focus of a membership is upon the member's rights in a specific piece of land.

Of course, the Court is aware that the plaintiffs' disclosure statements and membership agreements include restrictive terms. Membership agreements subject all the privileges of membership to potential change through amendment of the by-laws, a fact upon which the plaintiffs specially rely to show the absence of exclusivity. But that condition in reality seems to serve no purpose except, perhaps, a cosmetic one. The expectation that members would agree to amend the by-laws to deprive themselves of control over their sites is dubious. No instance was cited in which that actually transpired. To the contrary, a perusal of the by-laws shows frequent references to "purchasers" of "sites." If anything, such language serves to reassure prospective members that they are acquiring rights in the land.

Other provisions hedge the members' use of their campsites with restraints, e.g., forbidding permanent improvements, limiting the number of consecutive days a member may occupy this site, denying the right to lease one's campsite (although permitting the designation of a "guest" who may use it). These limitations appear aimed at preserving the character of the clubs and assuring that their facilities are not overtaxed. As such, they represent merely an adaptatio

of traditional restrictions associated with condominium ownership.

It is not the province of this Court to define what is the "exclusive use" of a specific portion of land which confers jurisdiction upon the Secretary to supervise the sale of what would otherwise constitute merely an undivided interest in land. It suffices to say that in this case there are sufficient indicators of an intended exclusivity -- most notably the presence of price discrimination tied to a member's assigned campsite -- that the Secretary's exercise of jurisdiction over these plaintiffs would not be an unreasonable application of her powers under the Interstate Land Sales Act.

In view of the Court's finding on the issue of jurisdiction, it can proceed no further, but must remand the plaintiffs to resolve the terms of regulation within the framework provided by the Act.

This disposition renders it unnecessary to entertain the plaintiffs' further request, that the Court quash certain orders made by the second named defendant, the Director of the Department of Motor Vehicles of the State of Washington. Since the claim was founded upon the alleged absence of jurisdiction in the Department of Housing and Urban Development, it too must be denied.

It is, THEREFORE, ORDERED that the plaintiffs' motion for injunctive relief be DENIED, and the Secretary's motion to dismiss be GRANTED.

DONE BY THE COURT this 10th day of December, 1975.

William N. Goodwin
UNITED STATES DISTRICT JUDGE

NOT FOR ROUTINE PUBLICATION

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 75-1695

COORS PARK, INC., a New Mexico Corporation, Appellant, v. UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, and JOHN R. McDOWELL, Acting Administrator of the Office of Interstate Land Sales Registration, Appellees.	Appeal From The United States District Court For The District of New Mexico (D.C. # 75-391)

Henry G. Coors, Albuquerque, New Mexico (John A. Myers, Robert N. Singer, and Coors, Singer & Broullire, Albuquerque, New Mexico, with him on the Brief), for Appellant.

Eleanor Roberts Lewis, Attorney, Land Sales Insurance and Disaster Assistance Branch, Department of Housing and Urban Development (Victor R. Ortega, United States Attorney, and Lyman G. Sandy, Assistant United States Attorney, on the Brief), for Appellees.

Before SETH and HOLLOWAY, Circuit Judges, and STANLEY, District Judge.*

PER CURIAM.

The appellant has taken this appeal from an order of the United States District Court for the District of New Mexico which denied its motion for a preliminary injunction against the defendants. The appellant sought to prevent the defendants from sending notices to those who had bought lots from appellant that they might have a right to rescind their purchase contracts and to have their payments refunded.

The record shows that appellant was the developer of a mobile home park consisting of some fifty-three fully improved lots. The federal agency (OILSR) made an investigation of the development and concluded that there was a violation of the Interstate Land Sales Act in that there was no statement of record and no HUD report had been given to purchasers. There is no allegation of fraud. The developer-

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* Of the District of Kansas, Sitting by Designation.

appellant, in this declaratory judgment action, sought to have issued the injunction here in contention.

In Continental Oil Co. v. Frontier Refining Co., 338 F.2d 780 (10th Cir.), we said:

> " . . . The function of a preliminary injunction is to preserve the status quo pending a final determination of the rights of the parties. It should be issued only where the plaintiff makes out a prima facie case showing a reasonable probability that he will ultimately be entitled to the relief sought and that irreparable damage will possibly result if the relief is not granted pendente lite." (Footnotes omitted).

Also in the cited case we set forth the following standard of review:

> "At the outset, we recognize that our review of an order granting or denying a preliminary injunction is limited to determining whether the trial court abused its discretion and, in making such a determination, the merits of the case may be considered only insofar as they have a bearing, if any, upon the question of sound judicial discretion." (Footnote omitted).

See also Penn v. San Juan Hospital, Inc., 528 F.2d 1181 (10th Cir.); Securities & Exchange Comm'n v. Thermodynamics, Inc., 464 F.2d 457 (10th Cir.); Atomic Oil Co. v. Bardahl Oil Co., 419 F.2d 1097 (10th Cir.); Crowther v. Seaborg, 415 F.2d 437 (10th Cir.).

The Supreme Court in Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, considered the nature of the trial

court's hearing and stated:

> "At such hearing, as in any other hearing in which a preliminary injunction is sought, the party seeking the injunction would bear the burden of demonstrating the various factors justifying preliminary injunctive relief, such as the likelihood of irreparable injury to it if an injunction is denied and its likelihood of success on the merits." (Footnote omitted).

Thus it is apparent that our review here is a limited one. The arguments advanced by the appellant on the merits will be considered within the above doctrine. Thus consideration is given to whether a showing was made of a reasonable probability of entitlement to the particular relief sought, and a showing of irreparable damage. This is then considered on the "sound judicial discretion" standard of review.

The record shows the developer advertised the lots to be for sale in the Albuquerque Journal and the Albuquerque Tribune. These papers were shown to have a considerable circulation by mail within New Mexico, and outside the State. The lots were also advertised on a local radio station. Certain maps and a statement of restrictions were sent by mail to prospective purchasers. There was sufficient basis in fact at the hearing on the preliminary injunction to bring the matter within the language of the Land Sales Act, 15

U.S.C. § 1703(a)(1), which triggers the nonregistration consequences. The "offering" language in section 1703(a)(2), compared to the "sale" language in section 1703(a)(1), is not of great significance in this review. We must hold that the ads and the mailings indicated are sufficient to combine the jurisdictional elements with the nonregistration aspects to support the exercise of the trial court's discretion. The "to sell" language in the Act must be construed for these purposes to include more than the act of signing the sales documents as the appellant argues. We do not consider on this appeal the other mailings, such as the lot payments, and post-contract-signing correspondence.

As to the authority of the Secretary to inform the purchasers that the contracts may be voidable, the trial court found on the preliminary injunction hearing that there was such authority under section 1714(b) of the Land Sales Act as it relates to the failure to give a purchaser, in advance of the signing, a property report. The Act, as the trial court indicates, does not require a showing of fraud in order for the voidable option to arise. The authority of the Secretary to give notice is not dependent upon the existence of fraud, and it may reasonably be derived from the general authority and powers under section 1714(b).

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Thus again we must hold that the trial court acted well within its discretion as to the failure of the appellant to meet the required showing, quoted above, as to the particular purpose sought by the preliminary injunction.

AFFIRMED.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

COORS PARK, INC.,

Plaintiff,

-vs- No. 75-391 CIVIL

UNITED STATES OF AMERICA, et al.,

Defendants.

O R D E R

This matter having come on for consideration of plaintiff's application for preliminary injunction, and a hearing on this matter having been held on July 18, 1975, and the Court having filed its Findings of Fact and Conclusions of Law; Now, Therefore,

IT IS BY THE COURT ORDERED that plaintiff's application for preliminary injunction is denied.

UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

COORS PARK, INC.,

Plaintiff,

-vs-

No. 75-391 CIVIL

UNITED STATES OF AMERICA, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The plaintiff has engaged in the following instances of use of the mails and of instruments of communication in interstate commerce:

(a) Advertising in newspapers which are mailed to some subscribers and have substantial interstate circulation;

(b) Mailing of plats and lists of restrictive covenants of the subdivision to potential purchasers;

(c) Mailing by purchasers of their monthly payments to the escrow account established in the contract of sale between Coors Park and the purchasers;

(d) Mailing to Mr. Feliciotti of bank statements which notified him of the failure of purchasers to make their required monthly payments, and his mailing of notice to these people of their failure to pay; and

(e) Use of the telephone to deal with purchasers and potential purchasers.

2. A purchaser can take advantage of 15 U.S.C.A. §1703(b) without any allegation or showing of fraud. The remedy is available whenever a developer fails to supply a required property report. 15 U.S.C.A. §1703(a)(1).

3. Plaintiff's application for preliminary injunction should be denied as it has failed to show a likelihood of success on the merits.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

BONNIE MAUD WIGGINS, Individually and as Administratrix and Substitute Trustee of the Estate of Barney Wiggins, Deceased,

Plaintiff

VS.

JAMES T. LYNN, ET AL,

Defendants

NO. B-74-90-CA

ORDER
CORRECTING JUDGMENT

ON THIS DATE, came on for consideration the Motion for Correction in Judgment filed by the Defendants herein, and after having considered same, the Court is of the opinion that same should be granted. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Judgment of this Court entered in this cause on April 25, 1975, be corrected in that all restraints and orders in said Judgment applying to Lake Run-A-Muck, Old Snake River, Wayward Wind and Natasha Heights shall also be made applicable to Plaintiff's subdivision Hardin's Hideout.

It is further ORDERED that Plaintiff shall be required to send notification to purchasers of recision rights on or before July 3, 1975.

ENTERED June 3rd 1975.

ORIGINAL SIGNED BY
JOE J. FISHER
UNITED STATES DISTRICT JUDGE

6.a.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

BONNIE MAUD WIGGINS, Individually and as Administratrix and Substitute Trustee of the Estate of Barney Wiggins, Deceased,

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NO. B-74-90-CA

ORDER
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It is further ORDERED that Plaintiff shall be required to send notification to purchasers of recision rights on or before July 3, 1975.

ENTERED June 2nd 1975.

ORIGINAL SIGNED BY
JOE J. FISHER
UNITED STATES DISTRICT JUDGE

G.A.

Mr. BROWN. But you also are advocating year after year an extension of that mandate and the Congress has responded in most cases. So, I do not think you can hold yourself faultless in that regard.

You want to change the definition of "sale" to, in effect, a continuing sale. In many States, of course, under a land contract, an executory contract, the purchaser can have immediate possession and that contract can extend for many years, as you have indicated in your testimony. Still, even though the purchaser had been on site for many, many years under an executory contract, you would still have all of the provisions, relative to even rescission and all of those things, extend beyond the end of the contract?

Ms. WORTHY. No, that is not correct.

Mr. BROWN. As you define it, I have forgotten exactly how it is used, and I did not carefully research this, but I thought that when you changed the definition of "sale," you, in effect, made all of the provisions applicable to the sale.

Ms. WORTHY. That definition of "sale" that you are referring to is in the proposed regulations, and they do not refer to any of the other statutory provisions. It is a regulatory change, only.

Mr. BROWN. But what are you changing? Are you changing the definition? If you change the definition, it applies in every place that that term is used in the act.

Ms. WORTHY. No, this is a proposed change of regulations, and it only relates to that section of the regulations, not to the act at all.

Mr. BROWN. Just to digress for a second. When you were talking about the indictments, do you have any idea how many HUD employees have been indicted in the same period that you were talking about?

Ms. WORTHY. No, I do not, sir.

Mr. BROWN. Well, for your information, you said there have been 91 indictments under the Interstate Land Sales Act. There were 96 HUD employees indicted over the same period.

Ms. WORTHY. For violation of the Interstate Land Sales Act, sir?

Mr. BROWN. No, just HUD employees. Maybe HUD employees are more fraudulent and deceptive and everything else than developers. At least there have been more indictments.

Well, we were just discussing here the problem of statute of limitations running out, and under this language you would propose to extend the opportunity for recourse much beyond that which is normally provided in the law, and that gets back into this whole issue.

It seems that we are almost establishing a preferred group of purchasers under the act than would normally be the case under State law, which, absent this legislation, would be applicable.

Mr. RACE. Well, Mr. Brown, I think there is a confusion with the change in the definition of "sale." Primarily, that was put in the regulation to deal with the present exemption that allows for no liens, encumberances, or adverse claims, that exemption.

And what our problem and concern was was that a developer qualifying for that exemption would have no liens at the time of the actual signing of the contract but since there was a long-term installment contract involved, that he could encumber the property during the whole term of that installment contract and, therefore, nullify the real thrust of that exemption by putting liens on after the day of signing contract.

So, for the long-term installment contracts, the agency is taking the position that any liens put on during that period would be during the time of sale.

There is no change in the statute of limitations with regard to the right of a purchaser to void his contract. That—there have been a number of cases on that, and they have held a strict 2 years after the signing of the contract.

The statute says that the violation for voidability is nondelivery of the property report at the time of the signing of the contract. That is already in the statute. So, the right to void goes specifically to the signing of the contract and does not continue during the installment contract.

Our concern with what the Nelson provisions have done is: They have put an absolute 3-year cap on any right to bring any kind of action under this statute. And our experience has been——

Mr. BROWN. Let me stop you there.

Under this statute, the cap certainly has not preempted bringing actions that are permitted under that State's laws.

Mr. RACE. It does not affect the State's laws at all.

Mr. BROWN. So that there is an absolute cap. All it says is if you are looking to this act for your remedy, there is an absolute cap.

Mr. RACE. The statute of limitations only applies to this act.

Mr. BROWN. All of the things applicable under that State's laws still can be brought.

Mr. RACE. That is right. But the problem is, under the Nelson provisions, the right for fraud actions under the Federal law are cut off at 3 years, absolutely. And the problem is that many of the contracts in this industry are for 7, 10, 15 years, and many of the promises are way down the road: "We will put in the swimming pools and facilities 5 years, 6 years, and so forth, down the road." And purchasers do not know about the fraud or misrepresentation at 3 years; they only learn of it at 5 years, and at that point, under the Nelson bill, they are absolutely cut off from any rights under the Federal law.

Mr. BROWN. But the thing that concerns me is, there is a remedy, I would presume, under that State's laws with respect to real estate transactions. It seems to me that this statute was intended to make sure that there was not fraud, and so forth, in the representations that are made by vehicles of interstate commerce—the mails, the phones, and so forth. If someone promised or held out, agreed, covenanted to do certain things and then did not do them, that would be covered.

It does not seem that that is a thing we should stress as much as we do in a disclosure statute.

Mr. RACE. Well, the frauds actually do take place, in many cases, in the vehicles of interstate commerce in the use of the advertising through the mails, in the use of the property report.

The problem is that those promises that are made in those vehicles do not often take place until more than 3 years down the road, and the purchasers are cut off so they cannot exercise their rights to bring fraud actions under the Federal statute.

Mr. BROWN. Well, it just seems to me we are throwing into one big bag breach of contract, failure to carry out certain contractual duties incorporated in the contract, fraud and the misrepresentation of the property. It just seems we are putting them all in the same bag, and I do not think they belong there.

I have no further questions, Mr. Chairman.

Chairman ASHLEY. Mr. Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman.

And thank you, Ms. Worthy, and your colleagues, for the time you have taken here and your cooperation with the subcommittee.

Would any of the developers that are involved in these 91 indictments on criminal charges, I believe, would any of them be exempt under the Nelson provisions?

Ms. WORTHY. Mr. Gonzalez, we have reviewed those indictments and the Nelson provisions, and we feel, based on our information and reading of the proposed changes, that of the 16, probably 10 of those cases would have been exempt.

Mr. GONZALEZ. Ten of the sixteen?

Ms. WORTHY. That is correct.

Mr. GONZALEZ. And a while ago, following along the line that Mr. Brown was questioning on, on this 3-year statute of limitations provision in the Nelson bill, my impression had been all along that the main thrust of the Nelson bill was to deal in the enlargement of the area of exemptions, and was not really invading the other Federal statutes with respect to fraud.

But, apparently, that is not the case. And if I understood correctly a while ago—and this is what I wanted to anchor down—it would, the 3-year limitation, would extend to the other provisions of the fraud statutes of the code. It would cut them off, too; would it not?

Mr. RACE. That is correct, Mr. Gonzalez. They have made it an absolute prohibition of bringing any action, including a fraud action, more than 3 years after signing the contract.

Mr. GONZALEZ. I have a very intense interest in all of this because I am identified, from the beginning of the efforts on the House side, going back to possibly more than 10 years ago, and I believe it was with Mrs. Lenore Sullivan's Subcommittee on Consumer Affairs of this same committee, and we had then the main initiative carried out by Representative Mo Udall of Arizona. And so I am intensely interested because I think several things are reflected in this history, including the pending questions that we are trying to resolve, a classic demonstration of the legislative process of good intentions and how, through a combination of both legislative as well as administratve hocus-pocus. you actually end up with some injustices in the name of enforcement and in the name of protecting the consumer.

For example, all the testimony we heard in those hearings—and I do not think a bill resulted on the House side at the time—but we did have considerable hours spent on hearings. Most of the cases were very dramatic. They were these rather sophisticated promoters with ample means and who were, indeed, involved in interstate traffic. None of the cases that were obviously and demonstrably abuses that were presented to us ever had a case that could be defined as a purely "intrastate" operator.

So that I can tell you that other than the definition of size, I do not think there was any intent on the part of Congress to have the main thrust on the enforcement side eventually translated over to the smaller or the purely intrastate developer or homebuilder or seller, and had never demonstrated any intention of going into intrastate transactions.

So that I am interested in knowing, because I think that it is the

focal point we have got to address ourselves to—it would be very hard for me to answer negatively the question that our associate, Congressman Kelly, has been asking, and that is: Suppose you did away with this law and this bureau, would it still not be possible to prosecute these cases of fraud under the jurisdiction of the other statutory provisions and through the enforcement agencies of the FTC or the SEC?

And it is very hard for me to answer that question now negatively, even though I have been one of the enthusiastic proponents, in view of the tendency in the last few years to concentrate more and more on the developer, and involving, really, time after time, purely intrastate operators who did not advertise interstate, who are not seeking customers outside of the State but who found themselves subject to the law and the interpretation of "50 lots or more," and the fact that if they have a phone that they use for any purpose in the transaction of business, I understand, that that would cause them to be defined as coming under the jurisdiction of the act.

So that in my own district, for example, I have a case of a homebuilder who found himself—and still finds himself—in the predicament of trying to sell, I believe, a colonel stationed in the San Antonio area. San Antonio has quite a number of military bases, and so a lot of retirees after they finish their service period retire there in San Antonio.

Now, in this case, I know the homebuilder, and I know the developer, even though he is not my own constituent. As far as I can tell and as far as anybody can show, he has never shown any intention of going outside of the purely local jurisdiction. I am sure he is not even well known at all in other Texas areas outside of the San Antonio area.

His intention has never been to seek purchasers outside of the State of Texas. Well, outside of Bexar County, much less outside of the State of Texas. Yet, the mere fact that this was an Army personnel whose domicile, official domicile, had been out of State, and the fact that he apparently had more than 50 lots in a given development, brought him under the jurisdiction of the act, which means a $20,000 fee.

And yet, it is hard for me to explain how he could come under our congressional intent of covering interstate land transactions and registration thereof.

I just do not see how, under any normal definition, that man could be defined as being in interstate commerce, other than the fact that if he mails a letter or if he has a phone, I understand that meets your definition.

Now, the homebuilders, yesterday, testified that the reason they were up in arms was that this had turned out to be the main thrust of the activity in this office.

Now, is that so? And if that is so, then should we not concentrate on defining what we thought we had in mind in the original consideration of this act, as an "interstate speculator or promoter."?

Ms. WORTHY. Mr. Gonzalez, you have asked me several questions. I will attempt to respond to as many of them as I can recall.

Your first question was really the same as your last: Are we more involved in fraud activity and enforcement activity than in what the Congress mandated us to do?

The answer to that is, "No; we are not."

Mr. GONZALEZ. Excuse me. I also left out something, though—a qualifying description—and that is, that in these cases I referred to—and obviously, the Home Builders Association's spokesman, also, you are talking about fully developed areas in which you have very strict requirements on zoning, on building codes, and the like.

And this, I can tell you, we never heard about during the testimony when we were considering the enactment of the bill.

Ms. WORTHY. With respect to the intent of Congress and our being involved in an activity—the only enforcement of fraud activity—and that the States could well do that, or other enforcement types of agencies—the FTC and SEC.

The problem is, Mr. Gonzalez, that we are really in the business of disclosure. That is something that SEC and the FTC do not do. It is a disclosure statute.

We provide—or make sure the developers provide information to consumers so they can make an intelligent decision about property they are purchasing. That is not what the FTC or the SEC does. We are mandated with that responsibility, and there are 27 States who have no disclosure State laws. So that that would not be something that the States could take on easily. They would have to enact disclosure legislation, and set up agencies to, in fact, enforce that legislation.

So we are doing something that 27 States are not even about the business of doing. Now that was the first part of your question.

The second one was: Are we in fact spending all of our time dealing with those developments that are fully developed? And my answer, to that is, "No; we are not." And in fact, we have proposed in our regulations that the primary homesite, those developments that are fully developed—they have the water; they have the streets; they have the sewers—that they would be exempt under our regulations. And that, we have already proposed.

Now you asked me about an incident in a subdivision called Lake of the Hills. Now in that particular instance, the developer admitted to us that he in fact was using the mails, and he used them a great deal——

Mr. GONZALEZ. Well, everybody has to use the mails nowadays. And if you are in business, how can you escape "using the mails"? But for intrastate purposes?

You see, that is the question, as well as disclosure, Yes, I know that the act is based on interstate land sales transactions disclosure. However, disclosure is an element leading to a prevention of fraud or possible fraud. Therefore, where you do have fraud, the SEC and the FTC of course can prosecute, and do have full jurisdiction under the statutes, as I understand it.

But the "disclosure" that worries me is the thing that you would define as triggering off the jurisdiction of the Government to compel registration of an individual who otherwise has no connections or associations with interstate transactions. "Disclosure," insofar as I can see, is important if it bears upon interstate, regardless of whether the States are capable or not capable.

Ms. WORTHY. Mr. Gonzalez, "disclosure" does not trigger off the fraud-provision situation. When we say "disclosure," what we mean by that is that the law says that we must—that developers must tell people information about the land—not necessarily for purposes of later making sure that fraud was there.

For example, they have to tell individuals whether or not there is water on the land, whether they can build a house, whether they are going to have electricity, whether or not it is flood prone, whether or not tornadoes occur there every month, whether or not it is hurricane prone. That is the information that this Congress said that we must——

Mr. GONZALEZ. That is true, Ms. Worthy, in those cases where you have a legitimate jurisdictional purpose and ability.

My issue is about "jurisdiction."

Ms. WORTHY. Then let me say this.

The law says, the act says that if it is more than 50 lots, and there is use of the mails directly or indirectly, you pattern the act after the SEC Act. And the case law says—and it has supported us in every instance except for maybe a couple—that we are clearly and accurately carrying out the mandate of this Congress in questions of jurisdiction.

We did not determine what the jurisdiction of the act would be; you all did. And we can only go by——

Mr. GONZALEZ. But you are interpreting—you certainly do have the capacity to interpret, in certain judgments, and make a decision whether the law is not specifically telling you the Congress in its intent defined it and limited it.

It said "interstate." By your definition, anybody could be covered, if you could find that they have 50 lots.

Ms. WORTHY. Mr. Gonzalez, let me share this with you.

There were proposed provisions to the act when you all were considering enacting this statute for intrastate exemptions. There were two proposed, and the Congress chose not to include them.

So that Congress did not really mean to keep us out of the business of intrastate activity. However, we have proposed regulations that would exempt from our registration requirements those individuals who are involved in sales, locally. We proposed seven new exemptions.

Mr. GONZALEZ. I still think that you have not answered the question of overstrained interpretations as to the definition of "intra- and interstate jurisdiction." Because, referring to attempts made to amend the law based on intrastate qualifications doesn't change the main thrust of the intention of Congress to make it a wholly interstate transaction. And to limit jurisdiction of any Federal agency to what would be otherwise clearly defined as an interstate promoter or transaction.

And I still don't think that we have gotten away from the fact that you have had overstrained interpretations. You can have a strict interpretation of the letter of the law and kill the spirit of the law.

In this case, the spirit obviously motivating the Congress was the fact that, if there was an inability on the part of the State officials to control a fraudulent situation—a fraudulent promotion—it was the inability of the purely State officials to go into interstate jurisdictions; and, therefore, the need for a Federal law.

But the need was based purely on interstate transactions, not on moving over to where the main thrust is impacting an intrastate transaction. As to the ability of States to govern that, well I think that unless we want to change our system, we could end up with what we have now—which is not bad. You have some States that have far more stringent provisions than the Federal requirements.

California, for example. But even the deputy attorney general of Nevada yesterday could find no reason why such a hypothetical case as I was giving you could be defined as coming under the jurisdiction of HUD.

I still fail to see it because, under your definition then, there is no distinction between "interstate" and "intrastate," as long as you have a phone, and as long as you write a letter. And everybody has to do that, nowadays.

Ms. WORTHY. Mr. Gonzalez, let me say this. I can understand where Congress would have some concerns about interstate involvement. And I cannot tell you other than we have attempted to eliminate the concerns of the small developers in our proposed regulations.

And I would be more than willing to have our staff people sit down with your staff people and show you how we have attempted to alleviate some of these problems in the new proposed exemptions.

We have seven that we have proposed. But more than that, though, I would like to say to you that I would want Congress to look very closely at the Senate proposal. Because even though the attempt at that would on its face be to exempt intrastate sales transactions, that you have in that Senate proposal the potential to exempt not only intra- but thousands of States from sales to out-of-State residents, because of the 100-mile radius.

I can't begin to tell you how concerned we are. Because, in many geographical areas, that will bring into exemption large numbers of sales transactions and thousands upon thousands of people who will not benefit from the disclosure protections of this act.

But I can't seem to share with you now the fact that we are proposing exemptions that will eliminate some of the concerns you are raising.

Mr. GONZALEZ. Well, I am not on the Nelson bill; I am on the Minish bill. Because I also happen to belong to the Minish subcommittee, which has had hearings on this matter. And so, therefore, I share apprehension about some of the provisions of the Nelson bill, and I have made reference to one—the 3-year limitation, which I think will throw the baby out with the bath water.

But, on the other hand, I still think that there is a legitimacy to the concern expressed by those most directly involved, as reflected in the testimony presented by homebuilders, and in my own personal experience in my own district or surrounding district.

Chairman ASHLEY. The time of the gentleman has expired.

Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

I just happened to think of one thing I wanted to ask you and forgot to. Are you still instructing the developer, when there has been a violation of the act to send out the specific rescission letter that you approve?

Ms. WORTHY. Are we still sending out rescission letters?

Mr. BROWN. No. Do you require the developer to send the letter to the purchaser? As I recall, for a long time—and I don't know if it still persists, you insisted that not just any letter be sent, but that a certain letter be sent that you have approved.

Is this still true?

Ms. WORTHY. First of all, we don't require that the developer send the letter out. We ask that he send the letter out; we don't require it.

But we do have a rescission letter—a form letter that we do ask them to use if they are going to send a letter out.

Mr. BROWN. Well, then what if a developer does not send the letter out?

Ms. WORTHY. Then the Office exercises the rescission action.

Mr. BROWN. You, in effect, notify the purchaser that they can rescind the transaction? Right?

Ms. WORTHY. Yes; that they have certain rights. That is what we do advise them. That is correct, Mr. Brown.

Mr. BROWN. But the problem is that this rescission is authorized even though there may not be a substantive problem. Isn't that correct?

I mean, if there has been a technical violation of the act, the individual purchaser has a right to rescind.

Ms. WORTHY. That is correct.

Mr. BROWN. I know that there was a case that came to my office where this happened. There was a technical violation. The developer had to send out the letter. He had to send it out to many purchasers, and it just did not make any sense.

And I noticed in the Senate testimony, that Senator Nelson, in discussing this matter with you, pointed out that purchasers may decide to go ahead and sell the lot back to get their purchase price paid back by the developer. In the meantime the value of the property has gone up substantially and the developer, in effect, reaps the profit.

It just seems that, without some qualifying information, that you are doing a disservice to the purchaser, rather than a service, in many cases.

Why? Are you afraid that there will be a supersell job again and the person won't rescind? Is that why you insist upon a particular letter going out from the developer? You don't permit enclosures; you don't permit explanations; you don't permit any of that.

Ms. WORTHY. Mr. Brown, I did testify before Senator Nelson and we did have discussions about the rescission letter. He made very positive criticisms and comments on the letter. And as a result of that, we revised the letter, and we have submitted a copy of that revision to him, and we have not heard anything, so we are assuming that he felt that we have made the recommended or suggested changes.

If you have any suggestions or recommendations about how that form letter is written, we would be more than willing to work again on the letter.

We feel the purpose of the rescission letter is within the spirit of that law, and we find that it has clear benefit. But if you feel that the letter is not in fact saying what Congress wanted us to say, or you feel it is not clear, or it does not give enough information, we would be more than willing to work on it again.

Mr. BROWN. One final thing, following on Mr. Gonzalez' conversation with you about stretching the jurisdiction or the application of this legislation.

I noticed that the way you are defining "condominiums" to bring them under the act is rather strained, too.

Ms. WORTHY. Mr. Brown, those definitions are from court cases. We are not referring to "buildings" now, we are referring to the real estate itself. And that is a form of ownership.

Mr. BROWN. But in your regs, you don't say "based upon the court case," you say: A condominium is considered by OILSR as a "subdivision."

Ms. WORTHY. But we are not referring to "buildings," we are referring to the actual land itself that is being offered for condominium ownership.

But is it your suggestion that we perhaps cite some cases along with the regulations? Or at least refer to them?

Mr. BROWN. No; it just seemed that you are once again stretching the application of the act.

Ms. WORTHY. Mr. Brown, that is a result of court decisions.

Mr. BROWN. Thank you, Mr. Chairman.

Chairman ASHLEY. One final question and then we will vote and return.

Ms. Worthy, your proposed statutory and regulatory changes vary according to the development's size. The regulations propose raising the 100-lot limit for the fundamental statutory exemption to a 150-lot limit, for the limited offering of the proposed exemption, and the 300-lot limit for the primary homesite exemption.

Can you tell us what is the basis for establishing different development sizes? Have different abuses occurred?

Why not exempt from disclosure requirements all developments of under 300 lots?

Ms. WORTHY. Mr. Chairman, I have talked to members of the staff of the subcommittee about this. And as I indicated to them, we conducted public hearings on the proposed regulations, specifically on the exemptions and the lot numbers, and we are going to reconsider those numbers, to attempt to come up with figures that we feel are reasonable and comparable.

Chairman ASHLEY. One final question on enforcement.

Is there a backlog, either in your shop or in that of the Inspector General? I am not, as you know, overly impressed with the numbers of referrals from the Inspector General to the Justice Department over a 9-year period. It doesn't seem very many have occurred, when we hear these lurid descriptions of fraud and deception that are rampant.

And while I am aware of the fact that a good many administrative actions have been taken short of referral, I am still led to wonder whether there is a backlog; whether the dirth or the paucity of referrals from the Inspector General to the Justice Department is because of a backlog in the consideration of the workload?

Ms. WORTHY. Mr. Chairman, we have been apprised by the Inspector General's office that they do have a backlog. But we don't know specifically what those numbers would be.

Chairman ASHLEY. I think it would be a good idea if we found out. Give us some information on exactly what the enforcement situation is, with a little clearer breakdown of the administrative actions that have taken place.

I am a little curious to the number of complaints that you get, and the disposi n of c plaints, and how many have been f t. Are all of them looked into? ently meritorious to refer

And then, what about the operations? Why do only a few seem to be worthy of being bucked down to Justice, when your shop in fact thought they were sufficiently serious for the attention of the Inspector General?

That is the kind of thing I would like to get at.

Ms. WORTHY. All right, Mr. Chairman, we will submit that for the record.

[In response to the request of Chairman Ashley for additional information, Ms. Worthy furnished the following response for inclusion in the record:]

RESPONSE FROM MS. WORTHY

OILSR's Professional Enforcement Staff is small. When the Act became effective in 1969 the Professional Enforcement Staff was three individuals. In 1972 it had grown to eight professionals. Presently there are 16 professional enforcement specialists. However, the proposed 20 person cut in OILSR's staff ceiling will undoubtedly reduce the size of the Enforcement Division.

Since the intent of Congress in writing this law was to provide the land buying public with meaningful consumer protection, we feel that enforcement remedies in the best interests of the consumer should be sought. As a result, administrative settlements of court-order remedies are given greatest consideration to effect compliance under the law. Only after these areas are explored does an enforcement case take on a criminal focus. The Enforcement Division with a staff of professionals numbering 3 in 1969 and 16 in 1978 has taken action on over 93,000 pieces of correspondence relating to enforcement actions or potential enforcement actions. In 1977, the Division's total correspondence approximated 19,000 items. Additionally, all in-person and telephone inquiries from consumers are handled by that Division's professional staff. Since the inception of the Act, over 16,000 individual consumers have filed formal written complaints with OILSR's Enforcement Division. Each complaint has been assigned to a particular professional for a thorough examination. Each respective developer has been notified of the allegations in the consumer's complaint and asked to respond to the charges. Many times the developer has voluntarily resolved the matter to the satisfaction of the consumer. In every case, the consumer is fully apprised of our efforts and advised if other recourse that may be available to him.

In 1972, OILSR issued its first formal Notice of Proceedings, its first Suspension Order and its first administrative subpoena. Since then, the Enforcement Division has been responsible for the issuance of 1,450 Notices of Proceedings, 2,345 Suspension Orders, and 1,501 Subpoenas. Additionally, 1,353 exemptions have been terminated due to the developer's failure to adhere to the terms of the exemption. Finally, in 3,504 cases, OILSR's Enforcement Division has negotiated and entered into administrative settlements with developers who have sold in non-compliance of the Act.

These 3,504 case resolutions might be considered consent orders, in the FTC sense. To remedy this non-compliance, the developer agrees to notify lot buyers of cancellation rights under Federal law and to make refunds to consumers when requested. The total administrative activity exceeds 11,000 formal actions since 1972.

Additionally, the Enforcement Division develops cases, when warranted, for civil litigation in conjunction with HUD's General Counsel and the Department of Justice. There have been 19 injunctive cases initiated by the Enforcement Division, 28 subpoena enforcement cases filed, and 43 cases filed by other parties naming the Secretary as a Party. The total number of civil cases relating to OILSR enforcement functions is 90.

Finally, the Enforcement Division is responsible for recommending through the Administrator land cases where a criminal prosecution appears warranted. These cases break down as follows:

A. Cases developed independently by OILSR:

37 Enforcement cases which involved direct referral of information to local U.S. Attorneys recommending a criminal prosecution.

16 of the 37 cases have resulted in indictments; 92 individuals and 25 companies.

7 of the 37 cases were formally declined for prosecution, or no action was taken.

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14 of the 37 cases remain under active investigation.

B. Cases developed by OILSR and referred to HUD's Inspector General under an Agreement dated September 10, 1976.

27 Enforcement cases have been developed by OILSR and referred to the Office of Inspector General recommending prosecution.

12 of the 27 have resulted in declinations or no action.

15 of the 27 remain in active investigation.

None have yet resulted in prosecution.

C. Other major enforcement cases: 34 major enforcement cases are being developed within OILSR but have not reached a stage at which they might be referred for possible civil or criminal litigation.

Should you wish further information it will be promptly furnished.

OILSR indictments

Principal	*Number of lots*
1. Parker Properties (North Carolina)	500
2. Black Horse Acres (Maine)	350
3. Ann Scripa (Maine)	200
4. Lake Winnebago (Missouri)	1,595
5. Treasure Lake (Georgia)	2,192
6. Lake Havasu Estates (Arizona)	11,627
7. Hickory Run Forest (Pennsylvania)	922
8. Del Rio Springs (Arizona)	450
9. Belgrade Lakes Colony (Maine)	336
10. Hickory Hills (Indiana)[1]	119
11. Whispering Pines (Mississippi)	510
12. Pocono Haven (Pennsylvania)	100
13. Rio Rancho Estates (New Mexico)[1]	106,214
14. Thornhurst Country Club (Pennsylvania)	1,210
15. Nevada Land Builders (Nevada)	400
16. Southern Properties (Mississippi)	500

[1] Case was not directly initiated by OILSR however, materials and manpower were provided to local prosecutors in a cooperative efforts.

1. *U.S.* v. *Parker*, No. CR–71–222, U.S. District Court, Middle District of North Carolina.

Parties: Edward L. Parker, American Lakeshore Corporation.

Allegations: 5 counts of violating 15 U.S.C. 1703 and 1717.

Chronology:

Indictment returned August 21, 1971.

Parker entered a guilty plea to 1 count of violating 15 U.S.C. 1702 (others dismissed) March 23, 1972.

Parker sentenced to 2 years probation and fined $5,000.00; American Lakeshore Realty dismissed March 23, 1972.

2. *U.S.* v. *Geotis*, No. CR–71–87, U.S. District Court, District of Maine.

Parties:

Charles G. Geotis doing business as Charles Endicott Development Company.

Black Horse Acres, A Delaware Corporation.

Allegations: 8 counts of violating 15 U.S.C. 1703 and 1717.

Chronology:

Indictment returned September 10, 1971.

Geotis entered a guilty plea (all counts) June 30, 1972.

Geotis sentenced to eight–2 year sentences (concurrent); Black Horse Acres pleaded guilty to 5 counts and was fined $4,000.00 but payment was remitted June 30, 1972.

3. *U.S.* v. *Scripa*, Case No. CR–71–110, U.S. District Court, District of Maine.

Allegations: 1 count of violating 15 U.S.C. 1703(a)(2)(C) and 1717.

Chronology:

Indictment returned on December 9, 1971.

Anne Scripa pleaded guilty on June 4, 1976.[1]

Anne Scripa was sentenced to 3 years in jail, but execution of sentence was suspended and she was placed on 3 years probation on June 4, 1978.

4. *U.S.* v. *Steinhilber*, No. CR–23761–2, U.S. District Court, Western District of Missouri.

[1] After being indicted, Anne Scripa skipped bond and disappeared. She was subsequently located (years later) in Minneapolis.

Parties: Robert V. Steinhilber.
Allegations: 2 counts of violating 15 U.S.C. 1717 and 2 counts of violating 18 U.S.C 2.
Chronology:
Indictment returned March 29, 1972.
Steinhilber found guilty (jury trial) October 31, 1972.
On appeal, verdict of trial court was reversed by the U.S. Court of Appeals, 8th Circuit, August 29, 1973.[2]

5. *U.S.* v. *Carcaise*, No. A-27.933, U.S. District Court, Northern District of Georgia.
Parties:
Frank A. Carcaise, James C. Dunbar, Jr., Robert A. Baker, George H. Ellis, Phil Brown, Troy Phillips, Ed Hamada, Randy Angelossi, Roy Metcalf, Don Bronston, James E. Zippay, Michael Grossi, Treasure Lake, Inc., Treasure Lake of Georgia, Inc., and Great Northern Development Company.
Allegations:
9 counts of violating 15 U.S.C. 1703(a)(1).
10 counts of violating 15 U.S.C. 1703(a)(2).
1 count of violating 15 U.S.C. 1706(c).
21 counts of violating 15 U.S.C. 1717.
1 count of violating 18 U.S.C. 371 (conspiracy).
Chronology:
Indictment returned on October 19, 1972.
By agreement, indictment was dismissed as to all defendants except Frank A. Carcaise, prior to trial.
Trial court entered a directed verdict finding Frank A. Carcaise, not guilty, on October 13, 1974.

6. *U.S.* v. *Lake Havasu Estates*, No. CR-73-147, U.S. District Court, District of Arizona.
Parties:
Lake Havasu Estates, an Arizona corporation, Kenneth R. Lavin, Ronald D. Lavin, Patricia Lavin, Paul B. Maholchic, Robert C. Stevens, J. Lance Sinclair a/k/a Victor Lockwood, Sr. a/k/a Victor Winters, Victor Lockwood, Edward C. Cass and Seymour Astern.
Allegations:
7 counts of violating 15 U.S.C. 1703(a)(1).
8 counts of violating 15 U.S.C. 1703(a)(2).
15 counts of violating 15 U.S.C. 1717.
15 counts of violating 18 U.S.C. 2 (aiding and abetting).
7 counts of violating 18 U.S.C. 1341 (postal fraud).
Chronology:
Indictment returned March 1, 1973.
All defendants pleaded guilty to 1 count of mail fraud and 1 count of aiding and abetting. Remaining counts were dismissed.
Kenneth R. Lavin was sentenced to 2 years in prison and fined $5,000.00; Edward Cass was sentenced to 1 year in prison and fined $1,000.00; and, Ronald D. Lavin was sentenced to 6 months in prison and fined $1,000.00. The remaining defendants received lesser sentences or fines.

7. *U.S.* v. *Pocono International Corporation and Charles Goldberg*, No. 73 CR-630 U.S. District Court, Southern District of New York.
Parties:
Pocono International Corporation, Charles Goldberg, Sellamerica, Ltd., and Heinz Ebenstein, a/k/a Ric of the Poconos.
Allegations:
12 counts of violating 15 U.S.C. 1703(a)(1).
13 counts of violating 15 U.S.C. 1703(a)(2).
26 counts of violating 15 U.S.C. 1717.
25 counts of violating 18 U.S.C. 2 (aiding and abetting).
15 counts of violating 18 U.S.C. 1341 (postal fraud).
Chronology:
Indictment returned June 27, 1973.
Defendants convicted on 6 counts of nonregistration, 7 counts of land sales fraud and 7 counts of postal fraud; July 14, 1974.
On appeal by Charles Goldberg to the U.S. Court of Appeals for the Second

[2] Conviction was reversed on a question of evidentiary law. We requested the Solicitor General of the U.S. to either ask for a rehearing or for a writ of certiorari, but the Solicitor General declined to do either of those things.

Circuit, the conviction was sustained; November 26, 1975.

Charles Goldberg's petition for a writ of certiorari to the U.S. Supreme Court was denied; May 19, 1976.

Charles Goldberg was sentenced to 18 months in prison. Pocono International Corporation was fined $37,500.00.

8. *U.S.* v. *Del Rio Springs, Inc. et al*, No. CR74–78 U.S. District Court, District of Arizona.

Parties:

Del Rio Springs, Inc., an Arizona corporation, Howard N. Woodall, Richard S. Johnson, Richard L. Bates, Clifford G. Beebe, Eugene Dewitt, Saul G. Schenker, Martin A. Clancey and William R. Ballen.

Allegations:

5 counts of violating 15 U.S.C. 1703 (a) (1).
5 counts of violating 15 U.S.C. 1703 (a) (2).
10 counts of violating 15 U.S.C. 1717.
15 counts of violating 18 U.S.C. 2 (aiding and abetting).
5 counts of violating 18 U.S.C. 1341 (postal fraud).
5 counts of violating 18 U.S.C. 2314 (transporting forged securities).

Chronology:

Indictment returned on February 7, 1974.

5 of the defendants pleaded guilty and the remaining 3 went to trial on February 19, 1975. The corporation was dropped as a defendant since it was in bankruptcy.

Trial resulted in a verdict of guilty on all counts, as to defendant Woodall, the remaining 2 defendants were found not guilty.

Howard N. Woodall was sentenced to 5 years in prison and fined $15,000.00.

5 salesmen who pleaded guilty were given 5 years suspended sentences and were fined from $1,000.00 to $3,000.00 each.

Howard N. Woodall appealed his convictions to the U.S. Court of Appeals; Ninth Circuit, which affirmed the trial court on January 25, 1977.

9. *U.S.* v. *Belgrade Lakes Colony, Inc., et al*, No. CR 75–31SD, U.S. District Court, District of Maine, Southern Division.

Parties:

Belgrade Lakes Colony, Inc., a Maine Corporation, Belgrade Lakes Development Company, a Maine Corporation, Stephen I. Hershaff, David L. Winn and Robert A. Keezer.

Allegations:

5 counts of violating 15 U.S.C. 1703(a) (1).
9 counts of violating 15 U.S.C. 1703(a) (2).
14 counts of violating 15 U.S.C. 1717.
14 counts of violating 18 U.S.C. 2.

Chronology:

Indictment returned on April 2, 1975.

2 corporate defendants pleaded guilty to all counts, December 8, 1975.

Charges against Robert A. Keezer were dismissed on December 8, 1975.

Defendants agreed to set up a trust fund for the benefit of the property owners. Funds consisted of $40,000.00 cash, plus unsold lots, plus installment payments still due on contracts for sold lots. This settlement was accepted by the United States and the Court on February 6, 1976.

Charges against Stephen I. Hershoff and David L. Winn were dropped on February 6, 1976.

10. *U.S.* v. *Jackson, et al*, No. F–CR–75–40, U.S. District Court, Northern District of Indiana, Fort Wayne Division.

Parties:

Kenneth L. Jackson, William C. Weaver, James C. Cox, Jr., Sally L. Haecker, Leo E. Walsh, Perry F. Watson, Jr., James L. Roddy and James V. Merl.

Allegations:

6 counts of violating 15 U.S.C. 1703(a) (1).
7 counts of violating 15 U.S.C. 1717.
1 count of violating 18 U.S.C. 2 (aiding and abetting).
1 count of violating 18 U.S.C. 371 (conspiracy to defraud the U.S.).
1 count of violating 18 U.S.C. 1014 (false statements in an application for a loan).
31 counts of violating 18 U.S.C. 1341 (postal fraud).
1 count of violating 18 U.S.C. 1343 (fraud by wire).

Chronology:

Indictment returned on April 30, 1975.

Trial was commenced on October 15, 1975.

Defendants were found guilty on all counts. Jackson was sentenced to 3 years in prison, Walsh and sentenced to 2 years in prison, Cox was sentenced to 3 years in prison, and the remaining defendants received lesser sentences or were fined on November 1, 1975.

Leo Walsh and James Cox filed an appeal of their convictions with the U.S. Court of Appeals—7th Circuit. The appellate court sustained the conviction on February 22, 1977.

11. *U.S.* v. *Stevens, et al*, No. CRN75–77, U.S. District Court, Northern District of Mississippi.

Parties: Larry Stevens, Floyd Montgomery and Robert J. Aubuchon.

Allegations:

6 counts of violating 15 U.S.C. 1703(a)(1).

6 counts of violating 15 U.S.C. 1717.

3 counts of violating 18 U.S.C. 2 (aiding and abetting).

8 counts of violating 18 U.S.C. 1341 (postal fraud).

Chronology:

Indictment returned on June 26, 1975.

Defendants were convicted on all counts on Septemer 7, 1975.

Stevens was given a 4 year suspended sentence and fined $3,000.00, Montgomery was given a 3 year suspended sentence and fined $3,000.00 and Aubuchon was given a 3 year suspended sentence, on October 8, 1975.

12. *U.S.* v. *Pocono Haven Corporation, et el*, No. CR75–367, U.S. District Court, District of New Jersey.

Parties:

Pocono Haven Corporation, a Pennsylvania corporation, Sea and Ski Homes, Inc., a New Jersey corporation, Paul Bunyan Distributors, a New Jersey corporation and Richard Feinberg.

Allegations:

4 counts of violating 15 U.S.C. 1703(a)(2).

4 counts of violating 15 U.S.C. 1717.

44 counts of violating 18 U.S.C. 2 (aiding and abetting).

40 counts of violating 18 U.S.C. 1341 (postal fraud).

Chronology:

Indictment returned on August 5, 1975.

Richard Feinberg and Pocono Haven Corporation pleaded guilty to 2 counts of postal fraud and Sea and Sea and Ski Homes, Inc. pleaded guilty to 1 count of postal fraud on February 24, 1976. Paul Bunyan Distributors was dropped from the case.

Richard Feinberg was sentenced to 1 year in prison, 5 years probation and agreed to consent to a civil action for restitution to be monitored by a court appointed receiver. Pocono Haven Corporation and Sea and Ski Homes, Inc. were fined $2,000.00 and $1,000,00, respectively, on April 12, 1976.

Civil action for restitution filed in the U.S. District Court, District of New Jersey, Case No. 76–558, and a receiver was appointed on June 7, 1976.

13. *U.S.* v. *Amrep Corporation, et al*, U.S. District Court, Southern District of New York.

Parties:

Amrep Corporation, an Oklahoma corporation, Rio Rancho Estates, Inc., a New Mexico corporation, ATC Realty Corporation, a New York corporation, Howard W. Friedman, Chester Carity, Irving W. Blum, Henry L. Hoffman, Herman B. Iberman, Saloman H. Friend and Daniel Friedman.

Allegations:

10 counts of violating 15 U.S.C. 1703(a).

80 counts of violating 18 U.S.C. 2 (aiding and abetting).

70 counts of violating 18 U.S.C. 1341 (postal fraud).

Chronology:

Indictment returned on October 29, 1975.

Trial was held in January, 1977, resulting in conviction on 20 counts of postal fraud and 5 counts of land sales fraud against Howard Friedman, Daniel Friedman, Chester Carity, Henry Hoffman, Amrep Corporation and its 2 corporate subsidiaries, on January 25, 1977. The remaining defendants were acquitted.

Howard Friedman, Daniel Friedman, Chester Carity and Henry Hoffman were sentenced to 6 months each in jail, and Amrep Corporation was fined $45,000.00, on March 10, 1977.

The 4 individuals and the 3 corporations appealed their conviction to the U.S. Court of Appeals—2nd Circuit, which affirmed the convictions in all respects, on August 8, 1977.

U.S. Supreme Court denied a petition for a writ of certiorari, on January 9, 1978.

14. *U.S.* v. *Morgan*, No. CR77-94, U.S. District Court, for the Middle District of Pennsylvania.

Parties: William D. Morgan.

Allegations:

40 counts of violating 15 U.S.C. 1703(a)(2).
40 counts of violating 15 U.S.C. 1717.
102 counts of violating 18 U.S.C. 2 (aiding and abetting).
32 counts of violating 18 U.S.C. 1341 (postal fraud).

Chronology:

Indictment returned on July 22, 1977.

William Morgan was found guilty (after trial) of 21 counts of land sales fraud and 12 counts of postal fraud, on December 1, 1977.

Morgan was sentenced to 4 years in prison and fined $11,500.00, on January 6, 1978.

Morgan's motion for a new trial was denied and he has filed a notice of appeal, on April 26, 1978. His sentence is stayed pending the appeal.

15. *U.S.* v. *Dacus, et al*, No. CR-LV-78-62 RDF. U.S. District Court, District of Nevada.

Parties:

Norman L. Dacus, Raymond E. Anderson, Donald Johnson, Daniel Keser, Jay Luna, Louis D. Sidwell, Cary M. Weller, Donald C. Wilson, Nevada Land Builders, Inc. and Green Saddle Ranch Company.

Allegations:

15 counts of violating 15 U.S.C. 1703(a)(1).
14 counts of violating 15 U.S.C. 1703(a)(2).
1 count of violating 15 U.S.C. 1705.
30 counts of violating 15 U.S.C. 1717.

Chronology: Indictment returned on June 8, 1978.

[NOTE.—A previous indictment had been returned on July 20, 1977, in Case No. CR-LV-77-8 RDF against the same parties, but it was dismissed upon motion of defendants on the bases of duplicity, ambiguity and vagueness in December 1977.]

16. *U.S.* v. *Elliott, et al*, No. S78-0004(c), U.S. District Court, Southern District of Mississippi.

Parties: Nicholas Elliott, James C. Smith, Daniel F. Dawson and Timothy Kee Sharp.

Allegations:

3 counts of violating 15 U.S.C. 1703(a)(1).
3 counts of violating 15 U.S.C. 1717.
6 counts of violating 18 U.S.C. 2 (aiding and abetting).
3 counts of violating 18 U.S.C. 1341 (postal fraud).

Chronology: Indictment returned on April 28, 1978.

Mr. BROWN. One final thing while you're doing that.

In your testimony before Senator Nelson, you said $133 million was in the rescissions available to purchasers. If you have done a study, would you give me the results, and if you have not done a study, I wish you would do it, if you could, to establish how much of that $133 million in refunds that was made available was actually refunded to purchasers.

Ms. WORTHY. Mr. Chairman, we have not conducted a study. We might have some information and we would give that to you.

Mr. BROWN. In your rescission letter, I think it might be well to say that you would wish to be notified as to whether purchasers took advantage of that rescission because I think of $133 million made avail-

able to purchasers, if only $1,000 resulted, it means that probably we don't have a very cost-effective operation.

Ms. WORTHY. We will get that information, what we have available, to you, Mr. Brown.

[In response to the request of Congressman Brown for additional information, the following response was received from Ms. Worthy for inclusion in the record:]

RESPONSE FROM MS. WORTHY

When the Enforcement Division enters into an administrative settlement with a developer concerning the notification of rescission rights under Interstate Land Sales Full Disclosure Act and the offer of refunds, the developer is requested to provide us with the dollar value of the lots subject to the rescission. After the notification, we ask that he indicate how many buyers afforded themselves of the refund offer. In an effort to minimize the burden in cost and time which such a settlement may put on a developer, both of these requests are voluntary, not required. From the information that is volunteered by developers, it appears that approximately ten percent of those consumers receiving letters, cancel their sales and are refunded their money.

By taking the 1977 figure of $133 million in contract value subject to rescission and incorporating the ten percent seeking rescission, you arrive at a figure of $13,350,000 as contract value of those agreements cancelled by consumers in 1977 per administrative agreements with OILSR's Enforcement Division. On an average, a contract subject to rescission is one-fifth paid off. Consequently, real dollars returned to consumers resulting from these administrative settlements during 1977 alone approximates 2.6 million.

In addition to these rescission settlements, OILSR's Enforcement Division enters into hundreds of administrative settlements remedying consumer complaints and alleged violations of the Act. One such case resulting directly from consumer complaints also took place in 1977. In this case OILSR filed a civil fraud complaint against Bankers Life and Casualty Company and its affiliated companies involved in land sales at Holley by the Sea, a registered subdivision in Florida. The allegations were fraudulent oral misrepresentation. In settlement of the lawsuit, the companies offered money back to all purchasers since December 8, 1975, and nearly all purchasers accepted. Consequently, the actual real dollars returned to consumers via consent or settlement agreements no doubt exceeds the 2.6 million dollars estimate by at least half a million dollars.

Chairman ASHLEY. The subcommittee will stand in recess for 10 minutes.

[A brief recess.]

Chairman ASHLEY. The subcommittee will come to order.

Our next witnesses will appear in a panel. The panel will be composed of: Edward D. Steinman, Acting Assistant Director, Division of Marketing Abuses, Federal Trade Commission, accompanied by John M. Tifford, staff attorney in the land sales program; John E. Hempel, assistant commissioner for policy and planning, Department of Real Estate, State of California; and Gordon J. Pfersich, director, Florida Division of Land Sales and Condominiums, Department of Business Regulation for the State of Florida.

Gentlemen, we appreciate your being with us. We apologize that the proceedings have not allowed us to get to you sooner. You have been patient and we appreciate that fact.

I think we will just go in the order that I introduced you, if that is agreeable, gentlemen. If any of you have got travel problems, we can accommodate those.

Do you, Mr. Hempel?

Mr. HEMPEL. Several hours yet, sir.

Chairman ASHLEY. We certainly will try to accommodate you. Why don't we lead of with Mr. Steinman.

STATEMENT OF EDWARD D. STEINMAN, ACTING ASSISTANT DIRECTOR, DIVISION OF MARKETING ABUSES, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION, ACCOMPANIED BY JOHN M. TIFFORD, PROGRAM ADVISER FOR THE BUREAU'S LAND SALES ACTIVITIES

Mr. STEINMAN. Thank you, Mr. Chairman.

I am Edward D. Steinman, Acting Assistant Director of the Division of Marketing Abuses of the Federal Trade Commission's Bureau of Consumer Protection.

Accompanying me today is John M. Tifford, program adviser for the Bureau's land sales activities. We welcome the opportunity to testify about land sales. My testimony reflects the views of the Bureau of Consumer Protection, but not necessarily those of the Commission nor any individual commissioner.

I have distributed to the subcommittee and to the public the full text of my remarks prepared for today's hearings. I ask that this testimony be inserted in the record.

At this time, I will present a brief summary of the major points of the testimony.

Calls for amendments to the Interstate Land Sales Full Disclosure Act come from all quarters. And Congress is taking action. This session of Congress has seen the introduction of three different bills seeking to amend the Act: H.R. 12574, H.R. 11265, HUD's 1978 legislative proposals which include amendments to the act, and S. 2716, which appears as section 715 of S. 3084.

These bills reflect several different but not necessarily contradictory legislative strategies for change. Section 715 removes certain categories of developers from the registration requirements of the act. H.R. 12574 proposes a number of substantive consumer protection reforms. The HUD proposals—generally track much of the H.R. 12574, but omit several important substantive issues addressed in that bill.

S. 3084 has been passed by the Senate. H.R. 12574 has not as yet been acted upon by the House. Thus, the issue at this time is whether to now either: one, make limited legislative change—that is, remove certain categories of developers from the registration requirements of the act while taking no action on substantive consumer protection reforms; or two, make more comprehensive legislative changes which would encompass the best features of both bills.

On April 11 of this year, we testified before the House Subcommittee on General Oversight and Renegotiation of this committee in support of H.R. 10999, which bill now has been reintroduced as H.R. 12574. Our testimony at that hearing, as well as our prepared testimony for this hearing, describes the Bureau's reasons for supporting H.R. 12574.

Accordingly, we will limit our comments to a brief summary of such testimony and will direct most of our testimony to the problems we see with section 715 of S. 3084.

H.R. 12574 contains three categories of suggested substantive reform: First, better enable consumers to enforce their statutory rights, on their own, by expanding the availability and nature of such rights; second, discourage industry's use of certain unfair practices which

harm consumers; and third, increase the statutory authority of the Office of Interstate Land Sales Registration to regulate land sales.

Among the specific features of H.R. 12574 which we believe provide the greatest protection for consumers are the following: It will extend the statute of limitations for consumers who wish to bring actions against land sales companies; it will broaden the type of relief available to consumers who are successful in private actions; it will extend the cooling-off period after purchase during which consumers may cancel their contracts without liability; it will discourage the use of forfeiture clauses in installment contracts; it will encourage developers to furnish consumers with legal titles to their property promptly after purchase; it will provide for a financial mechanism to insure that contractually promised improvements are properly funded and will be constructed; and it will increase the quality of OILSR's regulation by giving it better tools with which to regulate.

In sum, H.R. 12574 tackles many of the issues contributing to consumer's land sales problems. The Bureau is on record as supporting this bill with some limited modifications.

In contrast, section 715 of S. 3084 addresses none of these problems. Its expressed purpose is to remove certain developers from the registration requirements of the act. By so doing, a major benefit which arises from registration under the act, namely, receipt of a Federal property report, may be lost by consumers.

Our first concern is that purchasers from developers who are exempted from the registration requirements of the act by section 715 no longer will receive important information about the property—information which they currently receive by means of a Federal property report.

A minority of States have their own property report. If a Federal property report is no longer required, then information disseminated by the developer will be limited in many instances to sales presentations by a salesperson and/or the developer's own advertising and promotional material.

The Bureau's past experience strongly suggests that reliance on salespersons or advertising does not represent a reliable source for information about the property; traditionally, both have been prime sources of deception. On the other hand, the property report furnishes objective and important information about the property.

Its existence also tends to eliminate or at least tone down potential misrepresentations, since many sales claims are verifiable by the property report.

We should emphasize that our concern is not that extensive documentation which accompanies registration will be eliminated. Instead, we are uneasy about the elimination of the developer's obligation to furnish necessary information needed by consumers in order to make an informed decision. Whether this information is given to consumers in the form of the present Federal property report, or by some other means, there should be some requirement for developers to furnish meaningful information to prospective purchasers. Certainly, we support any means to simplify the registration process for all developers, especially the smaller ones.

At this time, OILSR is in the process in preparing final revisions to regulations governing the form and content of property reports.

One of the goals of these revisions is to make the property reports more useful for consumers. We understand that emphasis is being placed on eliminating nonessential information in the reports and making the reports more readable for consumers.

It is ironic, then, that at the very time that the property reports are being improved, their use may be eliminated for many persons.

We would agree that essentially local purchasers should not need some of the information which now appears in the Federal property reports, such as weather conditions and distances from the development to schools and hospitals.

We also think that onsite inspection of the property eliminates the need for descriptions of visible features of the property; for example, soil conditions and terrain.

However, the Federal property report, as proposed in the new regulations, will cover topics such as special risks of buying land, special notices of significant facts and the consequences to purchasers arising out of unusual or potentially adverse circumstances, if applicable, and other topics relevant to the purchase of property, such as development obligations and the costs of purchasing the property.

This and other information to be contained in the Federal property reports is important to purchasers. The only important information that consumers would be assured of receiving from developers who fit under the registration exemption contemplated by section 715 would be an assurance from the developer that, on the day of sale, the title to the property was free and clear of all liens, encumbrances, and adverse claims.

However, taking an onsite inspection tour accompanied by a skilled salesperson or being a local resident will not compensate for the lack of the other important information contained in the Federal property reports.

We are also uneasy about several other features of section 715. One feature exempts sales made to out-of-State consumers residing within a 100-mile radius of the property. We believe this radius is too big and should be reduced to 25 miles. If this exemption is designed for developers selling to a local market only, then the radius should be scaled down to make sure that only local residents are included.

The character of the land and the communities may change completely in 100 miles. Consumers residing in the outer limits of this radius may be completely ignorant of the local conditions.

For example, a 100-mile radius would exempt many Pocono developers for sales to New York City residents, even though the two locations have very little in common. What assurance is there that New Yorkers would be any more familiar with the Pocono region than a resident from Chicago? A shorter radius would make the exemption consistent with the expressed rationale for its existence.

Another feature involves the requirement that the land be free and clear of all restrictions. This requirement seems to apply only on the day of sale. Nothing in the bill prevents the developer from immediately encumbering the land after it is sold. Developers should be required to deed property promptly since, by prompt deeding, consumers need not fear any developer's acts to encumber the property after sale.

Moreover, prompt deeding will accomplish several of the substantive reforms proposed by H.R. 12574.

Finally, we believe that the 5-percent exemption requirement could become extremely complex mathematically and be difficult for developers to administer properly. Under the formula, after the initial five exempt sales, a developer would need to keep a running tally of lots sales to residents and nonresidents in order to know which sales qualify under the exemption.

This mathematical numbers game should be eliminated. In its place, we would suggest a formula such as the following: Exempt 5 lots in a development of up to 125 lots; exempt 10 lots in a development containing more than 125 lots but fewer than 225 lots, and exempt 15 lots in a development containing 225 lots or more.

This formula not only would eliminate the numbers game, but would also put a cap on a now apparently unlimited 5-percent exemption. The 15-lot cap itself is a reasonable one.

One rationale for exemption is the fact that the cost of compliance with OILSR's registration process imposes an unfair burden upon small developers. We believe that developers who build developments in excess of approximately 225 lots begin to lose the character of a "small developer."

In sum, we are sympathetic to the expressed goals of section 715. At the same time, we wish to make sure that the proposed solutions do not create more problems than they attempt to solve.

The time is ripe for land sales reform, not only for the purpose of increasing consumer protection, but for the purpose of reducing unnecessary burdens of business.

We urge that you consider the problems we see in section 715 of S. 3084 and not approve such legislation without incorporating the best features of both section 715 and H.R. 12574.

In this way, land sales reform may be made in a comprehensive fashion to the ultimate benefit of both consumers and businesses.

At this time, we would be pleased to answer questions. Thank you.

[Mr. Steinman's prepared statement, on behalf of the Bureau of Consumer Protection of the Federal Trade Commission, follows:]

STATEMENT OF EDWARD D. STEINMAN

ACTING ASSISTANT DIRECTOR, DIVISION OF MARKETING ABUSES

FEDERAL TRADE COMMISSION

BEFORE THE SUBCOMMITTEE ON HOUSING AND

COMMUNITY DEVELOPMENT OF THE COMMITTEE OF BANKING,

FINANCE AND URBAN AFFAIRS

HOUSE OF REPRESENTATIVES

August 3, 1978

* * * * *

Mr. Chairman and members of the Subcommittee, I am Edward D. Steinman, Acting Assistant Director of the Division of Marketing Abuses of the Federal Trade Commission's Bureau of Consumer Protection. Accompanying me today is John M. Tifford, Program Advisor for the Bureau's Land Sales activities. We welcome the opportunity to testify about land sales. Our testimony reflects the views of the Bureau of Consumer Protection, but not necessarily those of the Commission or any individual Commissioner.

The Federal Trade Commission has had extensive experience with land sales problems over the past few years. During this time, the Commission has investigated more than 35 land sales companies, issued four formal complaints, held 2 administrative trials, and currently is involved in a number of public and nonpublic land sales matters. Our activities have resulted in substantial relief to consumers. One federal court has awarded nearly four million dollars in cash refunds to consumers and

ordered the company to set aside an additional 16 million dollars for use in constructing capital improvements on its subdivisions. In addition, the Commission has accepted five consent agreements from companies which provide, among other things, consumer refunds, property exchanges, extended periods to cancel contracts to purchase land, and company agreements to construct additional subdivision improvements or facilities. Moreover, we have elicited company agreements to cease and desist from a host of sales practices, such as misrepresentations to consumers concerning potential investment appreciation, financial security inherent in land ownership, ease of resale and scarcity of land. Agreements also provide that certain facts be disclosed, such as those dealing with the absence of basic services like water and utilities, additional costs of land ownership, and the speculative nature of the land sales purchase. Finally, the Commission staff recently issued a release informing consumers of millions of dollars in potential tax savings from land contracts cancelled for nonpayment of amounts due; most consumers are unaware of the potential relief from this source.

At the present time, the Commission is reviewing public comments received with respect to yet another proposed consent agreement which it has tentatively accepted. This new consent agreement would provide at least seven million dollars in redress to consumers who purchased interests in land from the respondent company.

Over the years, Commission staff has visited many subdivisions. We have seen large and small, good and bad, planned communities

and barren desert. And we have spoken with countless numbers of consumers, each with his own special needs and expectations. Some were pleased by their purchases; many were disappointed and angry. We have met with land sales company personnel, real estate brokers, land use and planning experts, economists and government officials on all levels--federal, state and local.

Among other matters, our investigations have uncovered a myriad of deceptive marketing and sales practices which have harmed consumers. We will merely list some of the major ones. These include misrepresentations about the value of the property; profit potential; lack of risk; ease of resale; extent of present demand; company obligations to repurchase land or assist in its resale; company commitment to develop land or construct utilities, roads, or other improvements; extent of development; cost to consumers to construct utilities, roads or improvements; property exchange privileges; refund and cancellation privileges; function and cost of property owners association; need to purchase property immediately, and availability of other property. Other deceptive practices include deceptive sales introductions; deceptive or misleading comparisons of investment appreciation of land in general or between land and other forms of investment; deceptive use of unilateral price increases to suggest true market value or potential profits, and deceptive use of celebrity endorsements.

These and other types of deceptive or unfair practices have caused consumers to buy land because of mistaken expectations about vital aspects of the land, such as its present or

future investment value or habitability.

In view of the foregoing, it is small wonder that great numbers of consumers have lost money on their land sales purchases. It has been estimated that in one year -- 1971 -- 650,000 recreational lots were sold at an aggregate price of 5.5 billion dollars. Many consumers who brought land in that year have lost all or a substantial part of their investment - as have purchasers in years before and after 1971. For some, the loss has represented the bulk of their savings. This is especially tragic among the elderly.

While sales declined substantially during the mid-seventies, they are once again on the upswing, according to a recent survey of the real estate development industry conducted by the American Land Development Association. This survey indicates that sales are increasing, prices are higher, lots are smaller but contain more basic amenities like water, etc., and that industry members are optimistic about the future. Against the background of consumer problems and a revitalized industry, it is essential that Congress take action now.

And Congress is taking action. This session of Congress has seen the introduction of three different bills seeking to amend the Act: H.R. 12574, introduced by Congressman Joseph R. Minish, H.R. 11265-HUD's 1978 Legislative Proposals which include amendments to the Act, and S. 2716 introduced by Senator Gaylord Nelson which now appears as Section 715 of S. 3084.

These bills reflect several different but not necessarily contradictory legislative strategies for change. Section 715 of

S. 3084 removes certain categories of developers from the registration requirements of the Act. H.R. 12574 proposes a number of substantive reforms. The HUD proposals - H.R. 11265 - generally track much of the H.R. 12574, but omit several important substantive issues addressed in that bill. Thus, the real issue at this time is not whether to amend the Act but, rather, how to merge the various proposals into a single coherent proposal deserving everyone's support. We believe it can be done.

We would like to discuss the proposals set forth in both H.R. 12574 and Section 715 of S. 3084. We believe that there are elements of both bills which should be included in any final legislative proposal.

H.R. 12574 contains three categories of suggested substantive reform: first, to better enable consumers to enforce their statutory rights, on their own, by expanding the availability and nature of such rights; second, to discourage industry's use of certain unfair practices which harm consumers; and third, to increase the statutory authority of the Office of Interstate Land Sales Registration of the Department of Housing and Urban Development to regulate land sales.

The first category involves expanding private rights. Proposed reforms include (i) extending the statute of limitations for consumers who wish to bring actions against land sales companies, (ii) broadening the type of relief available to consumers who are successful in private actions, and (iii) extending the time immediately after purchase during which consumers may cancel their contracts without liability, i.e. a cooling-off period.

The present statute of limitations is unduly short. At present, actions for liabilities created by Section 1410(a) or (b)(2) (which basically involve untrue statements of material fact or omission of material fact) must be brought within one year from discovery or from when discovery should have been made. Actions for liabilities created by Section 1410(b)(1) (which basically involve the sale of unregistered property or sale by fraud or misrepresentation) must be brought within two years from discovery or from when discovery should have been made. Finally, the maximum length of time from the sale or lease of property within which to commence an action is three years.

Since land purchases are frequently made sight-unseen in an area about which the purchaser knows very little, and involve statements whose truth can only be determined by future events, misstatements may remain undetected for years. This often occurs in land sales transactions where the consumer has no immediate need for the property and thus makes no immediate effort either to inspect the property or to learn the true facts. A typical example is the consumer who buys land and holds it four years after being assured that in such time his investment will double or that utilities will be extended to his property, only to then discover that no market exists for his property, no development has occured, and neither event is likely to happen in the foreseeable future.

In addition, certain developer obligations may not accrue for several years after purchase. A consumer's suit based on

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a breach of such obligations, while possibly valid under state contract laws, may not be able to obtain the special statutory relief available under the Act if brought after the expiration of the Act's statute of limitations period. Accordingly, a longer statute of limitations is very much appropriate.

Expanding the range of damages available to consumers in the event of a company's violation of the Act would also be of great benefit to consumers.

The present Act restricts the maximum civil damages obtainable by private parties to the purchase price, the reasonable cost of improvements, and court costs. Our experience suggests that the present restrictions on awardable damages for consumers has inhibited the initiation of private litigation because of the limited potential return available to consumers, even if successful. The court should be free to award to the successful consumer other damages reasonably attributable to the land sales company's breach, such as attorneys fees, specific performance, reasonable travel expenses to and from the property and appraisal fees. These categories of expenses are proximately related to the company's violation of the Act. It would seem inequitable for consumers to be forced to bear such expenses in instances of proven breaches or misrepresentation by the land sales company.

Reasonable attorney's fees, especially, should be a recoverable expense by successful consumers. From our observations, a purchaser with a relatively small financial investment in his property and the prospect of incurring substantial legal expenses simply will abandon his contract and lose his investment, rather than

attempt to assert his rights. Purchasers also will have the right to obtain specific performance in instances where the land sales company fails to furnish promised improvements whenever the court deems this form of relief to be appropriate. Specific performance is a traditional form of relief in real estate transactions.

Finally, extending the time immediately after purchase for consumers to cancel their contracts without liability would help to eliminate many potential problems later. Consumers should purchase land only after careful thought and consideration. Few people are knowledgeable enough about real estate to be able to make an informed decision without such careful consideration. Unfortunately, the sales scripts we have reviewed from many companies impress upon salesmen the importance of closing the sale when the presentation is made, and describe techniques to make it appear that prompt action is required.

The current cooling-off provisions afford inadequate time for review. Most consumers simply do not have ongoing relations with attorneys or financial advisors which would result in consultations, let alone full review of dozens of pages of material, within two days before or three days after the signing of a land sales contract. The Commission has accepted a number of consent agreements from land sales companies which provide a 10 day cooling-off period. The extended period enables a consumer to review his decision outside of the pressured sales environment. We believe that an extended cooling-off period

is especially important in view of today's average purchase price of more than $13,000.

The second category of proposed change is to discourage industry's use of certain unfair practices which are especially harmful to consumers, while at the same time are not justified by the legitimate needs of land sales companies.

One such practice is the use of forfeiture clauses in installment contracts. These clauses authorize land sales companies to keep the property and retain all monies paid by consumers in the event of a consumer's default, even if the money retained exceeds the company's actual damages. This practice results in unjust enrichment to the land sales companies. It also tends to "lock in" a consumer to continue payments even after he realizes the folly of his original purchase, because the later the consumer breaches, the more he pays in and the greater his losses become. This is particularly unfair, since those consumers who pay off a greater percentage of their contracts before stopping are penalized more than those who pay a lesser percentage of their contracts.

Another practice involves the failure of many land sales companies to furnish the consumer with legal title to the property promptly after purchase. On such occasions, the property remains subject to claims by the company's creditors as long as the company remains legal owner of the property. As a result, a company's bankruptcy or other default after purchase but before deeding - in some cases a period of 8 years - may prevent the ultimate conveyance of a legal title to the consumer when he completes payment.

The third practice involves the failure to establish for consumers' benefit a financial mechanism to ensure that contractually promised improvements are properly funded and will be constructed. At the present time, most funding plans for contracted improvements are based upon individual corporate internal financial policies of varying prudence. A company bankruptcy or other business reverse could jeopardize construction of promised improvements, if it results in insufficient cash to finance construction. Since the construction may not be scheduled for several years, consumers may not even be aware of the problem until it is too late. Some states, such as Florida, have recognized this problem and require the creation of escrow accounts to ensure funding of promised improvements.

H. R. 12574 will discourage developers' use of either a forfeiture clause or delayed deeding, by permitting the consumer to rescind his contract for a period of three years after sales consummated under such circumstances. Obviously, a rescission period of such length is wholly unworkable for a developer. Moreover, the Bill will mandate use of an escrow account to guarantee funding for construction of the developers' contractually obligated improvements. We favor the concept of a funding mechanism, such as escrows, bonding, or any other method likely to assure consumers that funds will be available to construct bargained for improvements. While such funding mechanisms possibly may cause cash flow strains to some companies, they furnish important protection to consumers.

The third category of proposed change is to increase the statutory authority of the OILSR to regulate land sales. The Interstate Land Sales Full Disclosure Act created OILSR and vested it with authority to administer the Act. Since that time, OILSR has been the federal organization with specific statutory responsibility for land sales regulation. We believe it should have sufficient regulatory authority and resources to do the complete job - just as it should have the accountability for doing the job properly. Increased regulatory authority does not mean increasing the number of companies regulated or the quantity of required registration paperwork; it means increasing the quality of regulation by giving OILSR better tools with which to regulate. For example, land sales companies' advertising and sales scripts should be made a part of the statement of record. Our investigations demonstrate the heavy reliance that consumers place on advertising and promotional material when making purchase decisions. In fact, they generally rely on such material for information even more than they do on property reports. Accordingly, it makes little sense for OILSR to review the contents of property reports so carefully while ignoring the statements made in advertising.

As you know, property cannot be sold to consumers until a registration statement is made effective by the Secretary. Statements are made effective when OILSR determines that the statement of record is not inaccurate or incomplete in any material respect. If advertising is made part of the statement of record,

it must meet the same standards of accuracy as other items filed with the statement, such as the property report, before property can be sold. Even after the registration statement becomes effective, it can be subsequently suspended should the advertising later be found to be inaccurate or incomplete.

An additional benefit is that consumers' private rights against a land sales company will be enhanced. One type of potential liability to consumers involves an omission or misstatement in the statement of record. If advertising becomes part of the statement of record, it becomes an additional element upon which the consumer could base a claim against a company.

In addition, OILSR's authority to promulgate advertising regulations should be clarified. OILSR has published advertising guidelines, but up to now, some have questioned OILSR's authority to promulgate or enforce these regulations. They mistakenly claim that OILSR can register land but not regulate its sale, and thus has no authority either to develop or enforce advertising guidelines. Their arguments should be put to rest by statute. Moreover, regulations are an effective way to describe in detail the problems and proposed solutions.

Furthermore, OILSR should have authority to issue cease and desist orders against land sales companies which violate the terms of the Act or any rules or regulations promulgated thereunder, or fail to comply with the terms of any order issued by the Secretary, and to obtain prompt adjudications in such cases. We understand that OILSR has been frustrated in attempting

to enforce provisions of the Act by the delay sometimes attendant upon getting land sales companies to curtail practices which are in violation of the Act. According to OILSR, its present enforcement tools of either administrative proceedings or injunctions are very time consuming. As a result, effective relief cannot be accomplished without substantial delay. Cease and desist authority can help obtain prompt and effective relief against violators.

Other features of H.R. 12574 should be helpful to consumers, such as the parens patriae section and the authorization for a public education program.

In sum, H.R. 12574 is a consumer protection bill which tackles many of the issues which have contributed to consumers' land sales problems. The Bureau is on record as supporting this bill with some limited modifications.

Section 715 of S. 3084, on the other hand, addresses none of these problems. Its expressed purpose is to remove certain developers from the registration requirements of the Act. By so doing, a major benefit arising from registration under the Act; namely, receipt of a Federal property report, may be lost by consumers.

As we indicated earlier in our testimony, many consumers have bought land on the basis of mistaken expectations about vital aspects of the land, such as its present or future investment value or habitability. These expectations often are generated by false or misleading claims. An effective means of combatting such claims is through the required dissementation, by developers,

of accurate and relevant information about the land. The Interstate Land Sales Full Disclosure Act requires that developers covered by the Act furnish a Federal property report to purchasers at or before the time of sale. A minority of states require a state report.

If a Federal property report is no longer required, then information disseminated by the developer will be limited to sales presentations by a salesman and/or the developer's own advertising and promotional material. The Bureau's past experience strongly suggests that neither method represents a reliable source for information about the property; traditionally, both have been prime sources of deception. On the other hand, the property report furnishes objective and important information about the property. Its existence also tends to eliminate or at least tone down potential misrepresentation since many sales claims are verifiable by the property report.

OILSR has published its latest revisions to regulations governing the form and content of property reports. One of the goals of these revisions is to make the property reports more useful for consumers. We understand that emphasis is being placed on eliminating nonessential information in the report and making the report more readable for consumers. It is ironic, then, that at the very time that the property report is being improved, its use may be eliminated for many people.

We would agree that essentially local purchasers should not need some of the information which now appears in the Federal property report, like weather conditions and distances from

the development to schools, hospitals etc. We also think that an on-site inspection of the property eliminates the need for descriptions of soil conditions, terrain, etc. However, the Federal property report, as proposed in the new regulations, will cover topics such as special risks of buying land, special notices of significant facts and the consequences to purchasers arising out of unusual or potentially adverse circumstances, if applicable, such as the absence of financial arrangements to assure the completion of facilities, sufficiency of water, absence of developers' responsibility to provide roads, water, electricity or sewage disposal, lack of local required permits or licenses to construct improvements, litigation against the developer which may reflect on its ability to perform, and any developer financial difficulty. The Federal property reports also will furnish a summary of costs to consumers. This summary will include one time charges like the purchase price, plus water, sewer, electric, and telephone tap in fees. It also will include recurring charges like taxes, dues and assessments to local property owner associations, recreational facilities fees, garbage and trash collection, etc. This, and other information to be contained in the Federal property reports, is important to purchasers. The only important information that consumers would obtain under Section 715 of S. 3084 would be an assurance from the developer that, on the day of sale, the title to the property was free and clear of all liens, encumbrances and adverse claims. However, taking an on-site inspection tour accompanied by a skilled salesperson, or being

a local resident, will not compensate for the lack of the other important information contained in the Federal property report.

We are not locked-in to continued use of the present Federal property report format for small essentially intrastate developers. Instead, we are uneasy about the possible elimination of a vehicle which furnishes information needed by consumers in order to make an informed decision. Certain information is needed regardless of the size of the development or the geographic area in which the property is marketed. Whether this information is given to consumers in the form of the present Federal property report, or by some other means, there should be some requirement for developers to furnish meaningful information to prospective purchasers. Certainly, we support any means to simplify the registration process for all developers, especially the smaller ones.

We also are uneasy about several other features of Section 715 of S. 3084. One feature exempts sales made to out-of-state consumers residing within a 100 mile radius of the property. We believe this radius is too big and should be reduced to 25 miles. If this exemption is designed for developers selling to a local market only, then the radius should be scaled to make sure that only local residents are included. The character of the land and the communities may change completely in 100 miles. Consumers residing in the outer limits of this radius may be completely ignorant of the local conditions. For example, a 100 mile radius would qualify many Pocono developers for sales

to New York City residents, even though the two locations have very little in common. What assurance is there that New Yorkers would be any more familiar with the Pocono region than a resident from Chicago? A shorter radius would make the exemption consistent with the expressed rationale for its existence.

Another feature involves the requirement that the land be free and clear of all restrictions. This requirement seems to apply only on the day of sale. Nothing in the bill prevents the developer from immediately encumbering the land after it is sold. The bill should require developers to deed property promptly which is sold under this exemption, since, by prompt deeding, consumers need not fear any developer's acts to encumber the property after sale. Moreover, prompt deeding will accomplish several of the substantive reforms proposed by H.R. 12574.

Finally, we believe that the five percent exemption requirement could become extremely complex mathematically and be difficult for developers to administer properly. Under the formula, after the initial five exempt sales, a developer would need to keep a running tally of lots sales to residents, to out-of-state purchasers residing within a 100 mile radius, and to other out-of-state residents, in order to know which sales qualify under the exemption. This mathematical numbers game should be eliminated. In its place, we would suggest a formula such as the following: exempt five lots in a development of up to 125 lots; exempt 10 lots in a development containing more than 125 lots but fewer than 225 lots; and exempt 15 lots in a development

containing 225 lots or more. This formula not only would eliminate the numbers game, but would also put a cap on a now apparently unlimited five percent exemption. The 15 lot cap itself is a reasonable one. One rationale for exemption is the fact that the cost of compliance with OILSR's registration process imposes an unfair burden upon the small developers. We believe that developments in excess of approximately 225 lots begin to lose the character of "small developers."

In sum, we are sympathetic to the expressed goals of Section 715 of S. 3084. At the same time we wish to make sure that the proposed solutions do not create more problems than they attempt to solve.

No law, however well conceived or drafted, will serve its intended purpose without effective efforts by the agency created to administer and enforce it. If OILSR is to be able to properly perform its statutory responsibilities as the federal land sales regulator, it is imperative that it not only be sufficiently staffed, but also be staffed with persons having the enforcement expertise required to ensure compliance. Moreover, it is vital that OILSR has the attention and support it needs from the key management within HUD.

Strong consumer legislation benefits consumers as well as the many legitimate land sales companies who have been unfairly stigmatized by the actions of other less reputable companies. The land sales industry itself recognizes the adverse impact on sales from past publicity. One third of the respondents to the previously cited American Land Development Association

Survey named the "unethical image of industry" as one of the most severe problems affecting the industry's future. We know that legitimate land sales companies are an anxious as we are to correct consumer problems and stop deceptive and unfair practices used by less reputable companies.

Increased rights of consumers, a better and more effective authority for OILSR, and an accommodation for small essentially intrastate developers, are the ingredients for legislative reform that will inure to the benefit of buyer and seller.

The time is ripe for land sales reform. We urge the enactment of legislation incorporating the best features of all pending bills, so that the problems in land sales may be attacked in a comprehensive fashion, to the ultimate benefit of both consumers and businesses.

At this time, we would be pleased to answer questions. Thank you.

Chairman ASHLEY. Thank you, Mr. Steinman. I am advised that the second bells on a vote have just rung. As much as we had several votes yesterday that were decided by 2 or 3 votes, the Chair is obliged to take leave for about 5 or 6 minutes.

[A brief recess.]

Chairman ASHLEY. Our next witness will be John E. Hempel, assistant commissioner for policy and planning, Department of Real Estate, State of California.

If you would proceed, sir.

STATEMENT OF JOHN E. HEMPEL, ASSISTANT COMMISSIONER FOR POLICY AND PLANNING, CALIFORNIA STATE DEPARTMENT OF REAL ESTATE

Mr. HEMPEL. Yes, sir. Thank you, Mr. Chairman.

What I would request would be that the remarks be entered into the record of the subcommittee, and that my comments will be limited to extracts from those remarks.

Chairman ASHLEY. Without objection, the full statement of Mr. Hempel will appear in the record.

Mr. HEMPEL. Thank you.

The remarks will conclude with a recommendation concerning the proposed amendment to the Interstate Land Sales Full Disclosure Act which we in California believe is desirable in concept, and which would free OILSR's resources for more direct application in the areas of demonstrated need.

But first, I would like to explain a little bit as to why we are going to make such a proposal. It stems from the existence and the scope of our State of California's regulatory authority, and deals separately with varying situations where abuses or potential abuses have been identified.

The California Legislature has carved out several different regulatory schemes under the Subdivided Lands Act in our State.

For instance, every subdivision in California must, before the public report or privilege to sell his issue, meet what we refer to as the "affirmative standards test." This deals with requirements to guard against any adverse effect on any individual purchaser due to encumbrances on the property, along with meeting a whole set of requirements contained in Business and Professions Code, section 11018, which include, for example, a showing by the subdivider that adequate financial arrangements have been made for all offsite improvements included in the offering, and that adequate financial arrangements have been made for any community, recreational, or other facility; and that title, or other interest contracted for, can be delivered.

If it is a condominium or a planned development where some sort of a common facility is included, the developer must meet what we call the "reasonableness test." This is set forth primarily in section 11018.5 of the Business and Professions Code.

Under this test, reasonable arrangements must be made to insure completion of the subdivision and all offsite improvements. Provisions must be made to insure reasonable date for completion, delivery of control, and reasonable arrangements dealing with management, maintenance, preservation of operation, use, right of resale, and control.

And if any documentation would materially change the right of owners, it must be done only upon prior written consent of the Real Estate Commission, until such time as the unit owners are clearly in control.

Out-of-State subdivisions are subject to all of the provisions of the Subdivided Lands Act whether or not they have common facilities, and they are treated in addition as real property securities under other sections of the real estate law in California which provide for the fair, just, and equitable concept to apply.

Under this sort of regulatory authority, we conduct a departmental appraisal of the property and will not issue the permit if the price does not bear a reasonable relationship to the current market value.

The fourth regulatory scheme under the Subdivided Lands Act in California might be of more interest to the committee, because it gives special treatment to what are defined in California as "land projects."

The land projects sections would supplement those which I have already stated apply to every subdivision, and certain special regulations are attached to this statement.

I have delivered several copies of our real estate law to the staff of the subcommittee which include the some 50 pages of regulations in California dealing with the carrying out of the affirmative standards, the reasonableness test, and the requirements dealing with land projects which were specifically attached to this statement.

Generally speaking, a "land project" consists of a subdivision of 50 or more vacant lots in a rural area. When our department sought this legislation in 1969, it was because of the highly promotional nature of such offerings. Therefore, "land projects" are subject to all of the prior-stated requirements but, in addition, the public report is not issued until the real estate commissioner has made specific findings in a number of areas. That is part of the attachment. These are key to the overall nature of the total complex which might be planned.

It also requires even a wider distribution of the property report which we refer to as the public report in California. It must be given to any member of the public requesting same, and to every prospective purchaser or visitor to the site of a land project.

Whereas the public report generally in subdivisions must be given, otherwise, just to prospective purchasers.

[Samples of filing forms may be found following Mr. Hempel's prepared statement as attachment 3.]

Two additional requirements under the Lands Projects section in California are that a 14-day rescission right which has some comparability to some of the proposals that are before Congress, and a requirement for advanced submission of proposed advertising.

Now in connection with—those are the four different regulatory schemes. But in every subdivision, we inspect. We conduct an onsite inspection before issuance of the permit. We spot check impound accounts by our auditors. Because, when I referred to "affirmative standards," that means that if they are going to make adequate financial arrangements for something, they have to do it by one of several alternatives that they can meet, either to fully impound all of the purchasers' money, or to put up a bond, or to have an irrevocable letter of credit which guarantees completion—which guarantees completion of the improvements, or whatever.

These are all screened ahead of time. We don't rely on promises of the subdivider; only to the extent that there is a verification by the entity that is backing up the promise.

In connection with the common-facility subdivisions, we check the budget. Our appraisers check the budget of everyone to try to determine if the assessments that are contemplated are reasonable.

So when I use the expression "reasonableness test," we actually turn that into actual practice. It is not just a phrase.

The regulatory setup in California has provided stability within the subdivision industry, and it is rare indeed when there is a subdivision failure in California.

California's public report, as I stated earlier, must be given to every prospective purchaser and is of some moment. However, as can be seen, the California concept is to qualify the property, not the developer.

The legislature has pointed out the regulatory framework to see that people get that for which they bargain. As to representations in connection with sales, this department licenses real estate brokers and salesmen. And in California, there are no exemptions from the license law for agents acting on behalf of developers or builders.

It is, we believe, the regulatory duty of license law officials such as ourselves, and of city and county enforcement officers—since either licensees or not licensees might be involved in fraudulent representations—to deal with this in the light of the civil, criminal, and license disciplines and actions which are aready on the books.

For example, in California, it is a felony to offer lots or parcels in a subdivision without having a permit. There are a number of other sanctions, including revocation or suspension of real estate licenses, including the fact that for false advertising and a number of other violations the State can bring civil action against the developer for up to $2,500 per transaction. And we have had a number of those through the years. Not a great number, but possibly 15 or 20 in the last 5 or 10 years.

These things all supplement the disclosure instrument that is used in California. And in reading some of the prior statements of OILSR officials, we have noted reference to an OILSR assumption that Federal jurisdiction somehow means that theirs is the exclosure province; whereas, State jurisdiction is meant to deal only with substantive requirements.

We don't agree with this conclusion, and believe that when you have a State such as ours that has a good disclosure instrument, and probably the toughest substantive requirements of any State in the Nation, that that should be taken into consideration.

We built our public report, for the most part, around the items which are not clearly disclosed to the purchaser which might cause that purchaser to believe that that purchase will include something which is in fact not included in the offering.

We do not feel that it is the State's job to prepare a sales brochure for the developer. And as a result of that, we do not put a lot of affirmative statements in our public reports.

In public reports that we prepare, they deal with what might be wrong, or what might deviate from the norm as is to be expected by a typical purchaser. If there is something that is not going to be included

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in the offering, that is a typical amenity that one might expect of a lot or a parcel, then we point that out.

Also, I have given several copies of—just at random—different types of public reports, or I have meant to, to the staff of the subcommittee. And if I haven't already, I will deliver that before I leave.

We employ clerical people, and deputy real estate commissioners, to process our subdivision filings. We have appraisers on our staff to measure the reasonableness, as I mentioned, of the common-facility budgets.

Our legal staff reviews the management documents and C.C. & R.'s for reasonableness in common-facility subdivisions, and we have some 60 people who perform these functions.

In addition to that, of course, from an enforcement point of view, within the Department of Real Estate where all of this is housed in California, we have our full investigative staff that takes care of investigations of anything involving real estate brokers or real estate salesmen, and does preliminary investigations for matters that might ultimately be referred to the district attorneys or to the attorney general in the State.

Last year, to give you an idea of the volume, we processed nearly 4,000 new subdivisions to include this full, substantive review that I referred to. This included 30 or 40 from other States.

So as you see, most of our volume is interstate. There were 156,000 lots in those subdivisions involving 112,000 acres. Now I mention land projects because they more or less approximate the types of subdivisions that OILSR exercises jurisdiction over.

We have issued a total of 418 such land project public reports since our regulatory scheme was devised that dealt with land projects in 1970.

Environmental and growth considerations, as well as a dramatic increase in the cost of land, have limited new land project filings, apparently, because we have received only three new ones in the last 12 months.

Most of the activity that we get in land projects are just additional units of old subdivisions. It has been—this is no longer an area of substantial new activity, at least in California. So I must assume that most of the subdivisions that OILSR is getting—although I noticed their total was, I think I heard it stated earlier this morning, was 8,000, the grand total—but nevertheless, I must assume that most of them come from States other than California, despite the fact that there are a lot of highly promotional subdivisions in California because it is a vast State with a lot of undeveloped land still in it.

Hopefully, we believe our California experiences and especially when committee staff has an opportunity to check over the regulatory schemes that we have, and the actual language in the regulations, and the like, hopefully this can be useful to your deliberations as they relate to the substance of the three different proposals that the committee is concerning itself with dealing with the jurisdiction of OILSR.

We believe it is consistent with both the thrust and the language of original and current Federal legislation, that developments in States which have adequate regulatory tools should be exempt from the act. To do otherwise, creates duplicate work for the State regulatory entities, and for the developers; it adds to the cost of subdivision

production; and is questionable as to the benefits to the consuming public.

First, since OILSR designs its subdivision processing on the basis of disclosures only, it feels compelled to do the whole job with that vehicle—which means that it is an extensive, lengthy vehicle that deals with a lot of materials which, in connection with the subdivision in California, is not, we submit, material to the purchaser.

For example, if the roads have been fully bonded, or the money is being impounded until the roads are completed, and the roads are going to be completed to county standards, and they are going to be paved, and they are going to be done within a certain date based upon the completion bond that has been filed with us—in other words, if all of those standards have been met, the need to put all of that data into a public report which makes it less likely that it will be thoroughly read by the prospective purchaser is not, in our opinion, advisable. So we don't do that.

We might just have a very brief statement that the roads will be paved by a certain period in time to meet county standards.

OILSR has to gear itself—like convoys in the last war—to the slowest ship, and therefore it has built the total disclosure statement around the beginning assumption that there may not be any regulation in the State in which the property is being sold, or in the situs State.

Well, we suggest—as I mentioned at the outset—a type of exemption that I think would be useful. I would like to read that:

It would require the Secretary of HUD to categorically exempt all developments from States which have standards and disclosure requirements which, taken as a whole, provide either equivalent or greater consumer protection than the national standards.

This would apply for sales within the State, of land located within that State. Now, I am not dealing with the pure interstate sales when I say that, but I am talking about the fact that—as has been discussed here earlier today—there are certain interstate conditions which apparently meet Federal standards as intrastate transactions. And we believe there should be a flatout exemption for States which, as I say, have standards which taken as a whole—and that is important that a phrase such as that be utilized in this presentation—because if one uses a phrase such as that which I believe is in the existing statute: "When in the opinion of the Secretary it is in the public interest," I believe that discretion is entirely too broad. Because we have had experiences in the past with administrators of OILSR where they have taken the position that anything that is done other than the way we do it is not in the public interest.

Because everything we are doing, we are doing on that basis. And I'm sure they meant that very seriously, and very genuinely.

But, for example, if our disclosure instrument were to vary—that that was used at the time, as the basis, and therefore we had originally that category in the old exemption that was written into the regulations of OILSR, and after a long hassle with them we reached a sort of a détente where we agreed to put some additional material into the public report—we negotiated it out, so to speak, to satisfy them—and we have been getting along with them very well, I might say.

We appreciate the cooperation we have received, but we think it is, from the standpoint of a State-Federal relationship, we think it is a

dangerous situation where it can be so easily determined, so readily determined, that there is either a taking over of this authority—which I think would be a shame. Because of the fact that in a State such as California, or at least in California, it would do a disservice to purchasers if, for example as is contained in the language of one of these bills, the Federal report were to be used in lieu of the State report.

That causes all kinds of different problems. For example, in California we have a statutory requirement to put a certain thing into our public report having to do with schools. And this was brought about when there was a considerable amount of pressure because of the lack of sufficient schools—double sessions, and long busing, and all of that. So we are required by statute to put in our disclosure instrument certain information dealing with schools.

That is really one of the few things that we are mandated to put in. It is discretionary upon the commissioner, and we write the public report; the developer doesn't.

Second, besides that basic exemption that is suggested, "require"—and this is the one I think might be of even more interest—"require the Secretary of HUD to act similarly on individual subdivisions within the State which has these equivalent or greater consumer protections."

That is where the State has already, shall I say, "earned" the categorical exemption that is suggested, "and which are sold in another State, providing"—and here is where the Federal jurisdiction would take over—"providing: (a) The developer applies for such an exemption; and (b) The developer agrees" to the Federal Government "to distribute the situs State's disclosure instrument to prospective purchaser in other States; and (c) The developer is by law"—by Federal law—"held to account at the Federal level for any failure to comply with the conditions imposed by the situs State under which the interstate exemption was granted."

Since the granting of such a State exemption ultimately would be an exercise of the Secretary's discretion, the Secretary's original decision should provide that any State or any developer denied an exemption could apply for and secure a hearing on the merits of the exemption request.

The Secretary of HUD is currently expected to cooperate with State authorities and to make determinations—such as I stated before, we have had that sort of cooperation and I don't wish to imply that there is any difference of opinion from the standpoint of our regulatory mode as it exists today.

I just think that—I know it is an extra cost to the Department, because we have to prepare public reports that are going to be issued to developers who are subsequently going to register with HUD on an entirely different public report than we would prepare if they were not going to register with HUD. Because HUD does require additional information.

HUD, for example, is concerned with the financial capability—bankruptcies, past violations. They qualify the developer, rather than the property, because they don't have any authority at this time to qualify the property.

In our case, it really makes no difference who the developer is, because he doesn't get the permit until he has made a showing that all of the things that are promised are going to be delivered.

So the fact that the man, even if he was bankrupt at some prior time, it will be of no effect on the thing, but it is of interest to HUD, and they want that sort of information in the reports that might go to other States.

Now it can be deceiving. It is not really fair to a developer, if he has in fact already put the wherewithal up to make good on all of the promises, to have to have it suggested to people—whether they are in our State, or any other State—that maybe he just might not be able to cut it.

In any event, that is the suggestion we would like to bring to your attention.

We wish to thank the subcommittee and its staff for the opportunity to make this presentation.

Thank you.

[Text resumes on p. 654.]

[Mr. Hempel's prepared statement, on behalf of the California State Department of Real Estate, appears with the following attachments: attachment 1, a statement by Chief Counsel W. J. Thomas before Government Operations Committee of the Arizona State Legislature, November 9, 1977; attachment 2, an extract of special subdivision laws and regulations in California dealing with land projects; attachment 3, samples of filing forms of the California State Department of Real Estate; and attachment 4, a letter from Mr. Hempel to Chairman Ashley, dated July 31, 1978, with attachments.]

STATEMENT ON BEHALF OF THE CALIFORNIA STATE DEPARTMENT OF REAL ESTATE
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
HOUSE BANKING, FINANCE AND URBAN AFFAIRS COMMITTEE
AUGUST 3, 1978

My name is John E. Hempel. I am Assistant Commissioner, Policy and Planning, California Department of Real Estate. California's Real Estate Commissioner and Director of the Department, David H. Fox, has asked me to thank you for this opportunity to appear before your committee to discuss regulation of real estate subdivisions in the State of California. These remarks will conclude with a recommendation concerning a proposed amendment to the Interstate Land Sales Full Disclosure Act, which we believe to be desirable in concept and which would free OILSR resources for more direct application in the areas of demonstrated need.

First, we would like to refer to two attachments to this statement. One is a copy of a statement delivered by Chief Counsel W. J. Thomas to a unit of the Arizona Legislature in November of 1977 in connection with its interest to add certain "affirmative standards" to the Arizona subdivision laws. The other is an extract of the special subdivision laws and regulations in California dealing with land projects -- the type of subdivision which most closely approximates the type of subdivision over which OILSR ordinarily exercises jurisdiction.

In California, minimum standards for the design and improvement of subdivisions are applied by city and county authorities under the Subdivision Map Act. The Act applies to all subdivisions in California, and it is at that level that zoning is determined, and standards for road surfacing, sewage disposal, and the like, are all considered.

Our Department's jurisdiction is in addition to that of the local governing bodies, and the concept is to be both an anti-fraud statute and to provide a mechanism to assure that prospective purchasers will receive that for which they bargained. This is known as the Subdivided Lands Act and the statutory authority begins with Section 11000 of the Business and Professions Code.

In order to apply the state's regulatory authority to deal separately with the varying situations where abuses or potential abuses had been identified, the California Legislature carved out several different regulatory schemes under the Subdivided Lands Act. They are:

1. Every subdivision in California must, before the public report or permit to sell is issued, meet what we refer to as the affirmative standards test. This deals with requirements to guard against any adverse effect on any individual purchaser due to encumbrances on the property, along with meeting a whole set of requirements (see B&P Code Section 11018) -- these include a showing by the subdivider that adequate financial arrangements have been made for all offsite improvements included in the offering, that adequate financial arrangements have been made for any community, recreational or other facility, that title or other interest contracted for can be delivered, and others.
2. Condominiums and planned developments, where some sort of common facility is included, must meet what we refer to as the "reasonableness test" (see Section 11018.5 of the B&P Code). Under this section reasonable arrangements

must be made to assure completion of the subdivision and all offsite improvements, provisions must be made to insure a reasonable date for completion, delivery of control, and reasonable arrangements dealing with management, maintenance, preservation, operation, use, right of resale and control. Further, documentation which would materially change the rights of owners cannot be effected by the developer without prior written consent of the Real Estate Commissioner until the unit owners are clearly in control (B&P Code Section 11018.7).

3. Out-of-state subdivisions are subject to all of the provisions of the Subdivided Lands Act; also, they are treated as real property securities under other sections of the Real Estate Law in California providing for the fair, just and equitable concept to apply. Under this sort of regulatory authority we conduct a departmental appraisal of the property and will not issue the permit if the price doesn't bear a reasonable relationship to the current market value.

4. Of most interest, perhaps, to the committee is the set of Business and Professions Code sections which give special treatment to what are defined here as "land projects." The land project sections and special regulations are attached to this statement. Generally speaking, a land project consists of a subdivision of 50 or more vacant lots in a rural area. When our Department sought this legislation in 1969, it was because of the highly promotional nature of such offerings.

Land projects, of course, are subject to all of the prior stated requirements; in addition, the public report or permit is not issued until the Real Estate Commissioner has made specific findings in a number of areas which are keyed to the overall nature of the total complex which might be planned. That is, it goes considerably beyond the usual requirements for the type of unit being offered, since many of these projects contemplate a larger and long term development (see B&P Code Section 11025). Also, an even wider distribution of the public report must be made (to any member of the public requesting same and to every prospective purchaser/visitor to the site of a land project); whereas in other subdivisions mandatory distribution to the public report is required only to prospective purchasers. A 14-day rescission right applies, the subdivider must make quarterly rescission reports for three years (designed to be a regulatory tool since a high withdrawal rate is a possible indication of misrepresentation), and a special set of regulations (see attached beginning with Section 2819.5) applies -- these include the requirement for advance submission of proposed advertising.

The above is not meant to outline the entire regulatory structure in California under the Subdivided Lands Act. However, we believe this regulatory setup has provided stability within the subdivision industry, and it is rare, indeed, when there is a subdivision

failure in California.

The public report is a disclosure instrument of some moment; however, as can be seen, the California concept is to qualify the property, not the developer. The Legislature has pointed the regulatory framework to attempt to see that people get that for which they have bargained. As to representations in connection with sales, this Department licenses real estate brokers and salespersons, and in California there are no exemptions from the license law for agents acting on behalf of developers or builders. It is, we believe, the regulatory duty of license law officials such as ourselves, and of city and county law enforcement officers (since either licensees or non-licensees might be involved in fraudulent representations) -- to deal with this in the light of the civil, criminal and license discipline sanctions which are already on the books.

For example, it is a criminal offense (calling for a maximum $5,000 fine and imprisonment in the state prison) to sell or lease or offer for sale or lease any lots or parcels in a subdivision without first obtaining a public report from the Commissioner. Further, violations lead to revocation or suspension of licenses, and willful violation of a number of the subdivision sections (including selling without a public report) can subject the violator to civil penalties up to $2,500 for each violation.

In reading some of the prior statements of OILSR officials, we have noted reference to an OILSR assumption that Federal jurisdiction somehow means theirs is the exclusive disclosure province whereas state jurisdiction

is meant to deal only with substantive requirements. We do not agree with this conclusion, nor do we find it in the Federal statutes. Most states which do have subdivision laws have disclosure requirements in the form of mandatory distribution of a disclosure instrument of some sort. Of course, California is among those states. In addition, some of the states have affirmative standard requirements and others have a great deal more. This is mentioned, particularly, because our disclosure instrument in California is built around the substantive requirements of the Subdivided Lands Act. The California public report, for the most part, is constructed with reference to those items which, if not clearly disclosed to the purchaser, might cause that person to believe the purchase will include something which is, in fact, not included in the offering. We do not feel it is the State's job to prepare a sales brochure for the developer. Our Department has issued hundreds of thousands of these public reports for something like 40 years on virtually all subdivisions in California, and recognizes the usefulness and effectiveness of the document diminishes in almost direct proportion to its degree of length. We are currently conducting another review to simplify the public report and to incorporate more easily understood language.

We employ clerical people and deputy real estate commissioners to process our subdivision filings. Also, we have appraisers on our staff to measure the reasonableness of the common facility budgets for condominiums and planned developments. Our legal staff is available for review of management documents and CC&R's. There are something under 60 people here to perform these functions. Last year, in addition to amended and preliminary public reports

there were nearly 4,000 new subdivisions qualified (including a scattering from other states and countries). There were a total of 156,365 lots or units in these new subdivisions, involving 112,627 acres. We have issued 418 land project public reports since that regulatory scheme was devised by legislative action in 1970. Environmental and growth considerations have limited new land project filings -- only three new ones were filed during the last 12 months.

Hopefully, our California experiences can be useful to your deliberations on the several proposals dealing with amendments to the Federal statutes to alter the jurisdiction of the Office of the Interstate Land Sales Registration.

We believe it is consistent with both the thrust and the language of original and current Federal legislation that developments in states which have adequate enforcement tools should be exempt from the Act. To do otherwise creates duplicate work for the state regulatory entities and for the developers, adds to the cost of subdivision production, and is questionable as to benefits to the consuming public.

First, since OILSR designs its subdivision processing on the basis of disclosure, only, it feels compelled to do the "whole job" with that vehicle. Of course, we feel the typical California public report does the job better. Especially since the development, itself, has met the intensive substantive requirements of California law. We submit, below, a concept for exemption which we hope will find itself into whatever Federal legislation might ultimately become law. It is:

1. Require the Secretary of HUD to categorically exempt all developments from states that have standards and disclosure requirements which, taken as a whole, provide either equivalent or greater consumer protection than the National standards. This would apply for sales within the state of land located within that state.
2. Require the Secretary of HUD to act similarly on individual subdivisions within a state which has these equivalent or greater consumer protections and which are sold in another state, providing:
   (a) The developer applies for such an exemption, and
   (b) The developer agrees to distribute the situs state's disclosure instrument to prospective purchasers in other states, and
   (c) The developer is by law held to account at the Federal level for any failure to comply with the conditions imposed by the situs state under which the interstate exemption was granted.
3. Since the granting of the state exemption, ultimately, would be an exercise of the Secretary's discretion, the Secretary's original decision should provide that any state or any developer denied an exemption could apply for and secure a hearing on the merits of the exemption request.

The Secretary of HUD is currently expected to cooperate with state authorities and to make determinations dealing with state exemptions based on what the Secretary believes to be "appropriate in the public interest" or some similar language. In our relationships with OILSR, they have been cooperative, especially in

the last two or three years. However, we feel that the discretion exercised is too broad, and when acting on behalf of the Secretary, most decisions have been resolved on the basis that the "public interest is best served" by the utilization of the format, language and coverage of the HUD Property Report -- an instrument which has been created as if there were no substantive controls in some states and which has added considerable processing time and cost in our processing of subdivisions in order to maintain the California detente with OILSR.

Our Department wishes to thank the subcommittee and its staff for the opportunity to make this presentation. If you have any questions, I will do my best to answer them.

(Attachment 1)

REMARKS OF CHIEF COUNSEL W. J. THOMAS
GOVERNMENT OPERATIONS COMMITTEE
ARIZONA HOUSE OF REPRESENTATIVES
NOVEMBER 9 1977

I am pleased to be here today to tell you about California's experience in administering its Subdivision Law and particularly the so-called affirmative standards. I hope that what I have to say will be of some help to you in deciding what new legislation if any will be in the public interest in Arizona. Unless a different format is desired, I will briefly set forth the affirmative standards that we have in California, explain how they came to be and will then be pleased to answer any questions that you may have about application of the affirmative standards or about any other aspect of California Subdivision Law.

California has had a Subdivision Law since 1921. In that year the Real Estate Commissioner was given jurisdiction over sales of agricultural lands for "colonization, farm acreage or rural settlement." The Commissioner was expressly authorized to issue a public report on such lands and prepare a questionnaire to be completed by the applicant to assist in the preparation of the public report. Interestingly enough the 1921 Act, more than today's statutes, prescribed what was to be included in the public report. The following were expressly referred to as items of disclosure in the 1921 statute:

1. Name and location of the project.
2. Name of the owner and sales agents.

3. Whether the project is irrigable or depends upon irrigation.
4. Sources of water and nature and condition of water rights.
5. Total area of the project and the unit size of parcels for sale.
6. Proposed average selling price per acre.
7. Terms of sale.
8. Amount of any outstanding liens or bonded debts affecting the property.
9. Probable adaptabilities of the soil.
10. Character of the soils.
11. Available transportation facilities.
12. Roads and community improvements.
13. Drainage conditions and systems.
14. Condition of title to the lands.
15. Methods of sale proposed to be used.

From the extent of this list of items to be disclosed one has to conclude that by 1921 California had already experienced widespread land sales frauds primarily in the offering of agricultural lands. The apparent purpose of the 1921 legislation was to curb these frauds by requiring that the person proposing to make an offering of subdivided agricultural lands give complete information about the lands to the Real Estate Commissioner and by authorizing the Commissioner to examine the projects to be offered. The Commissioner was expressly authorized to prepare a disclosure

device, then and still known as a public report, but the law did not then require that the public report be made available to prospective purchasers nor did it specify how it was to be published or disseminated. Presumably copies would be available at an office of the Department and a prospective purchaser could obtain a copy by requesting it if he or she was interested enough to do so.

With the passage by the Legislature of the first subdivision act in 1921, the Legislature also passed a law making it a crime for any person to publish or disseminate any false written statement concerning any land or subdivision of land being offered for sale. This is a further indication that California had already experienced land sales frauds sufficiently extensive as to justify legislative action.

There were no significant changes in the Subdivision Law from 1921 to 1933. In 1933 the authority of the Real Estate Commissioner over offerings of subdivided lands was broadened to include offerings for residential and commercial as well as agricultural purposes. Sometime between 1925 and 1930 subdivision was defined as "land or lands divided for the purpose of sale or lease into five or more lots or parcels."

The Subdivision Law remained almost exclusively a full disclosure law until 1955. The only indication of a departure from the full disclosure concept was the addition of two provisions to the law in 1935. One of these authorized the Commissioner to issue an order prohibiting sales in a subdivision instead of issuing the public report if the examination

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of the project showed that the sale or lease would constitute misrepresentation to, or a fraud upon, the purchasers of lots. Secondly, a new section declared it to be unlawful to sell subdivided land subject to a lien or encumbrance other than for taxes or assessments by public authority unless there was a provision whereby the vendor was able to deliver title to the lot or parcel free and clear of the lien or encumbrance.

In 1955 the first of what we refer to now as affirmative standards was added to the Subdivision Law. The sections in question were designed to protect a subdivision lot purchaser against the possibility that his deposits toward acquisition of the property would be expended by the subdivider without the purchaser receiving the subdivision interest for which he bargained. Basically this protection is afforded through an impounding of purchase money payments until the title or other interest contracted for has been delivered to the purchaser or by the posting of a bond or other security device by the subdivider in an amount equal to the aggregate of purchasers' funds received but not impounded by the subdivider.

1963 was a banner year for subdivision legislation in California. It saw the passage of the Out of State Land Promotions Law under which the sale within California of interests in subdivided lands located outside of the state are treated as the sale of securities. A permit must be obtained from the Department of Real Estate before out-of-state subdivided lands can be sold in California and the "fair, just and equitable" standard which is the touchstone

for the regulation of securities offerings in California is made applicable to an offering of out-of-state subdivided lands. Under this "fair, just and equitable" power, the Department may deny the issuance of a permit to sell out-of-state subdivided lands in California on the basis of the price being charged for the subdivision interests. No such authority of the Department over the offering of in-state subdivided lands yet exist in California though a legislative proposal to give the Commissioner this authority has been presented at least twice.

1963 also saw the enactment of condominium legislation in California and the Real Estate Commissioner asserted jurisdiction over condominium offerings by regulations. The advent of the common-interest subdivision offering was responsible in part for the affirmative standards that were made part of the law in 1963. The affirmative standards added to the Subdivision Law in 1963 are stated as grounds under which the Real Estate Commissioner may deny the issuance of a public report. In addition to the previously noted authority to deny if the sale or lease would constitute misrepresentation to or a fraud upon purchasers or lessees, additional grounds for denial under the 1963 legislation include the following:

1. A failure of the subdivider to comply with any of the provisions of the Subdivision Law or the regulations of the Real Estate Commissioner for implementing that law.
2. An inability of the subdivider to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering.

3. Inability of the subdivider to demonstrate that adequate financial arrangements have been made for any community (common), recreational or other facilities included in the offering.
4. A failure to make a showing that the parcels can be used for the purpose for which they are offered.
5. Failure to provide in the contract with the purchaser or in another appropriate instrument the use or uses for which the subdivided parcels are offered and any covenants or conditions relating to the use or uses.
6. Failure to provide agreements or bylaws in compliance with the regulations of the Real Estate Commissioner for the management or furnishing of other services having to do with the common facilities.

Stock cooperatives and community apartment projects existed in California long before condominiums were officially created by statute.

The fourth -- and to date last -- type of common-interest subdivision known as the planned development was made subject to the Subdivision Law in 1965. A planned development is essentially a subdivision of individually-owned lots for single-family dwellings with other areas to be owned and managed by the individual lot owners in common through a nonprofit corporation or association. Legally and conceptually it is quite similar to a condominium development. Physically the individually owned parcels may range from townhouses with party walls to very large parcels in rural areas. The common

property may range from unimproved greenbelts and private rights of way to extensive improvements for recreational activities such as swimming pools, tennis courts and golf courses.

In 1965 special affirmative standards were established by the Legislature for the so-called common-interest subdivisions offerings. These special standards included the creation of "reasonable arrangements" regulatory criteria to be administered by the Real Estate Commissioner. "Reasonable arrangements" is something less than "fair, just and equitable" but clearly represents an affirmative-standards approach as opposed to one of full disclosure.

The "reasonable arrangements" that must be provided if a public report is to be issued for a common-interest subdivision offering are as follows:

1. Reasonable arrangements to assure completion of the subdivision and all offsite improvements included in the offering.
2. Reasonable arrangements for delivery of control over the subdivision and all offsite improvements to the purchasers of subdivision interests.
3. Reasonable arrangements of owners of subdivision interests with respect to the management, operation, use and right of resale of the subdivision interests purchased by them.

In addition to the reasonable arrangements, special standards that must be met by common-interest subdivisions

before a public report will be issued include the following:

1. The instruments for conveying the subdivision interests to purchasers must be adequate to transfer the legal and beneficial interests which the subdivider has represented that each purchaser will receive.
2. The provisions of the governing instruments for the subdivision will be binding upon each purchaser and his grantees and successors in interest including any entity acquiring through foreclosure or a power of sale.

Two other bases (having nothing in particular to do with the common-interest subdivisions) for denying the issuance of a public report were added to the Subdivision Law in 1965.

1. The first of these authorized the Real Estate Commissioner to deny a public report for the failure of a subdivider to demonstrate that he had made adequate financial arrangements for any guarantee or warranty included in the offering, while
2. The second directed the Commissioner to deny the issuance of a public report if a subdivider failed to demonstrate that the soil within a subdivision had been or would be prepared in accordance with the recommendations of a registered civil engineer in such a manner that damage to structures within the subdivision would not be likely to result.

(Attachment 2)

PART 2. REGULATION OF TRANSACTIONS
CHAPTER 1. SUBDIVIDED LANDS
Article 1. General Provisions

"Subdivided Lands," and "Subdivision"

11000. "Subdivided lands" and "subdivision" refer to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels; provided, however, that land or lands sold by lots or parcels of not less than 160 acres which are designated by such lot or parcel description by government surveys and appear as such on the current assessment roll of the county in which such land or lands are situated shall not be deemed to be "subdivided lands" or "a subdivision" within the meaning of this section, unless such land or lands are divided or proposed to be divided for the purpose of sale for oil and gas purposes, in which case such land or lands shall be deemed to be "subdivided lands" or "a subdivision" within the meaning of this section; and provided further, this chapter does not apply to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building, except that the leasing of apartments in a community apartment project, as defined in Section 11004, shall be subject to the provisions of this chapter.

Nothing in this section shall in any way modify or affect any of the provisions of Section 66424 of the Government Code.

"Land Project" Defined

11000.5. A "land project" is a subdivision or subdivided lands within this state which satisfies all of the following conditions:

(a) The subdivision of subdivided lands contain 50 or more parcels of which any 50 are both

(1) Not improved with residential, industrial, commercial, or institutional buildings and

(2) Offered for sale, lease, or financing for purposes other than industrial, commercial, institutional, or commercial agricultural uses.

(b) The subdivision or subdivided lands are located in an area in which reside less than 1,500 registered voters within the subdivision or within two miles of the boundaries of the property described in the final public report.

(c) Not constituting a community apartment project as defined in Section 11004, a project consisting of condominiums as defined in Section 783 of the Civil Code, or a stock cooperative as defined in Section 11003.2.

For purposes of subdivision (a), lands owned or beneficially controlled by substantially the same entities or interests shall be deemed to be part of the same subdivided lands or subdivision.

11000.6. A subdivision which would otherwise be treated as a land project under Section 11000.5 shall not be so treated, if the subdivider submits evidence satisfactory to the commissioner that any one of the following conditions exists:

(a) All lots within the subdivision are to be offered for sale only to builders or developers.

(b) The lots are not to be offered by means of substantial direct mail advertising, and overall sales promotion costs in connection with the sales thereof are nominal. For the purposes of this section, sales promotion costs shall be deemed nominal if they include a conventional real estate brokerage commission which commission shall not exceed similar commissions for similar services in nonland projects in the area where such services are rendered or a comparable area as determined by the commissioner plus an allowance of not more than 10 percent of the projected selling price of all of the lots for overhead and advertising.

(c) Other characteristics of the subdivision render such treatment unnecessary in order to provide protection to the public, as determined in acordance with reasonable regulations adopted by the commissioner to carry out the provisions of this chapter.

Grounds for Denial of Public Report

11025. In addition to the other grounds for denial of a public report as set forth in this chapter, the commissioner shall not issue a public report on any land project within the purview of Section 11000.5, as modified by Section 11000.6, unless he makes a specific finding that:

(1) The total complex of existing or proposed improvements reflected in the subdivision offering (including storm sewers, sanitary sewers, water systems, roads, utilities, community facilities, recreational amenities) will be adequate to serve the projected population of the entire land project.

(2) The arrangements that have been made to assure completion, maintenance and financing of the total complex of existing or proposed improvements referred to in paragraph (1) are reasonable. In determining the reasonableness of such arrangements, the commissioner shall consider whether the probable continuing financial burden with respect to the financing of completion and maintenance of improvements within the subdivision bears a reasonable relationship to the value of the lots therein.

(3) The offsite and onsite measures, including the overall design of the entire land project, are adequate to prevent damage to property by reason of flooding, erosion and other natural occurrences which are usual or predictable for the area.

(4) The method of financing the purchase of individual parcels or lots, including the effect of balloon payments, is reasonable.

(5) The existing zoning, or any change in zoning that has been proposed to the local governing body, is compatible with the proposed use of the lots within the land project.

(6) The use, or zoning, of adjacent properties is compatible with the proposed land project.

This section shall not be applicable to subdivisions on which final public reports were issued prior to January 2, 1970.

History—Added by Stats. 1971, Chap. 1399, Sec. 4, to replace former Section 11018.6 (See Stats. 1969, Chap. 763, Sec. 8, for operative date information), amended by Stats. 1972, Chap. 590, Sec. 2.

Public Report to Be Furnished on Request

11027. (a) A copy of the public report issued on land within a land project shall be given by the subdivider or his agents or salesmen:

(1) At any time, upon oral or written request, to any member of the public.

(2) To every adult or head of a family who, as a prospective purchaser, visits the site of a land project, whether by appointment or by casual visitation and whose presence is known, or should reasonably be known, by the subdivider, his agents or salesmen.

(3) To every prospective purchaser to whom the subdivider, his agent or salesman makes a sale presentation or to whom promotional material, other than a preliminary solicitation, is sent.

(b) Willful failure to distribute a copy of the public report pursuant to this section shall be a misdemeanor.

(c) If a subdivider or his agent or salesman violates the provisions of subdivision (b) the commissioner, at his discretion, may order the subdivider, his agents and salesmen to desist and refrain from the further sale or lease of lots or parcels within the land project for a period not to exceed 30 days.

(d) No receipt shall be required for a copy of a public report issued pursuant to this section.

Rescission Procedure

11028. Any contract or agreement to purchase or lease a lot or parcel in a land project within the purview of Section 11000.5, as modified by Section 11000.6, may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of rescission by midnight of the 14th calendar day following the day on which the purchaser or prospective purchaser has executed such contract or agreement. The subdivider shall clearly and conspicuously disclose, in accordance with regulations adopted by the commissioner, the right to rescind provided for in this section and shall provide, in accordance with regulations adopted by the commissioner, an adequate opportunity to exercise the right to rescission provided for herein within the time limit set forth above. Any certificate signed by the purchaser or lessee which sets forth a brief description of the property sold or leased and a statement that the purchaser or lessee has not exercised the right of rescission as provided for in this section within the time limit above set forth shall be conclusive evidence of its contents in favor of any third party acting in good faith and in reliance thereon. The remedy granted under this section shall not be cumulative with any remedy granted and exercised under the Interstate Land Sales Full Disclosure Act (15 U.S.C., Sec. 1701, et seq.) or any other federal act pursuant to which the purchaser or party contracting with respect to a lot in a land project may have a right of rescission.

This section shall not be applicable to conveyances of or contracts for the purchase and sale of lots, which conveyances were made or which contracts were executed prior to November 10, 1969.

Submission of Quarterly Reports on Lot Purchasers

11029. Each subdivider of a land project or his successor in interest shall submit reports on or before the 10th day of each calendar quarter listing the names and addresses of all persons who had agreed to purchase a lot or parcel in the subdivision and who subsequently had withdrawn or attempted to withdraw from the agreement either by formal notification to the subdivider, by failure to make payments for a period of 90 days or more after the due date thereof, by claim of rescission or otherwise. The obligation to make such reports shall terminate on the earliest to occur of the following events:

(a) Thirteen months after execution of conveyances or contracts for the purchase and sale of 90 percent of the lots within the subdivision.

(b) Three years after the issuance of the public report with respect thereto.

The commissioner may, however, adopt reasonable regulations to carry out the provisions of this chapter, for extension of the obligation to make such reports where the requirements to do so would otherwise expire pursuant to sudivision (b) above.

This section shall not be applicable to conveyances of or contracts for the purchase and sale of lots, which conveyances were made or which contracts were executed prior to November 10, 1969.

Article 12.5. Land Projects

2819.5. Definitions

(a) "Registered Voters" referred to in Section 11000.5 means voters registered at or about the time the subdivision questionnaire is filed, within the confines of the subdivision and within two miles of any point on the perimeter of the boundaries of the subdivision.

(b) "Builders" as used in Section 11000.6 means licensed *general* contractors.

(c) "Developer" as used in Section 11000.6 means any person or entity who, directly or indirectly, acquires for sale or lease 50 or more subdivision interests.

History: 1. New section filed 12-12-69; effective 1-11-70 (Register 69, No. 50).
2. Amendment filed 12-10-71; effective 1-9-72 (Register 71, No. 50).

2819.6. Rescission Rights. The purchaser or prospective purchaser may exercise his rights of rescission granted by Section 11028 by notifying the developer by mail, telegram or other writing of his decision to do so.

Where mail is used, notification shall be considered given at the time of mailing; when telegram is used, notification shall be considered given at the time of filing; and notification by other writing shall be considered given at the time delivered to the developer's designated place of business.

History: 1. New section filed 12-12-69; effective 1-11-70 (Register 69, No. 50).
2. Amendment filed 12-10-71; effective 3-6-72 (Register 71, No. 50).

2819.7. Disclosure of Rescission Rights. To inform a purchaser of his rights under Section 11028, the developer shall deliver with the public report as an attachment affixed on the front page thereof, the following notice printed in not less than twelve point Roman bold type face capital letters and numerals:

RESCISSION RIGHTS

IF YOU ENTER INTO AN AGREEMENT TO PURCHASE OR LEASE AN INTEREST IN THE LAND COVERED BY THE PUBLIC REPORT TO WHICH THIS NOTICE IS ATTACHED, YOU HAVE A LEGAL RIGHT TO RESCIND (CANCEL) THE AGREEMENT AND TO THE RETURN OF ANY MONEY OR OTHER CONSIDERATION THAT YOU HAVE GIVEN TOWARD THE PURCHASE OR LEASE UNTIL MIDNIGHT OF THE 14th CALENDAR DAY FOLLOWING THE DAY YOU EXECUTE THE CONTRACT TO PURCHASE OR LEASE.

YOU MAY EXERCISE THIS RIGHT WITHOUT GIVING ANY REASON FOR YOUR ACTION AND WITHOUT INCURRING ANY PENALTY OR OBLIGATION BY NOTIFYING _____

_____

_____

(Name of Developer)

AT _____

(Address of Developer's Place of Business)

OF SUCH CANCELLATION BY TELEGRAM, MAIL OR OTHER WRITTEN NOTICE SENT (IN THE CASE OF A TELEGRAM OR MAIL) OR DELIVERED (IN THE CASE OF OTHER WRITTEN NOTICE) NOT LATER THAN MIDNIGHT OF (date) _____. YOU MAY USE THIS NOTICE FOR THE PURPOSE OF CANCELLING THE AGREEMENT TO PURCHASE OR LEASE BY COMPLETING THE BLANKS AND BY DATING AND SIGNING BELOW. THE USE OF REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED IS RECOMMENDED FOR TRANSMITTAL OF THIS NOTICE OF CANCELLATION.

I HEREBY RESCIND MY AGREEMENT TO PURCHASE LOT (PARCEL) NO. _____ IN _____

(Name or Identifying Number of Subdivision)

THIS _____ DAY OF _____, 19__

(Signature of Purchaser)

(Signature of Purchaser)

2819.9. Submission of Evidence for Specific Findings. The subdivider, owner or his agent shall submit evidence to substatiate a request for specific findings referred to in Section 11025 of the Business and Professions Code to allow issuance of the Public Report. No specific findings as required by subsections (1) through (6) thereof will be made unless there is evidence submitted, along with such verification as the commissioner may require to warrant such findings.

2819.10. Land Project Treatment Exemption. Ordinarily the commissioner will consider a subdivision exempt under Section 11000.6(c) when, and for so long as, not less than 20 percent of all lots and parcels of the subdivision offered for residential use, including lots and parcels in all prior increments or phases of the subdivision are sold or offered for sale with a completed residential structure and with all other improvements necessary to occupancy completed or with adequate financial arrangements to assure completion.

2819.85. Submission of Advertising. The owner, agent or subdivider of a Land Project as defined in Section 11000.5 of the Business and Professions Code shall submit a true copy of any advertisement proposed to be used in connection with the offering, as part of the documentation required prior to the issuance of the Public Report.

Any material change to advertising previously filed or any new advertising matter subsequent to the issuance of the Public Report shall be submitted to the commissioner prior to use.

2819.96. Report of Withdrawals. Where the rate of withdrawal exceeds 10% of the total subdivision interests sold within the last year, the subdivider shall report such withdrawals pursuant to Section 11029 beyond the three-year period until 13 months after 90% of the subdivision interests have been sold or conveyed.

(Attachment 3)

(Would be land project but are less than 50 lots.)

DEPARTMENT OF REAL ESTATE
OF THE
STATE OF CALIFORNIA
(916) 322-2505

In the matter of the application of

WALO CORPORATION, INC.,
A California Corporation

for a Final Subdivision Public Report on

BLACK OAK ESTATES UNIT NO. 1

PLACER COUNTY, CALIFORNIA

FINAL SUBDIVISION
PUBLIC REPORT

FILE NO. 15,082 SAC

ISSUED JUNE 22, 1978
AMENDED JULY 12, 1978
EXPIRES JUNE 21, 1983

This Report Is Not a Recommendation or Endorsement of the Subdivision But Is Informative Only.

Buyer or Lessee Must Sign That He Has Received and Read This Report.

This Report Expires on Date Shown Above. If There Has Been a Material Change in the Offering, an Amended Public Report Must Be Obtained and Used in Lieu of This Report.

Section 35700 of the California Health and Safety Code provides that the practice of discrimination because of race, color, religion, sex, marital status, national origin or ancestry in housing accommodations is against public policy.

Under Section 125.6 of the California Business and Professions Code, California real estate licensees are subject to disciplinary action by the Real Estate Commissioner if they make any discrimination, distinction or restriction in negotiating a sale or lease of real property because of the race, color, sex, religion, ancestry or national origin of the prospective buyer. If any prospective buyer or lessee believes that a licensee is guilty of such conduct, he or she should contact the Department of Real Estate.

Information Regarding Schools can be found on Page 7 of this report.

READ THE ENTIRE REPORT on the following pages before contracting to purchase a lot in this SUBDIVISION.

R/E Form 618
10/76

SPECIAL NOTE

MOST OF THE SERVICES FURNISHED TO OWNERS AND OCCUPANTS OF SUBDIVISION PROPERTIES BY COUNTIES, CITIES, AND LOCAL DISTRICTS HAVE IN THE PAST BEEN FINANCED WHOLLY OR IN PART FROM PROPERTY TAX REVENUES. PROPOSITION 13 (JARVIS-GANN INITIATIVE) SEVERELY LIMITS THE AMOUNT OF MONEY AVAILABLE TO LOCAL GOVERNMENT THROUGH PROPERTY TAXATION. AS A RESULT, IT MAY BE NECESSARY FOR LOCAL GOVERNMENT TO ELIMINATE OR CURTAIL SERVICES THAT HAVE BEEN PROVIDED IN THE PAST. IT IS NOT PRESENTLY POSSIBLE TO PREDICT THE LEVEL OF ANY SERVICE TO BE PROVIDED TO THIS SUBDIVISION BY LOCAL GOVERNMENT.

SPECIAL NOTES

1. THIS FILING IS THE FIRST UNIT OF A DEVELOPMENT PLANNED FOR APPROXIMATELY 43 LOTS IF COMPLETELY DEVELOPED. THERE IS NO ASSURANCE THAT THIS PROJECT WILL BE COMPLETED AS PROPOSED.

2. THE FOLLOWING WAS IMPOSED UPON THE BLACK OAK ESTATES SUBDIVISION AS A CONDITION OF APPROVAL BY THE PLACER COUNTY PLANNING COMMISSION:

   THE FIRST SALE OF EACH SEPARATE LOT IN THE SUBDIVISION SHALL BE SUBJECT TO COMPLETION OF A SATISFACTORY WELL UNLESS THE BUYER WAIVES THIS REQUIREMENT IN WRITING. THE WELL SHALL BE DEEMED SATISFACTORY IF:

   A. THE WELL COMPLIES WITH F.H.A. STANDARDS; OR

   B. THE WELL DOES NOT COMPLY WITH F.H.S STANDARDS, THE WELL IS SATISFACTORY TO AND APPROVED BY THE BUYER IN WRITING.

   PROOF THAT A SATISFACTORY WELL HAS BEEN COMPLETED, OR WAIVED SHALL BE RECORDED AT THE CLOSE OF ESCROW. SUCH PROOF MAY BE BY:

   A. RECORDING THE BUYER'S WRITTEN APPROVAL OF WAIVER; OR

   B. RECORDING A VERIFIED CERTIFICATE EXECUTED BY THE WELL DRILLER STATING THE TESTS MADE BY HIM, THE RESULTS OF SUCH TESTS, THE RELATIONSHIP OF SUCH TEST RESULTS TO THEN APPLICABLE F.H.A. STANDARDS, AND STATING THAT THE WELL COMPLIES WITH SUCH STANDARD.

   LOT PURCHASERS WILL BE REQUIRED TO PAY ALL COSTS OF DRILLING A WELL. YOU HAVE THE ALTERNATIVE TO BUY SUBJECT TO COMPLETION OF A SATISFACTORY WELL OR TO WAIVE THIS REQUIREMENT AS PART OF YOUR ESCROW.

3. THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

   PURCHASERS MAY DISCUSS WITH THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVEMENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

LOCATION AND SIZE: This subdivision contains 17 lots on 85 acres which includes Lots "A" and "B", in Placer County at Dry Creek and Black Oak Roads approximately 4-1/2 miles north of Auburn.

EASEMENTS: Easements for utilities, drainage, rights of way, building setbacks and other purposes are shown on the title report and subdivision map recorded in the Office of the Placer County Recorder, Book L of Maps, Page 59.

Direct access to Dry Creek Road from Lot 1 is not permitted.

USES AND ZONING: The Auburn Airport is 1-1/2 miles west of the site. Lot A is designated an open space easement. Lot B is designated an open space, firepond and access easement.

Ownership of Lots A and B will be retained by the developer and its use will not be for the benefit of lot purchasers. Lots A and B are zoned open space, which provides for such uses as outdoor amphitheaters, airstrips, picnic areas, ciop and tree farming, grazing of livestock, public utility buildings, public dumps, public and prive playground, riding stables, and golf courses. The CC&R's recorded as Instrument No. 22248, provide that the owner of Lot A and B shall have the right to develop a commercial enterprise for profit, including the construction of necessary buildings in accordance with the ordinance governing open space zoning. There is no assurance that any development will be done by this developer or any other developer.

RESTRICTIONS: This subdivision is subject to restrictions recorded in the Office of the Placer County Recorder, as Instrument No. 22248, which include, among other provisions, the following:

> Prior to any construction, you must obtain approval of your plans by the Architectural Control Committee. This committee is appointed by the subdivider.

BUILDING RESTRICTIONS: Minimum floor space: 1,600 square feet for single story.
1,200 square feet for more than one story. (per ground floor)

Each lot owner will be a member of the Black Oak Estates Unit No. 1 Property Owners Association. The roads and fire pond shown on the subdivision map shall be maintained by the association.

> FOR INFORMATION AS TO YOUR OBLIGATIONS AND RIGHTS, YOU SHOULD READ THE RESTRICTIONS. THE SUBDIVIDER SHOULD MAKE THEM AVAILABLE TO YOU.

CONDITIONS OF SALE: If your purchase involves financing a form of deed of trust and note will be used. These documents contain the following provisions:

> An Acceleration Clause. This means that if you default in your payment, the lender may declare the entire unpaid loan balance immediately due and payable.

PURCHASE MONEY HANDLING: The subdivider mutt impound all funds received from you in an escrow depository until legal title is delivered to you. (Refer to Section 11013.2 (a) of the Business and Professions Code.)

WATER: There is no regular water service to this tract. Private water wells are the only source of water in this tract; and you will be required to pay all costs to have a well installed. The subdivider's well driller has submitted the following information:

> Wells in this area should average from 145' to 300'. The cost of these wells will be approximately $10.00 per foot. The approximate cost of a pressure system and pump is $1,250.00. Wells in this area produce potable water.
>
> Total cost for a well approximately $2,750.00 to 4,250.00.

WATER (continued)

The State Water Code requires a Notice of Intention to drill a well and a Report of Completion to be filed with the Department of Water Resources.

FIRE PROTECTION: The Rock Creek Fire Protection District advises as follows:

"This area was recently annexed to the Rock Creek Fire Protection District, and fire protection will be furnished by the Rock Creek Fire Department.

Our ability to provide fire protection is contingent upon availability of water. Since this is in a rural area where no water mains exist and wells will furnish domestic water, plans must include a pond or reservoir with an all weather access road for fire apparatus passage.

This reservoir must produce 500 GPM for 4 hours or contain 120,000 gallons to meet fire suppression needs. These requirements are stated in the Placer County Land Manual. The following list is a list of units that will respond to this area and approximate response times.

First Alarm - Atwood Station #1, Highway 49, Station #2.

2- 1,000 GPM pumpers, 750 gal. tanks, each with crew of three.
1- 2,300 gal. tanker, 250 gpm crew of one.
1- 250 gal. rescue/mini pumper 250 gpm. crew of two.

Second Alarm - if needed:

1- 600 gpm pumper, 500 gal. tank, crew of two.
1- 750 gpm pumper 500 gal. tank, crew of three.
1-2,300 gal. tanker, 250 gpm. crew of one.

Response time for these units five to eight minutes from stations.

GAS: Natural gas is not available.

ELECTRICITY: Pacific Gas and Electric Company advises:

"The subdivider has advised us that he does not plan to make arrangements with PG&E to provide electric service to the lot line of each lot within this subdivision.

We certify that overhead electric distribution to Black Oak Estates, #1 can be supplied under our Electric Rule 15. However, there may be instances where it is determined that the extension of electric distribution facilities under the regular provisions of these rules is not feasible. In these instances the exceptional cases provisions of the rules would be invoked requiring, among other things, the payment of cost of ownership charges.

ELECTRICITY (continued)

Lot 11, the most remote lot, is located approximately 3,750 feet from our existing overhead electric facilities. If service is desired to this lot, the approximate cost including the cost of ownership charges would amount to $33,750.00.

The charges quoted are based on current tariffs for an electric distribution system. However, the actual charges for the electric distribution system will be established in accordance with the current extension rules in effect at the time of the installation."

TELEPHONE: Pacific Telephone and Telegraph Company advises:

"It appears that the minimum lot is three acres or more, therefore, under the present regulations of the California Public Utility Commission telephone facilities may be placed overhead.

Pacific Telephone Company expects to be in a position to provide telephone service to applicants in the above-listed development upon request and in accordance with requirements of and at rates and charges specified in its tariffs on file with the California Public Utilities Commission.

This development is located outside our existing base rate area. The most remote lot is approximately 3,900 feet from our existing facilities. Therefore, line extension along public thoroughfare will be involved. The Utility will provide without cost the first 1,000 feet. The individual applicant on the most remote lo would be required to pay one-half of the cost of extending telephone facilities beyond that point. At the present time this cost is estimated to be $6,125.00. If the individual applicant requests the most remote portion of this lot, the distance would be approximately 600 feet. The Utility will provide, at its cost, the first 300 feet. The individual applicant would be responsible for the 75% of the remaining 300 feet. This cost is estimated at this time to be $543.00.

If you have any questions or need further information, please contact Mr. R. M. Roudebush at (916) 885-1797."

SEWAGE DISPOSAL: Septic tanks will be used for sewage disposal. You must pay for your septic tank. The developer estimates the cost to be $1,800.00. Prior to commencing construction, you should contact the local health department for specifications, requirements and any local problems.

STREETS AND ROADS: As of the date of this report, streets have not been completed. The subdivider has posted a bond with the county to ensure completion to county standards.

Subdivider has 18 months to complete. The time limit may be extended by the county.

The roads within this subdivision are private. The repair and maintenance of these private roads will be in accordance with provisions included in the CC&R's which allow for annual assessments.

33-716 O - 78 - 40

STREETS AND ROADS (continued)

THE SUBDIVIDER SHOULD PROVIDE YOU WITH A COPY OF THIS AGREEMENT.

An engineer estimates it will cost $5.02 per lineal foot to bring roads to county standards and that the annual cost for maintaining roads as existing at time of sale will be $0.39 per lineal foot.

SCHOOLS: The Placer Hills Union School District advises as follows:

"The Placer Hills Elementary School District serves this geographic region and is therefore responsible for the education of the students this subdivision will generate.

Our projection of .9 students per unit is commensurate with the population trend in Christian Valley. This will be approximately 14 additional students. We are presently on double session at the Kindergarten through sixth grade levels. The students in grades K-6 are served at Placer Hills School in Meadow Vista. The students in grades 7-8 will attend Weimar Hills School in Weimar. Bus transportation will be available."

The Placer Union High School District provides the following information:

This subdivision is located approximately 16-1/2 miles from Colfax, Placer County, and is within the attendance area of Colfax High School in Colfax. Student transportation to Colfax High School will be provided at district expense per district policy.

NOTE: This school information was correct as of the date of this report. Purchasers may contact the local school district for current information on school assignments, facilities and bus service.

For further information in regard to this subdivision, you may call (916) 322-2505, or examine the documents at the Department of Real Estate, 4433 Florin Road, Suite 250, Sacramento, California 95823.

(Would be land project but are less than 50 lots.)

DEPARTMENT OF REAL ESTATE
OF THE
STATE OF CALIFORNIA
(916) 322-2505

In the matter of the application of

NICHOLS DEVELOPMENT INC.,
A California Corporation

for a Final Subdivision Public Report on

PINE CREEK ESTATES
TRACT NO. 77-1003

TEHAMA COUNTY, CALIFORNIA

FINAL SUBDIVISION
PUBLIC REPORT

FILE NO. 14,038 SAC

ISSUED SEPTEMBER 23, 1977

EXPIRES SEPTEMBER 22, 1982

This Report Is Not a Recommendation or Endorsement of the Subdivision But Is Informative Only.

Buyer or Lessee Must Sign That He Has Received and Read This Report.

This Report Expires on Date Shown Above. If There Has Been a Material Change in the Offering, an Amended Public Report Must Be Obtained and Used in Lieu of This Report.

Section 35700 of the California Health and Safety Code provides that the practice of discrimination because of race, color, religion, sex, marital status, national origin or ancestry in housing accommodations is against public policy.

Under Section 125.6 of the California Business and Professions Code, California real estate licensees are subject to disciplinary action by the Real Estate Commissioner if they make any discrimination, distinction or restriction in negotiating a sale or lease of real property because of the race, color, sex, religion, ancestry or national origin of the prospective buyer. If any prospective buyer or lessee believes that a licensee is guilty of such conduct, he or she should contact the Department of Real Estate.

Information Regarding Schools can be found on Pages 8 and 9 of this report.

READ THE ENTIRE REPORT on the following pages before contracting to purchase a lot in this SUBDIVISION.

R/E Form 618
10/76

SPECIAL NOTES

1. THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

   PURCHASERS MAY DISCUSS WITH THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST, AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVE-MENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

2. YOUR ATTENTION IS DIRECTED TO THE SECTION HEADED "TELEPHONE".

3. THE PINE CREEK ESTATES OWNERS ASSOCIATION SHALL BE FORMED AND SHALL EXIST ONLY FOR THE CONVENIENCE OF THE OWNERS TO ASSIST WITH THE MAINTENANCE AND UPGRADING OF THE PROPERTIES AND TO CARRY OUT THE GENERAL PURPOSES OF THE OWNERS. THE ASSOCIATION SHALL NOT ENGAGE IN ANY BUSINESS OR PROFIT-MAKING ING ACTIVITIES, BUT SHALL EXIST ONLY AS AN ARRANGEMENT FOR THE PROTECTION OF THE PROPERTY INTERESTS OF THE MEMBERS.

   THE SOLE INCOME OF THE ASSOCIATION SHALL BE DERIVED FROM ASSESSMENTS RECEIVED FROM INDIVIDUAL MEMBERS.

   AS EACH PARCEL IS SOLD OUT OF THE PROPERTIES AND PASSES OUT OF THE TITLE OF DECLARANTS, ITS NEW OWNERS SHALL BE OBLIGATED TO PAY TO THE ASSOCIATION AN INITIATION FEE OF $40.00 PER PARCEL PURCHASED. SUBSEQUENT PASSAGE OF TITLE FROM SUCH NEW OWNER TO A SUBSEQUENT OWNER SHALL NOT BE SUBJECT TO THE INITIATION FEE.

   AS AN INITIAL MAINTENANCE AND UPGRADE FUND PAYMENT, EACH NEW OWNER AND SUBSEQUENT OWNER CONVENANTS AND AGREES TO PAY TO THE ASSOCIATION $80.00 PER YEAR PER PARCEL OF THE PROPERTIES OWNED. PAYMENTS SHALL BE DUE ON THE 10TH DAY OF OCTOBER OF EACH YEAR, BEGINNING ON OCTOBER 10, 1978.

4. THE SUBDIVIDER ADVISES THAT A SAVINGS ACCOUNT IS ESTABLISHED AT NORTH VALLEY BANK, RED BLUFF BRANCH, IN THE NAME OF "PINE CREEK ESTATES OWNERS ASSOCIATION" WITH AN INITIAL DEPOSIT OF $1,920.00 TO COVER THE INITIATION FEE AS REQUIRED BY ARTICLE XIV, SECTION 8 OF THE DECLARATION OF RESTRICTIONS OF PINE CREEK ESTATES, TRACT 77-1003, TEHAMA COUNTY, CALIFORNIA. UPON THE SALE OF EACH LOT THE $40.00 INITIATION FEE SHALL BE PAID TO NICHOLS DEVELOPMENT, INC., AS A REFUND OF SAID DEPOSIT.

LOCATION AND SIZE: In Tehama County, adjacent to Pine Creek Road at Montecito Road. Approximately 420 acres divided into 48 lots or parcels.

EASEMENTS: Easements for utilities, rights of way, and other purposes are shown on the title report and subdivision map recorded in the Office of the Tehama County Recorder, Book "S" of Maps, Pages 126-132

MINERAL RIGHTS: You will not own the mineral, oil, and gas rights under your land. These have been reserved as follows

EXCEPTING all oil, oil rights minerals, mineral rights natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be located below the above described property without the right of surface entry to a depth of 500 feet below the surface of said lands, as conveyed in the deed from Nichols Development Inc., a California Corporation, to Frank B. Nichols and Darlene M. Nichols, recorded September 19, 1977 as Instrument No. 9789, which deed recites in part:

(1) "TOGETHER WITH the perpetual right of drilling, mining, exploring, and operating therefor and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than the said lands, oil or gas wells, tunnels and shafts into through or across the surface of the said land and to bottom whipstocked or directionally drilled wells, tunnels and shafts under or beneath or beyond the exterior limits thereof and to redrill, retunnel, equip, maintain repair, deepen and operate any such wells or mines from through, or within or under the parcels of land described."

(2) "GRANTOR hereby grants to Grantee all of the necessary rights to the u of the surface for oil and gas well drill sites as to Lot 41 along wit all the necessary rights for ingress and egress for roads, pipelines, and utility lines to and from said drill site lands across common road easements as shown on said Subdivision Map and the necessary rights for maintenance, repairs, and replacement."

USES AND ZONING: This subdivision is zoned R1-A-T-B:Z, One Family Residential-Agricultural-Special Trailer Site-Special Building Site.

RESTRICTIONS: This subdivision is subject to restrictions recorded in the Office of the Tehama County Recorder, Book 725, Page 650 which include, among other provisions the following:

Prior to any construction, you must obtain approval of your plans by the Architectural Control Committee. This committee is appointed by the subdivider.

Building Restrictions:

Minimum size house shall be one thousand square feet of indoor living area.

Architecture shall be rustic or ranch style

Exterior colors shall be natural "earth colors" such as grey, green, brown, dull red, gold, dull yellow, etc.

Roof color shall be dark. White or very light colors are not allowed on roofs.

Whenever construction of any building, or other structure shall be commenced, it shall be diligently prosecuted to completion and in no event shall completion be later than one hundred eighty days for the exterior of the building from commencement thereof.

RESTRICTIONS - Continued:

MOBILE HOME REQUIREMENTS

Only NEW mobile homes shall be allowed to be placed on said Properties.

Minimum size mobile home shall be a 20 foot double wide exclusive of any expando rooms and shall contain not less than one thousand square feet of living area exclusive of trailer hitch, overhang, or porches.

Mobile home siding shall be a rustic wood, wood textured masonite or shiplap. Metal siding is not allowed.

Roofing shall be composition shingle, wood shake or other roofing material approved by the Board, however metal roofing is not allowed.

Skirting to match siding or to be of a rustic wood type and skirting to be installed within 90 days after mobile home is placed on the lot. Metal skirting is NOT ALLOWED.

Structures or roofs covering the mobile home shall not be permitted and the height of structures adjoining or near the mobile home such as a carport or cabana shall not exceed the height of the mobile home unless specifically approved in writing by the Architectural Control Committee prior to construction.

FOR INFORMATION AS TO YOUR OBLIGATIONS AND RIGHTS, YOU SHOULD READ THE RESTRICTIONS. THE SUBDIVIDER SHOULD MAKE THEM AVAILABLE TO YOU.

TAX ESTIMATES: If the subdivider is unable to give you the current tax information for your lot, you may approximate your taxes as follows:

TAKE 25% OF THE SALES PRICE, DIVIDE BY 100, AND THEN MULTIPLY BY THE TOTAL TAX RATE. THE TAX RATE FOR THE 1976-77 FISCAL YEAR IS $8.57. THE TAX RATE AND ASSESSED VALUATION MAY CHANGE IN SUBSEQUENT YEARS. FOR EXAMPLE, ANY BONDED DEBT OR SPECIAL DISTRICT ASSESSMENT APPROVED AFTER THE ABOVE TAX RATE HAD BEEN SET COULD INCREASE THE FUTURE RATE.

CONDITIONS OF SALE: If your purchase involves financing, a form of deed of trust and note will be used. These documents contain the following provisions:

Installment Note. The following applies only to an installment note which may be used as a part of financing for this subdivision.

Late Charge. Any payment reaching Beneficiary or his designated agent more than 15 days after the due date of the monthly installment, or any payment by check that is dishonored by Trustor's Bank for any reason, shall, at the option of the Beneficiary or his agent, be subject to a late charge to defray added administrative expenses in the amount equal to 5% of said installment, however in no case shall said late charge be less than $5.00. Failure to pay such late charge when called for by Beneficiary shall constitute a default and afford Beneficiary the same remedies as provided herein for default in an installment payment.

CONDITIONS OF SALE-Continued:

Allocation of Payment. Each payment received shall be credited first to the late charge, if any, then to the interest due, and the remainder on the principal balance.

Dishonored Check. In the event a payment is dishonored by Trustor's bank for any reason whatsoever, Beneficiary or his designated agent shall have the option of requiring ALL payments thereafter be made in the form o a money order, cashier's check or certified funds Failure by Beneficiary or his agent to exercise any of the options herein specified shall not constitute a waiver of his right to exercise such options for subsequent defaults.

PURCHASE MONEY HANDLING: The subdivider must impound all funds received from you in an escrow depository until legal title is delivered to you. (Refer to Section 11013.4(a) of the Business and Professions Code.)

FILLED GROUND: The subdivider's engineer advises as follows:

The grading of this subdivision is confined to road construction only and no fills on lots exist or are planned. Fills on roads will not exceed 10 feet in depth and have been constructed to meet Tehama County specifications.

WATER: There is no regular water service to this tract. Private water wells are the only source of water in this tract and you will be required to pay all costs to have a well installed. The subdivider's well driller has submitted the following information:

Potable water in suitable quantities for domestic use may be found from 150 feet to 200 feet deep. Cost of drilling and casing a 6" well in this area is $10.00 per foot. A pump and pressure system could be around $850.00 installed.

Tehama County Health Department advises that there should be no problem obtaining individual wells and potable water provided the well installation is located and constructed properly.

The State Water Code requires a Notice of Intention to drill a well and a Report of Completion to be filed with the Department of Water Resources.

FIRE PROTECTION: The California Department of Forestry will serve the Pine Creek Estates Subdivision as follows:

In the event of unwanted fires, the following fire suppression equipment would respond to this area. Triple combination, structure type engines would respond year around from Red Bluff and Proberta Schedule "A" Stations.

FIRE PROTECTION - Continued:

In addition to the above, Tehama Rural Fire Units from Volunteer Fire Departments located at Antelope, Bend and Bowman would be initially dispatched if required. During the fire season (dry months) CDF equipment from the California Department of Forestry Headquarters in Red Bluff, Baker and Red Bank Stations would respond if necessary.

During the summer months, most of the Tehama County lands are dry and fire hazardous.

ELECTRICITY: "Pacific Gas and Electric Company advises that an electric extension of approximately 5,700 feet would be required to serve Lot No. 17, which is the farthest from our existing electric distribution facilities.

In view of the disproportionate ratio between the cost of extending electric facilities to the farthest lot, and the anticipated annual revenue, it would not be economically feasible to establish service to a single residential applicant under the standard provisions of our extension rule. The exceptional cases provisions of the rule might be invoked requiring, in addition to the extension advance, the payment of cost of ownership charges. Therefore, based on current costs, it may cost roughly $38,000 to make electric service available to the most remote lot. Any extension to and within this development would be dependent upon acquiring satisfactory rights of way.

Since the 48 lots shown on the map are 5 - 27 acres and larger in size, the above costs are based on overhead construction; however, to permit overhead construction, the following conditions apply:

(1) Local ordinances do not require underground construction.

(2) Local ordinances or land use policies do not permit further division of the parcels involved such that parcel sizes less than 3 acres could be formed.

(3) Local ordinances or deed restrictions do not allow more than one single family dwelling or accommodation on each parcel of less than 3 acres, or any portion of a parcel of less than 3 acres."

GAS: Natural gas is not available.

TELEPHONE: Pacific Telephone and Telegraph Company advises as follows:

"We may not be able to provide telephone service to applicants located within this development until approximately the first quarter of 1978. The reinforcement of our facilities from our central office to this area is scheduled in the first quarter of 1978.

TELEPHONE - Continued:

"As the developer is not providing telephone facilities in this development and the development is outside our Base Rate Area, the individual applicant would be required to pay in advance a line extension charge to and upon the property to be served equal to 50% of the total costs of constructing facilities to the property and 75% of the total costs within the property boundaries. These amounts would include a free extension of 1,000 feet to the property and 300 feet on the property to be served, as provided for in Schedule 23T of our tariffs. This charge could amount to as much as $9,612.00 and is based on the lot furthest from our existing aerial facilities. Any other lot would have to be figured on an individual basis and could be of a lesser amount. The above charges are in accordance with Schedule 23T of our tariffs.

We plan to extend our facilities into the development from existing aerial facilities on Pine Creek Road, although no determination has been made whether to serve underground or aerial.

If the underground facilities are requested, the applicant will be required to furnish install and maintain the underground supporting structure on the property to be served as well as a suitable building entrance arrangement The underground supporting structure is usually a trench and backfill, but conduit is occasionally required at the discretion of the Telephone Company Building entrance arrangements usually consist of a short section of condui from the bottom of the trench to the wall mounted termination point. Normal service connection charges will apply."

SEWAGE DISPOSAL: Septic tanks will be used for sewage disposal. You must pay for your septic tank. Prior to commencing construction you should contact the local health department for specifications, requirements, and any local problems.
The Tehama County Health Department advises as follows:

Twenty soil profiles were evaluated in the subdivision and all showed good leach field percolation. Due to the size of the lots and numerous potential building sites a soil percolation test may be required by this department prior to obtaining a building permit from the Tehama County Building and Safety Department

The subdivider's engineer advises as follows:

The septic system for two bedroom homes with 1,000 gallon tank and leachline, with leachline varing from perk test would be approximately $700 to $900.00.

The septic system for three bedroom homes with 1,200 gallon septic tank and leachlines would be approximately $750 to $1,000.00.

STREETS AND ROADS: The subdividers engineer advises that the roads in this subdivision have been completed to Tehama County requirements for private gravelled roads. The minimum width on the main road is 24 feet of gravel base and on the secondary roads is 20 feet of gravel base. The aggregate road base is a minimum of 6 inches deep.

The annual maintenance cost for the private gravelled roads servicing said subdivision is estimated at $0.10 per lineal foot x 12,000 lineal feet results in $1,200 per year.

The cost to upgrade said roads to county standards of a double seal coat is $0.09 per square foot x 288,000 square feet results in $25,920.00.

SCHOOLS: The Red Bluff Union High School District advises as follows:

> The above subdivision is located approximately six miles from Red Bluff and high school students living in this area would attend Red Bluff Union High School. Transportation for these students would be provided, and it is approximately three miles to the nearest bus stop. Elementary students would attend Reeds Creek Elementary School.
>
> The Board may provide transportation to children living beyond the minimum distances provided by law as follows:
>
> Kindergarten through Grade 3 . . . . . 3/4 mile
> Grades 4 through 8 . . . . . 1 mile
> Grades 9 through 12 . . . . . 2 miles
>
> The Board may provide money in lieu of transportation when in its judgment it is not economical or practical to provide transportation. Money paid in lieu of transportation shall not exceed the following:
>
> 2 to 4 miles . . . . . 25¢ per day
> Over 4 miles . . . . . 50¢ per day
> Not more than $1.50 per day shall be paid to one family
>
> The superintendent shall in extreme hardship cases recommend to the Board alternative in lieu payments for transportation on an individual basis.
>
> Distance shall be calculated to the school or the nearest bus stop, whichever is the closer. Children living at a distance from school which in the judgment of the Board is too great for transportation shall be paid $1.50 per day for board and room.
>
> The transportation system shall be under the direction of the High School District who shall contract with the Union School District for the transportation of elementary school pupils.

SCHOOLS - Continued:

The Board may contract with other Elementary School Districts for transportation of children. Children may not be transported from one Elementary School District to another unless such a contract is entered into.

NOTE: This school information was correct as of the date of this report. The purchasers may contact the local school district for current information on school assignments, facilities, and bus service.

SHOPPING FACILITIES: City of Red Bluff is located approximately 5 miles from said subddvision and has full shopping services.

For further information in regard to this subdivision, you may call 916-322-2505, or examine the documents at the Department of Real Estate, 714 P Street, Room 1400, Sacramento, California 95814.

(Urban project)

DEPARTMENT OF REAL ESTATE
OF THE
STATE OF CALIFORNIA
(213) 6202-2700

In the matter of the application of

WARMINGTON DEVELOPMENT, INC.,
A California Corporation

for a Final Subdivision Public Report on

TRACT NO. 9541, "THE COVENTRY"

ORANGE COUNTY, CALIFORNIA

FINAL SUBDIVISION
PUBLIC REPORT

FILE NO. 41400 LA

ISSUED MAY 19, 1978

EXPIRES MAY 18, 1983

This Report Is Not a Recommendation or Endorsement of the Subdivision But Is Informative Only.

Buyer or Lessee Must Sign That He Has Received and Read This Report.

This Report Expires on Date Shown Above. If There Has Been a Material Change in the Offering, an Amended Public Report Must Be Obtained and Used in Lieu of This Report.

Section 35700 of the California Health and Safety Code provides that the practice of discrimination because of race, color, religion, sex, marital status, national origin or ancestry in housing accommodations is against public policy.

Under Section 125.6 of the California Business and Professions Code, California real estate licensees are subject to disciplinary action by the Real Estate Commissioner if they make any discrimination, distinction or restriction in negotiating a sale or lease of real property because of the race, color, sex, religion, ancestry or national origin of the prospective buyer. If any prospective buyer or lessee believes that a licensee is guilty of such conduct, he or she should contact the Department of Real Estate.

Information Regarding Schools can be found on Page 4 of this Report.

READ THE ENTIRE REPORT on the following pages before contracting to purchase a lot in this SUBDIVISION.

R/E Form 618
10/76

COMMON INTEREST SUBDIVISION GENERAL INFORMATION

The project described in the attached Subdivision Public Report is known as a common-interest subdivision. **Read the Public Report carefully** for more information about the type of subdivision. The subdivision includes common areas and facilities which will be owned and/or operated by an owners' association. **Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities.** Since membership in the association is mandatory, **you should be aware** of the following information before you purchase:

Your ownership in this development and **your rights and remedies as a member of its association will be controlled** by governing instruments which generally include a Declaration of Restrictions (also known as CC&R's), Articles of Incorporation (or association) and Bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. **Study these documents** carefully before entering into a contract to purchase a subdivision interest.

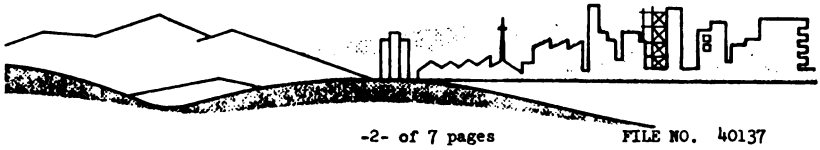
In order to provide funds for operation and maintenance of the common facilities, **the association will levy assessments against your lot/unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot/unit may be liened and sold through the exercise of a power of sale.** The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. **Ask to see a copy of the budget** if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this subdivision. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. **The purchaser of an interest in a common-interest subdivision should contemplate active participation in the affairs of the association.** He or she should be willing to serve on the board of directors or on committees created by the board. **In short, "they" in a common-interest subdivision is "you".** Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which **can have a significant impact upon the quality of life for association members.**

Until there is a sufficient number of purchasers of lots or units in a common-interest subdivision to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. **It is vitally important to the owners** of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common-interest subdivision, you should consider factors beyond the attractiveness of the dwelling units themselves. **Study the governing instruments and give careful thought** to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. **Remember** that managing a common-interest subdivision is very much like governing a small community . . . the management can serve you well, but **you will have to work for its success.**

DRE



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CONDITIONS OF SALE - ALL INCLUSIVE (WRAP-AROUND) DEED OF TRUST (Cont)

IF THE SUBDIVIDER FAILS TO MAKE A PAYMENT TO THE BENEFICIARY OF THE FIRST DEED OF TRUST, THE BENEFICIARY CAN FORECLOSE ONTHE PROPERTY EVEN THOUGH YOU HAVE MADE ALL OF THE PAYMENTS FOR WHICH YOU ARE OBLIGATED. TO PRECLUDE THIS POSSIBILITY, PROVISION HAS BEEN MADE TO FURNISH YOU WITH NOTICE OF ANY FAILURE OF THE SUBDIVIDER TO MAKE A PAYMENT DUE ON THE FIRST DEED OF TRUST. UPON RECEIPT OF NOTICE OF A FAILURE OF THE SUBDIVIDER TO MAKE PAYMENTS DUE UNDER THE FIRST DEED OF TRUST, YOU MAY MAKE YOUR PAYMENTS UNDER THE ALL-INCLUSIVE DEED OF TRUST DIRECTLY TO THE BENEFICIARY OF THE FIRST DEED OF TRUST UNDER THE TERMS OF THE ALL-INCLUSIVE DEED OF TRUST. THE ALL-INCLUSIVE DEED OF TRUST PROVIDES FOR A MONETARY PENALTY IN THE CASE OF A LATE PAYMENT AND THE ENTIRE OUTSTANDING BALANCE OF THE ALL-INCLUSIVE DEED OF TRUST MAY BE DUE AND PAYABLE IN CASE OF SALE OF THE PROPERTY BY YOU.

PRIOR TO YOUR ENTERING INTO THE FINANCING PLAN OF THE SUBDIVIDER, YOU SHOULD CAREFULLY STUDY THE TERMS OF THE ALL-INCLUSIVE DEED OF TRUST AND THE ATTENDANT INSTRUMENTS. IF YOU ARE UNABLE TO UNDERSTAND YOUR RIGHTS AND YOUR OBLIGATIONS UNDER THE FINANCING PLAN, THEN IT IS RECOMMENDED THAT YOU DISCUSS IT WITH YOUR ATTORNEY OR WITH A KNOWLEDGE-ABLE OFFICER OF A FINANCIAL INSTITUTION WITH WHOM YOU ARE ACQUAINTED.

PURCHASE MONEY HANDLING: The subdivider must impound all funds received from you in an escrow depository until legal title is delivered to you. The subdivider of this project has posted a blanket bond covering this and other subdivisions in the amount of $200,000.00. This is the limit of amounts not required to be impounded as of the date of issuance of this report. The subdivider may increase or decrease the bond amount in the future. (Refer to Sections 11013 and 11013.2(c) of the Business and Professions Code.)

GEOLOGIC CONDITIONS: THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

PURCHASERS MAY DISCUSS WITH THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST, AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVE-MENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

FILLED GROUND: Some lots will contain filled ground varying to a maximum depth of 5.9 feet. These soils are to be properly compacted for the intended use under the supervision of a state licensed engineer.

SEWAGE DISPOSAL: Lots will be subject to a service charge of $3.70 every two months for sewage disposal.

PUBLIC TRANSPORTATION: Dial-A-Ride (cab-like transportation system) charges $.50 for rides anywhere within the city limits of Orange.

SCHOOLS: The Orange Unified School District has furnished information of the nearest schools, distances to the most remote lot, availability of school bus transportation, and bus charges, as indicated:

Schools	Distance (Miles)	Bus Available
Esplanade Elementary 381 N. Esplanade	1/2	No
Santiago Junior High 515 N. Rancho Santiage Blvd.	1/2	No
El Modena High 3920 Spring Street	3/4	No

NOTE: This school information was provided by the school district prior to issuance of the public report. Purchasers may contact the local school district office for any changes in school assignments, facilities and bus service.

For further information in regard to this subdivision you may call (213) 620-2700 or examine the documents at the Department of Real Estate, 107 South Broadway, Room 7001, Los Angeles, California 90012.

SPECIAL NOTES

THIS PROJECT IS A CONDOMINIUM. IT WILL BE OPERATED BY AN UNINCORPORATED OWNERS ASSOCIATION. THE ASSOCIATION HAS THE RIGHT TO LEVY ASSESSMENTS AGAINST YOU FOR MAINTENANCE OF THE COMMON AREAS AND OTHER PURPOSES. YOUR CONTROL OF OPERATIONS AND EXPENSES IS NORMALLY LIMITED TO THE RIGHT OF YOUR ELECTED REPRESENTATIVES TO VOTE ON CERTAIN PROVISIONS AT MEETINGS.

SINCE THE COMMON PROPERTY AND FACILITIES WILL BE MAINTAINED BY AN ASSOCIATION OF HOMEOWNERS, AND IT IS ESSENTIAL THAT THIS ASSOCIATION BE FORMED EARLY AND PROPERLY, THE DEVELOPER MUST:

1) PAY ALL THE MONTHLY ASSESSMENTS WHICH HE OWES TO THE HOMEOWNERS ASSOCIATION FOR UNSOLD UNITS -- THE PAYMENTS MUST COMMENCE IMMEDIATELY AFTER SUBDIVIDER CLOSES FIRST SALE (Regulations 2792.9 and 2792.16).

THE HOMEOWNER ASSOCIATION MUST:

2) CAUSE THE FIRST ELECTION OF THE ASSOCIATION'S GOVERNING BODY TO BE HELD WITHIN 45 DAYS AFTER 51% SELL-OUT, OR IN ANY EVENT, NO LATER THAN SIX MONTHS AFTER CLOSING THE FIRST SALE. (Regulations 2792.17 and 2792.19); AND

3) PREPARE AND DISTRIBUTE TO ALL HOMEOWNERS A BALANCE SHEET AND INCOME STATEMENT. (Regulation 2792.22).

THE SUBDIVIDER HAS STATED THAT HE WILL PROVIDE YOU WITH A COPY OF THE RESTRICTIONS AND BYLAWS, BY POSTING THEM IN A PROMINENT LOCATION IN THE SALES OFFICE AND FURNISHING YOU COPIES PRIOR TO CLOSE OF ESCROW. THESE DOCUMENTS CONTAIN NUMEROUS MATERIAL PROVISIONS THAT SUBSTANTIALLY AFFECT AND CONTROL YOUR RIGHTS, PRIVILEGES, USE, OBLIGATIONS, AND COSTS OF MAINTENANCE AND OPERATION. YOU SHOULD READ AND UNDERSTAND THESE DOCUMENTS BEFORE YOU OBLIGATE YOURSELF TO PURCHASE A UNIT.

THE SUBDIVIDER STATED HE WILL FURNISH THE CURRENT BOARD OF OFFICERS OF THE HOMEOWNER ASSOCIATION THE BUILDING PLANS TO INCLUDE DIAGRAMS OF LOCATION OF MAJOR COMPONENTS, UTILITIES AND RELATED DATA. THESE ITEMS WILL BE IMPORTANT TO THE BOARD OF OFFICERS OR THOSE WHO WILL MANAGE OR REPAIR COMMON FACILITIES IN THIS SUBDIVISION.

THE SUBDIVIDER OF THIS PROJECT HAS INDICATED THAT HE INTENDS TO SELL ALL OF THE UNITS IN THIS PROJECT. HOWEVER, ANY OWNER, INCLUDING THE SUBDIVIDER, HAS A LEGAL RIGHT TO LEASE THE UNITS. PROSPECTIVE PURCHASERS SHOULD CONSIDER THE POSSIBLE EFFECTS ON THE DEVELOPMENT IF A SUBSTANTIAL PORTION OF THE UNITS BECOME RENTAL PROPERTIES.

IF YOU PURCHASE TWO OR MORE UNITS THE SELLER IS REQUIRED TO NOTIFY THE REAL ESTATE COMMISSIONER OF THE SALE. IF YOU INTEND TO SELL A UNIT OR LEASE A UNIT FOR MORE THAN ONE YEAR, YOU ARE REQUIRED TO OBTAIN AN AMENDED SUBDIVISION PUBLIC REPORT BEFORE YOU CAN OFFER THE UNITS FOR SALE OR LEASE.

WARNING: WHEN YOU SELL YOUR CONDOMINIUM UNIT TO SOMEONE ELSE, YOU MUST GIVE THAT PERSON A COPY OF THE DECLARATION OF RESTRICTIONS, THE ARTICLES OF INCORPORATION, AND OF THE BYLAWS. IF YOU FORGET TO DO THIS, IT MAY COST YOU A PENALTY OF $500.00 -- PLUS ATTORNEY'S FEES, PLUS DAMAGES. (SEE CIVIL CODE SECTION 1360).

TAXES: MOST OF THE SERVICES FURNISHED TO OWNERS AND OCCUPANTS OF SUBDIVISION PROPERTIES BY COUNTIES, CITIES AND LOCAL DISTRICTS HAVE IN THE PAST BEEN FINANCED WHOLLY OR IN PART FROM PROPERTY TAX REVENUES. PROPOSITION 13 (JARVIS-GANN INITIATIVE) SEVERELY LIMITS THE AMOUNT OF MONEY AVAILABLE TO LOCAL GOVERNMENT THROUGH PROPERTY TAXATION. AS A RESULT, IT MAY BE NECESSARY FOR LOCAL GOVERNMENT TO ELIMINATE OR CURTAIL SERVICES THAT HAVE BEEN PROVIDED IN THE PAST. IT IS NOT PRESENTLY POSSIBLE TO PREDICT THE LEVEL OF ANY SERVICE TO BE PROVIDED TO THIS SUBDIVISION BY LOCAL GOVERNMENT.

INTERESTS TO BE CONVEYED: You will receive fee title to a specified unit, together with an undivided fractional fee interest as a tenant in common in the common area together with a membership in Park Vista II Association and rights to use the common area.

Approximately 0.73 acres on which 1 building containing 18 units and 36 carports will be constructed, together with common facilities consisting of pool, jacuzzi, recreation room with dressing rooms and barbeque grills.

The subdivider advises that no escrows will close until all common facilities, improvements, landscaping and all structures have been completed and a Notice of Completion has been filed and all claim of liens have expired or a title policy issued containing an endorsement against all claim of liens.

MANAGEMENT AND OPERATION: The Park Vista II Association which you must join, manages and operates the common areas in accordance with the Restrictions and the Bylaws.

MAINTENANCE AND OPERATIONAL EXPENSES: The subdivider has submitted a budget for the maintenance and operation of the common areas and for long term reserves. You should obtain a copy of thes budget from the subdivider. Under this budget, the monthly assessment against each subdivision unit is $57.28 of which $8.59 is a monthly contribution to long term reserves and is not to be used to pay for current operating expenses.

IF THE BUDGET FURNISHED TO YOU BY THE DEVELOPER SHOWS A MONTHLY ASSESSMENT FIGURE WHICH VARIES 10% OR MORE FROM THE ASSESSMENT AMOUNT SHOWN IN THIS PUBLIC REPORT, YOU SHOULD CONTACT THE DEPARTMENT OF REAL ESTATE BEFORE ENTERING INTO AN AGREEMENT TO PURCHASE.

The association may increase or decrease assessmenss at any time in accordance with the procedure prescribed in the CC&Rs or Bylaws. In considering the advisability of a decrease (or a smaller increase) in assessments, care should be taken not to eliminate amounts attributable to reserves for replacement or major maintenance.

THE INFORMATION INCLUDED IN THIS PUBLIC REPORT IS APPLICABLE AS OF THE DATE OF ISSUANCE. EXPENSES OF OPERATION ARE DIFFICULT TO PREDICT ACCURATELY AND EVEN IF ACCURATELY ESTIMATED INITIALLY, MOST EXPENSES INCREASE WITH THE AGE OF FACILITIES AND WITH INCREASES IN COST OF LIVING.

Monthly assessments will commence on all units on the first day of the month following the closing of the first sale of a unit. From that time, the subdivider is required to pay the association a monthly assessment for each unit which he owns.

The remedies available to the association against owners who are delinquent in the payment of assessments are set forth in the CC&Rs. These remedies are available against the subdivider as well as against other owners. The subdivider has posted a bond in the amount of $6,186.24 as partial security for his obligation to pay these assessments. The governing body of the association should assure itself that the subdivider has satisfied his obligations to the association with respect to the payment of assessments before agreeing to a release or exoneration of the security.

EASEMENTS: Easements for utilities and other purposes are shown on the title report and the subdivision map recorded in the Office of the Los Angeles County Recorder, in Book 879, Page 69, and Condominium Plan recorded on March 16, 1978 as Instrument No. 78-278926.

RESTRICTIONS: This subdivision is subject to restrictions recorded in the Office of the Los Angeles County Recorder, on March 16, 1978, as Instrument No. 78-278929 and amended on May 4, 1978, as Instrument No. 78-474587, which include, among other provisions, the following:

Non-payment of assessments to owners association may result in a foreclosure against the owner.

The homeowner association may levy a fine against you for violation of CC&Rs or Bylaws.

No animals, livestock or poultry shall be raised except one (1) dog, cat or other household pet may be kept in the owner's unit as set forth in the restrictions.

Dogs shall be kept on leashes while on any common area.

There is a restriction on the age of occupants set forth in the restrictions.

The Board or its authorized agents shall have the right to enter upon any unit for specific purposes set forth in the restrictions.

PURCHASE MONEY HANDLING: The subdivider must impound all funds received from you in escrow depository until legal title is delivered to you. (Refer to Sections 11013, 11013.2(a) of the Business and Professions Code.) If the escrow has not closed on your lot within twelve (12) months of the date of your deposit receipt, you may request return of your deposit.

INTERESTS TO BE CONVEYED - CONDITIONS OF SALE: If your purchase involves financing, a form of deed of trust and note will be used. These documents contain the following provisions:

An acceleration clause. This means that if you sell the property, or use it as a security for another loan, the lender may declare the entire unpaid balance immediately due and payable.

A late charge. This means that if you are late in making your monthly payment you may have to pay an additional amount as a penalty.

A prepayment penalty. This means that if you wish to pay off your loan in whole or in part before it is due, you may be required to pay an additional amount as a penalty in accordance with the terms of the loan.

BEFORE SIGNING, YOU SHOULD READ AND THOROUGHLY UNDERSTAND ALL LOAN DOCUMENTS.

GEOLOGIC CONDITIONS: THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

PURCHASERS SHOULD DISCUSS WITH THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST, AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVE-MENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

FLOOD AND DRAINAGE: The city of Gardena advises that the flood hazard areas within the city of Gardena are located in the South Gardena Park Site and along the flood channels.

PUBLIC TRANSPORTATION: Bus service is 9 blocks west of the subdivision on Normandie and Rosecrans.

SCHOOLS: The Los Angeles City School District has furnished information of the nearest schools, distances to the most remote unit, availability of school bus transportation, and bus charges, as indicated:

Amestoy, 1048 W. 149th Street, Gardena, CA 90247, (K-6), 0.47 mile;
Peary Junior High, 1415 Gardena Boulevard, Gardena, CA 90247, (7-9), 0.95 mile;
Gardena High, 1301 West 182nd Street, Gardena, CA 90248, (10-12), 2.17 miles.

School bus transportation is not available to the above schools.

OTHER INFORMATION CONCERNING THE AVAILABILITY OF SCHOOLS:

Amestoy Elementary School is currently operating under its capacity. The principal is projecting an increase in enrollment through 1978.

Peary Junior High School is currently operating under its capacity. The principal is projecting a decrease in enrollment through 1978.

Gardena High School is currently operating over its capacity. The principal is projecting a decrease in enrollment through 1978.

School bus transportation, if required, shall be available at the District's expense in accordance with existing Board rules.

NOTE: This school information was provided by the school district prior to issuance of the public report. Purchasers may contact the local school district office for any changes in school assignments, facilities and bus service.

For further information in regard to this subdivision, you may call (213) 620-2700, or examine the documents at the Department of Real Estate, 107 South Broadway, Room 7001, Los Angeles, California 90012.

BJ/mt -7- and last FILE NO. 40137

(Attachment 1)

STATE OF CALIFORNIA — EDMUND G. BROWN JR., Governor

DEPARTMENT OF REAL ESTATE
714 P Street, Suite 1550
Sacramento, California 95814
Telephone: (916) 445-8645

July 31, 1978

Mr. Thomas L. Ashley, Chairman
U.S. House of Representatives
Subcommittee on Housing and
Community Development of the
Committee on Banking, Finance
and Urban Affairs
Washington, D.C. 20515

Attention: Ms. Diane Dorius

Gentlemen:

RE: Interstate Land Sales Full Disclosure Hearing
August 3, 1978

Attached are several copies of a statement on behalf of the California Department of Real Estate. Present intentions are that I will read from or summarize the statement before the committee in accordance with the agenda you stated to me would begin at 10 a.m.

For your general benefit as a staff person, I am also attaching a copy of our July 28 transmittal to Ms. Worthy in connection with proposed OILSR rules -- it helps give you a flavor for the ongoing situation.

As I understand it, we should bring 25 copies of the attached statement for distribution on August 3. I have been ill for the past several days, so there is a possibility that Chief Counsel W. J. Thomas will appear on our behalf. However, I am still planning to make the trip as of the writing of this letter.

Sincerely,

John E. Hempel
Assistant Commissioner
Policy and Planning Division

JEH:yvb

Attachments

STATE OF CALIFORNIA — EDMUND G. BROWN JR., Governor

DEPARTMENT OF REAL ESTATE
714 P Street, Suite 1550
Sacramento, CA 95814
(916) 445-8645

July 28, 1978

Ms. Patricia M. Worthy
Deputy Assistant Secretary
for Regulatory Functions
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Ms. Worthy:

RE: Proposed Changes to the Federal Register, Being Proposed Revision of Parts 1710 and 1715 of Chapter IX of 24 CFR, the Land Registration Regulations for the Office of Interstate Land Sales Registration

As you know, the State of California has an understanding with OILSR geared to the existing rules in the Federal Register. Our concern with these draft changes stems almost exclusively from the material proposed for inclusion in the disclosure instrument.

OILSR files are replete with communications from this Department several years ago concerning the differing requirements for disclosure and the different materiality of certain disclosures when dealing with subdivisions from the State of California.

As can be seen by the attached analysis by our subdivision people, many of the "canned" disclosure requirements would run afoul of the true fact situation in California or be misleading due to the substantive provisions of California law and unnecessarily burden the reading tolerance of the average prospective purchaser.

If the provisions of the subsections (beginning with 1710.102) dealing with completing the Statement of Record would not apply in California due to 1710.54(a)(1), then we would like to be so advised, and the attached statement would not apply. However, from our reading of the proposed rules we conclude that it is your intention that they would apply.

We have heard that you may be extending the time for comment on these regulations beyond July 31, 1978. Please advise! We would like to use the additional time to comment further, and in that regard solicit your response concerning the applicability of the proposed rules dealing with the Statement of Record format and content.

Sincerely,

John E. Hempel
Assistant Commissioner
Policy and Planning

Attachment

33-716 O - 78 - 42

State of California — Department of Real Estate
RE Form 700

Memorandum

To : John E. Hempel — Date: July 26, 1978

cc: W. J. Thomas
Duane A. Aasland
Paul E. Markey, SF
Richard E. Ranger, LA
Frank J. Ryan
Joseph Hofmann
Stirling R. Long

Telephone: ATSS ( )
( )

From: Raymond M. Dabler

Subject: PROPOSED RULES OF OILSR

You have asked me to supply you with a list of some of the proposed regulations of OILSR that would cause problems to our Subdivision Section, with special reference to the changes which would be superfluous, unnecessary or even counterproductive if applied to California subdivisions.

The following would cause substantial problems by delaying the issuance of public reports, requiring additional manpower, and cluttering up public reports with a great deal of unneeded or misleading items of disclosure. I am more convinced than ever that the time has come for a sincere effort to be made to exempt California subdivisions from OILSR jurisdiction. With the Fed's quest for uniformity, stemming from experiences in states which may have little or no subdivision regulation, the burdensome aspects to the general public, as well as developers, comes into clear focus as one contemplates the proposed regulations.

The following are examples:

1. Section 1710.106 - Table of Contents. This is in addition to the public report that is completely unnecessary. This is a strong indication, however, of OILSR's own feeling that the table of content is necessary since the reader is actually going to be looking through a book rather than a report.

2. Section 1710.107 - This includes warning paragraphs that in normal size type would take up about two pages. These "caveats" would not apply in most respects to most California subdivisions.

3. Section 1710.108 - Specific format required by OILSR. Considered unnecessary.

4. Section 1710.109 - Instructional material intended as a "caveat". Completely unnecessary. This would take up about one quarter of a type written page.

5. Section 1710.109(2)(b)(ii) - Another "canned" paragraph that is unnecessary

6. Section 1710.109(2)(b)(iv) - Another warning paragraph but this one must be in red. Currently, this Department has no method of printing anything in red.

7. Section 1710.109(4 - Another statement concerning oil, gas, and mineral rights We do not necessarily agree with this statement and believe the one we use is better.

8. Section 1710.109(c)(2) et seq - This material pertains to release provisions in blanket encumbrances It is not applicable in California because we do not allow any sales to close until the purchaser's interest has been released from all blanket encumbrances Regardless of that, it appears that all of this language would be necessary and would just clutter up our public report and confuse purchasers.

9. Section 1710.109(e) - This is another requirement that would not be applicable in California because we do have our basic purchaser's money impound law which is followed religiously by all subdividers.

10. Section 1710.109(f) - This pertains to restrictions and a portion of it pertains to restrictions that have not been recorded. Again this is not applicable because we do not issue Subdivision Public Reports which provide for unrecorded restrictions of any kind.

11. Section 1710.109(g) - This pertains to local government's platting, zoning, surveying, etc of the subdivisions and the warnings that must be in the public report in the event local authorities have not approved such subdivisions In California no public reports are issued until all subdivision approvals have been made by the local authorities All of these regulations would be unnecessary and not applicable in California.

12. Section 1710.110 - This would include substantial additional disclosure concerning roads which we believe to be unnecessary when the roads are maintained by cities or counties. OILSR would require that we set forth all of this information as to

12. who was responsible for maintaining the roads. Also, they have a specific type of chart that should be set up and included in the public report for disclosure of this information. Completely unnecessary in California where the roads have been dedicated for public use and maintenance

13. Section 1710.111 - Utilities. This would require a great deal of explanatory material, especially if wells are the source of water. We feel that we are already including all the information necessary in any subdivisions where the well is the source of water. In the event there are water suppliers and water plants involved, there is a great deal of other information required in the public report concerning plant capacity and also requiring that the printing in the public repor be in red describing limitations. In California all such "central systems" are regulated by agencies uch as the Public Utilities Commission, Department of Corporations various municipalities, none of whom would allow such companies to operate without having already determined that not only is the water potable, but that the supplier can furnish all the lots in the subdivision with a continuing source of water and that such systems will be maintained and operated properly. Inclusion of all of the information required by OILSR for "central systems" would take a substantial number of pages in the public report and is unnecessary

This same section (subsection 'b') pertains to sewers and we have the same objections here that we have for water.

This particular portion of Section 1710.111 also refers to "individual systems" Currently we have no individual sewage systems in California I don't know of any county in California that currently approves the use of individual sewage systems on lots.

This section also pertains to "comfort stations". I have no idea of what OILSR means by "comfort stations" in subdivisions. In my opinion there are no such things as "comfort stations" in California subdivisions. The same objections hold for "central systems" for sewage treatment as I set forth above for central water systems. Again, OILSR expects the public report to contain charts.

Insofar as electric service in the subdivision is concerned, this is also covered under Section 1710.111. We have no specific objections to this because it is very close to what we now put in the public reports.

14. Section 1710.112 - Financial information. This goes considerably beyond what the DRE now does insofar as setting forth financial information in the public reports. In the event the developer had a defici in retained earnings or experienced an operating lo s the public report must contain a statement to the effect that this may affect the developer's ability to complete promised facilities This is not true in California because we require financial arrangements considerably beyond a developer s financial statement Our substantive requirements for bonds escrow closings only after facilities are completed and/or other financial arrangements set up by law seem to me to over ride nearly all of the information required under Section 1710.112.

15. Section 1710 114 - This section requires that we set forth the financial assurance completion. If there are such assurances, then we must state whether or not these financial arrangements consist of bonds, escrows, trusts, etc. Again, this is unnecessary disclosure in California.

This section also requires that if the facilities are not yet complete, that we indicate in the public report who is responsible for the construction and whether or not purchasers will be required to pay any of the costs of construction. This is unnecessary disclosure.

a. Subsection (4) of Section 1710.114 Pertains to facilities which will be leased to lot purchasers. This is not normally applicable in California.

b. Subsection (4) of Section 1710.114 - Requires that we indicate whether there are presently any liens or mortgages on the recreational facilities. Our California laws require that the said common facilities be conveyed lien free to the homeowner association We see no need for any such disclosure in public reports.

16. Section 1710 115 This requires disclosure as to whether any lots in the subdivision have a "slope of 20% or more". If so, we must include a warning in red This would be true even though there is no definition as to how much of the lots should have a slope of 20% In some cases, you may have a 20 acre lot and only a portion of the lot has a slope of 20%. The balance of the lot may be perfectly flat. If there is a sufficient amount of the lot that is level enough for a building pad, then it would be immaterial as to whether or not the balance of the lot had a slope of

16. 20%. I believe it would be very onerous for the subdivider to determine the degree of slope on every lot and also determine whether or not this 20% slope applied to the entire lot or only a portion of the lot.

Other requirements such as water coverage of the lots, lots that may require draining, soil erosion or additional items of disclosure, we have not felt necessary to disclose previously because such items are normally handled by local authorities prior to the approval of any map.

17. Section 1710.116(6) This section que tions whether the current level of assessment etc provides the capability for the association to meet its financial obligation including operating expenses, maintenance and repair costs and reserves. In effect this places our Department on the spot to make such a statement when nobody knows at that stage whether or not the assessmen are actually adequate. Regardless of the masterful job done by our Appraisal Section in reviewing proposed budgets there is no method of determining what the actual costs will be until the homeowner association has operated for a few weeks or months I would very much hesitate to make a statemen in a public report that any amount of asses ment is adequate to meet the associations obligations This Department has more experience in reviewing budgets for homeowner as ociations than anyone in the United States. If we feel that we cannot make such a positive statement, then nobody in the country should be able to do it.

a. Section 1710.116(6)(b) - This provides that if taxes are to be paid to the developer we should include a statement that: "Should the developer not forward the tax funds to the proper authorities, a tax lien may be placed against your lot." Our regulation (Section 2814 et seq and Section 2985.2 of the California Civil Code would substantially preclude any developer from failing o pay taxes to the proper authorities if he receives a tax fund from the purchasers. Regardless of this, we would still be required to place the statement in the public report so long as the contract purchasers were making tax payments to the developer. This would actually be an incorrect statement in California. I suppose the developer could fail to pay the taxes however he would be liable for a $5,000 fine by imprisonment in a State Prison or in the County Jail If any such statement is to be made in a public report, then I think we should also indicate the penalties provided for the subdivider s failure to pay taxes he would collect from a contract vendee. So far as I can

a. figure out, there would be no other circumstance where the subdivider would be collecting the taxes and making the payments to the local tax collector. When the buyer receives the deed to the property, he pays his own taxes.

b. Section 1710.116(e)(3) - Timesharing. I wonder why they include this because I cannot think of any case where anyone would want to timeshare a vacant lot. Possibly OILSR has in mind a case where they have jurisdiction over condominiums that are to be constructed at some distant time in the future. In these types of cases, the Department of Real Estate would not even issue a Subdivision Public Report on such condominium project. If we did issue a public report and timesharing was involved, we would go far beyond the requirements set forth by OILSR for timesharing.

c. Section 1710.116(f) - Equal opportunity in lot sales. This requires us to state whether or not the developer is complying with the Civil Rights Act by directly or indirectly discriminating on the basis of race, religion, sex, etc. As you know, we now place a statement in our public reports wherein we warn purchasers of the developer's responsibilities to comply with such laws, however, this particular OILSR regulation puts us on the spot to determine whether or not the developer actually is discriminating. This would require some sort of an investigation in each case and it would appear to me that if the developer has not been approved to sell any lots in the subdivision that it would be impossible to tell whether or not he is discriminating or intends to discriminate. Possibly if we were issuing an amended public report where sales have been in process for some time, we could then make such an investigation to determine what we place in the public report. This is a big can of worms.

18. Section 1710.117 - This is an additional document entitled "Cost Sheet" which totals up all major cost items and requires the Senior Executive Officer of the subdivider to sign the said costs. I assume that with the rate of inflation and other changes in cost that such figures will become obsolete very rapidly and will require substantial numbers of amendments and I can also see where any Senior Executive Officer of any corporation would be extremely reluctant to sign such a document, particularly where most of these cost figures are being supplied by companies over which he has no control.

19. Section 1710.118 - Receipt page. This goes beyond the regulations we now have which require subdividers to furnish prospective purchasers a receipt for the public report. This page not only includes a receipt but also a certification by the agent to the effect that he has made no representation to the purchasers which are contrary to the information contained in the public report. This same page also contains a rescission form. I see no need for the agent's certification because California would take action against the agent's license for any proven misrepresentation regardless of his certification. Also, such a certification is likely to cause it to be more difficult for a purchaser to institute any sort of legal action against the agent for misrepresentation if he later finds the agent's statements are incorrect. With the length of the proposed property report, I seriously doubt that anyone would be able to digest the information contained in the property report. It would appear to me that the agent is being protected more than the purchaser by said certification.

I might add here that the feedback we have had from attorneys who handle HUD filings in California indicates that they feel that these proposed regulations are rather horrendous.

In my own opinion, these appear to be typical bureaucratic gobbledygook and the type of unnecessary regulations that will keep lots of attorneys busy throughout the country and will provide little or no additional protection to the public. However, the public will definitely be paying for all of this.

Raymond M. Dabler

Raymond M. Dabler
Assistant Commissioner
Headquarters, Subdivisions

RMD:cy

State of California

Department of Real Estate
RE Form 703

Memorandum

To : John E. Hempel

Date: July 31, 1978

From : Raymond M. Dabler

Subject: OILSR PRACTICES

As you know, when we issue a DRE-OILSR public report, we include substantial additional disclosures compared to the public reports that we would issue on the same subdivision if OILSR was not involved. OILSR requires both positive and negative disclosures in every category. We would not ordinarily make positive disclosures about certain items due to the fact that we feel this type of information will be furnished to the prospective purchasers by the subdivider and it is unnecessary for this Department to advertise.

As an example, we feel that it is proper and necessary to state the location of the subdivision; however, OILSR requires that we set forth the names of surrounding towns or cities, the population, miles of paved roads to those cities, miles of unpaved roads and total distance. I am sure that this type of information could be obtained by the purchaser directly from the subdivider if the purchaser was interested in obtaining such information. Also, there are always road maps available which clearly sets forth such information.*

As another example, if a grant deed and deed of trust are to be involved in the conveyance of title to the purchaser, OILSR requires that we set forth the information stating that the deed of trust and grant deed "will be recorded by _____ title insurance company at close of escrow in the office of the county recorder _____ county within _____ months of the date you sign the agreement of sale form. You will pay 1% of the selling price for recording and escrow fees and the seller will pay the balance." Recording and escrow fees are normally not over $5.00 and we seriously question the necessity of placing such information in a public report. All grant deeds and deeds of trust are recorded in California at the close of escrow and we see no reason to set forth such information in public reports.

*Selectively, this information can be important; however, the OILSR across the board requirements serve no useful purpose.

Under purchase money handling, if there is a blanket encumbrance, OILSR requires that we state: "The encumbrance contains release provisions to enable your lots to be delivered free and clear of the lien upon payment of a release price by the developer." Our California subdivision laws would not allow the escrows to close until such time as the buyer's property was released from the blanket encumbrance. As a result, we never put this information in a California Public Report and we have never had a problem with our failure to do this. OILSR still requires it.

The DRE does not normally disclose what type of insurance is available. OILSR requires that we set forth the type of insurance that is available as well as the price for one year coverage. This makes about as much sense as stating that there are contractors available who will build a house for you for $50,000.

OILSR requires that we set forth additional information concerning community services normally not typed in a California Public Report, particularly on vacant lot subdivisions. This includes garbage and trash collection information, medical and dental information such as location of hospitals and whether or not there are physicians and dentists available in the locality. Also, they ask that we state whether or not mail is delivered to all lots or whether mailboxs may have to be clustered, or whether owners would have to pick up their mail at the post office. They also require that we set forth the type of police protection available and the nearest office of the law enforcement agency.*

Other items of disclosure that we feel are unnecessary but to which we do not object include information concerning elevation, physical characteristics and climate at the location of the subdivision.

Some of the more objectionable features of OILSR public reports are the "violations" portion which includes any type of formal order issued by State or Federal Government against the applicant for violation of any statute, regulation or ordinance. As you know, California laws provide that we qualify the subdivision; not the subdivider. OILSR requires that we set forth all litigation that may be pending which may have a material effect on the applicant or the subdivision. In some cases this may be appropriate, however, in about 90% of the cases such litigation would have no effect upon whether or not a California purchaser obtained title to his property or obtained a refund of his purchase money.

It is also required by OILSR that we set forth information concerning bankruptcy of subdividers. Again, this is useless information and may be misleading to a purchaser. Some subdividers have gone

*Selectively, this information can be important; however, the OILSR across the board requirements serve no useful purpose.

bankrupt, however, been able to start over again and under California laws purchasers have been protected as well as if the subdivider had never been bankrupt.

OILSR requires financial statements for subdividers and requires that DRE disclose the developer's net income and net worth for the last fiscal year. We have always felt that disclosure of such financial information was useless. It could also be very mis leading to a purchaser The mere fact that a subdivider's financial statement shows him to be solvent does no necessarily mean that he is honest California laws require that the subdivision be qualified not the subdivider Many fine honest subdividers may show a small ne income or net worth, however the purchaser would be sufficiently protected that he would obtain title to the property for which he contracted or would receive a refund of his purchase money. The developer s financial statement has no bearing on this whatsoever and in the issuance of thousands of California Public Reports, it was never determined to be a necessary item of disclosure.

When I discussed with Chief Deputy Duane Aasland (whose office issues the most OILSR reports) he states that it is difficult to deal with OILSR because they have had a turn over of personnel and the examiners seem to have complete discretion as to the method and type of disclosure needed. They will no tell us in advance what they want. They will only tell us when we have not included information that they want. For several months we had a good working arrangement with Examiner Donald Pie ras who had journied to California and sat down with our deputies and with whom we had had several telephone conversations regarding the type of disclosures OILSR needed in public reports. After Pietras left, we obtained some new examiner who then started "kicking everything back" because of our failure to disclose some minor items. This necessitated the developers refiling with OILSR with delays up to 30 to 60 days.

We cannot obtain from them any sort of a "check list" concerning methods of disclosure or completeness of disclosure. Mr. Aasland feels there is too much discretion given by OILSR to their examiners.

In other words, it is a "guessing game" everytime we issue a DRE-OILSR public report as to whether or not we have satisfied the OILSR examiner with the type of disclosure we have furnished.

Raymond M. Dabler
Assistant Commissioner
Headquarters, Subdivisions

RMD:cy

Chairman ASHLEY. That is a very good statement, Mr. Hempel. We appreciate that.

Our final panelist is Gordon Pfersich, director of the Florida Division of Land Sales and Condominiums, Department of Business Regulation.

STATEMENT OF GORDON J. PFERSICH, DIRECTOR, DIVISION OF LAND SALES AND CONDOMINIUMS, DEPARTMENT OF BUSINESS REGULATION, STATE OF FLORIDA

Mr. PFERSICH. Thank you, Mr. Chairman.

On behalf of both Florida and the Division of Land Sales and Condominiums, I would like to thank you for the opportunity to appear here today and give you some of Florida's thoughts on regulation in the land sales industry.

With your permission, I think that the text of my prepared remarks is fairly self-explanatory. If you could have that entered into the record, I would just make a brief summary.

Chairman ASHLEY. That will be done, Mr. Pfersich.

Mr. PFERSICH. To give you a brief idea of the size and importance of the land sales industry to the State of Florida, we currently have registered with our agency some 1,400 subdivisions by some 500-plus subdividers, and this includes some 1.7 million lots.

This has taken place over the last 10 years, since 1967, when the Uniform Land Sales Practices Act first went into effect.

We estimate, during this 10-year span, that approximately 5.2 billion dollars' worth of land sales has taken place. The State of Florida believes very strongly that land sales regulation is essential.

Our approach is very similar to that approach which has been just described in very good detail by Mr. Hempel. And that is, we combine the process of full disclosure of what we consider to be all the material information that a purchaser should have concerning the property which is being offered for sale, together with certain standards of substance which the State of Florida believes are necessary threshold tests in order to qualify a subdivision for registration with our agency.

And further, to perform an ongoing monitoring process throughout the life of that subdivision to determine and assure ourselves that the conditions that existed at the time that registration took place remain consistent throughout the life of the sale of that property.

And in fact, at the point in time where improvements are to be delivered, contracts mature, and title to the property is being delivered, that in fact the subdivider is in a position to do it.

The jurisdiction of our division covers three broad areas. It covers any land located in the State of Florida, regardless of its location of sale, anywhere throughout the world. Any land located outside of the State of Florida but sold to Florida residents is also subject to our jurisdiction. Third, any land located outside the State of Florida and sold to non-Florida residents, but where the solicitation or offer originates within the State is subject to our jurisdiction.

We have very limited responsibilities in that area at this time.

I would like to make a couple of brief comments about the two main thrusts of the regulatory approach in Florida. They consist of a dis-

closure document on the one hand, and requirements of substance on the other.

It has been traditionally the position of Florida—as Mr. Hempel has also suggested—that more disclosure is not necessarily always better. We have attempted to achieve the development of a disclosure document which combines a disclosure of what we believe is the material information concerning the subdivision, together with presenting a balanced, readable, and understandable description of that property that will be useful to the individual consumer.

And we have attempted, where possible, to eliminate information that we think is unnecessary or will not assist the individual consumer in making a determination.

We recognize that an argument can be made for putting complete or total information in a report, and there will always be some purchasers who would avail themselves of that. Our experience has been that very few do so and, as a result of that, our direction has been to attempt to prepare a less-detailed report, but highlighting the material information.

In terms of standards of substance, we again have an approach very similar to California's. In particular, the area of what we refer to as assurances for promised improvements is at the very heart of our substantive approach.

If improvements to subdivided land are promised at the time of sale and in fact are not yet complete, the division requires the subdivider to establish assurances in a form acceptable to the division that those improvements will eventually be completed.

They may take generally one of three forms: corporate performance bonds; surety bonds; or improvement trust accounts. At the present time, based upon these State standards for qualifications for corporate performance bonding, virtually no subdividers in our State can meet the financial tests necessary to qualify.

Improvement trust accounts and surety bonds are currently being widely used. The purpose and function of surety bonds are obvious. The improvement trust account is a mechanism established under Florida law whereby a subdivider is required to place into a special escrow account a predetermined percentage of each sales dollar collected as a form of assurance that those promised improvements will eventually be completed.

At the present time, this is a relatively widely used approach, and we think one that is meeting with considerable success.

In relation to the substance of our requirements, I would like to point out something that I think came up in some discussion this morning, and where Florida's position may depart a little bit from other approaches.

Most of the testimony that I have heard earlier has been directed at problems involving fraud and misrepresentation. I would like to point out that in Florida we believe strongly that our role is just as important to protect against mismanagement and hard economic times as it is against fraud.

A relatively small percentage of our major problems result from schemes that were originally designed to be fraudulent and to outright deprive purchasers of promised facilities improvements, or in fact title to their property.

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Many of our major problems today involve subdivisions which, for whatever reason, got into financial trouble. We hope, through these substantive requirements we now have established, we have eliminated many of those problems for the future. But we currently must live with the problems of the past, because those requirements of substance weren't in place and we are still feeling the effects of them.

In connection with this, one of the very important aspects of our substantive standards require that subsequent to registration, if any material change which would affect the offering and could conceivably adversely affect the interests of any existing contract purchaser or any prospective contract purchaser, prior to the consummation of that change we require that that be submitted to our division for our prior review and approval. We think this is at the very heart of our ability to, on an ongoing basis, maintain our control and regulation over the sale of subdivided land.

As has been suggested earlier, if you have a standard, someone meets the test at the time of registration; but then you do not have the necessary mechanisms to monitor and in fact prohibit certain kinds of practices in advance. You can defeat the very registration requirements that you have previously established.

I would like to comment also briefly on the relationship of our division with the Office of Interstate Land Sales Regulation.

I would like to preface those comments by saying that, beginning last December and on a continuing basis since that time, I believe the State of Florida has been working on a very cooperative level. We are extremely pleased with the relationship we currently have with the Federal agency.

We are currently working toward designing and conceiving a single disclosure document that would serve the purpose of both the Federal agency and the State agency as well.

I would have to add to that, however, the purpose for our doing this is not because the State of Florida feels that it is incapable of doing the job, or that its current disclosure document is in any way inadequate. I am simply facing reality.

At the present time, subdivisions within the State of Florida are subject to both Federal regulation and State regulation. Purchasers receive two disclosure documents. We believe that serves no useful purpose, and in fact hinders the understanding of the consumer in what it is that he is analyzing before he makes his purchase.

As a result of that, we have attempted to work with OILSR, and as I have indicated, we are very appreciative of how cooperative they have been in working with us to come up with a single disclosure document.

We could also very much agree with California that, should Congress believe an exemption process was sensible, that the State of Florida would readily qualify, and that its standards are some of the highest in the United States with respect to the registration and ongoing regulation and sale of subdivided land.

I would encourage, should this approach be adopted, however, that the exemption not remove the subdivisions from Federal jurisdiction; that they simply certify or accept the filing that is submitted to the State.

I think that it makes a great deal of sense that the subdivisions remain under Federal jurisdiction. We have found, especially recently, a number of instances whereby it has been very useful to avail ourselves of some of the resources that OILSR has at its command to assist us, or in fact for us to assist them, in certain investigations that are being carried out.

And I would suggest that if an exemption approach is adopted, that the jurisdiction be retained in their office to allow continued cooperation on investigative matters, matters of fraud, misrepresentation, or other types of problems.

I think that the cooperation at that level is still essential, irrespective of any changes that may take place in the registration requirements themselves.

Last, I would just like to point out that in Florida we do have certain sunset provisions. The land sales registration provisions are subject to that sunset review this legislative session.

The chapter 478 which establishes the authority for regulation of the sale of subdivided land in Florida will be repealed automatically at the end of this fiscal year which ends June 30, 1979, if in fact it is not reenacted either in its current or a modified form.

I think I would like to represent to you this morning that it is my expectation—and very firm expectation—that chapter 478 will be reenacted in substantially its current form. And I think that the Florida legislature's intent to do so is pointed up by the fact that, No. 1, this past legislative session they greatly increased the funding resources available to the division to strengthen our continued ability to regulate the sale of subdivided land; and, two, this past legislative session they increased the size of our staff by some 30-plus percent, which I think is a strong indication of our legislature's continued intention to regulate the sale of subdivided land.

That concludes my comments, Mr. Chairman. I would be happy to answer any questions you may have.

[Mr. Pfersich's prepared statement, on behalf of the division of land sales and condominiums, department of business regulation, State of Florida, follows:]

LAND SALES REGULATION IN FLORIDA

TESTIMONY BEFORE THE
HOUSING & COMMUNITY DEVELOPMENT COMMITTEE
L. ASHLEY, CHAIRMAN

REPORT BY GORDON J. PFERSICH, DIRECTOR
DIVISION OF FLORIDA LAND SALES AND CONDOMINIUMS
DEPARTMENT OF BUSINESS REGULATION

BACKGROUND

THE DIVISION OF FLORIDA LAND SALES AND CONDOMINIUMS (DFLS&C) IS THE AGENCY RESPONSIBLE FOR THE REGULATION OF THE SALE OF SUBDIVIDED LAND IN FLORIDA. THE AUTHORITY IS ESTABLISHED IN CHAPTER 478, FLORIDA STATUTES, " FLORIDA UNIFORM LAND SALES PRACTICES LAW".

THE THRESHOLD OF JURISDICTION IN FLORIDA IS 50 LOTS, PARCELS, UNITS OR INTERESTS OFFERED AS PART OF A COMMON PROMOTIONAL PLAN OF SALE. THESE LOTS NEED NOT NECESSARILY BE CONTIGUOUS. THE JURISDICTION OF THE DIVISION COVERS THREE GENERAL AREAS:

1. SUBDIVIDED LAND LOCATED WITHIN FLORIDA NO MATTER WHERE IT IS SOLD.
2. SUBDIVIDED LAND LOCATED OUTSIDE FLORIDA AND SOLD TO FLORIDA RESIDENTS.
3. SUBDIVIDED LAND LOCATED OUTSIDE FLORIDA AND SOLD TO NON-FLORIDA RESIDENTS WHERE THE OFFER ORIGINATES IN FLORIDA.

PHILOSOPHICAL APPROACH

THE REGULATION OF THE SALE OF SUBDIVIDED LAND IN FLORIDA COMBINES TWO FUNDAMENTAL APPROACHES:

1. FULL DISCLOSURE
2. SUBSTANTIVE STANDARDS

HISTORICALLY, FLORIDA'S REGULATION BEGAN IN 1963 WITH REVIEW OF ADVERTISING MATERIAL ONLY. IN 1967 THE UNIFORM LAND SALES PRACTICES LAW, CHAPTER 478, F. S., WAS ENACTED AND ESTABLISHED REGISTRATION PROCEDURES BASED ON A FULL DISCLOSURE APPROACH. MAJOR CHANGES OCCURRED IN 1973 AND 1976 ADDING SIGNIFICANT SUBSTANTIVE REQUIREMENTS TO THE REGULATORY PROCESS. THE PRESENT STATUTE IS SOUND IN ITS APPROACH AND ESTABLISHES STRONG

YET REASONABLE STANDARDS NOT ONLY FOR INITIAL REGISTRATION BUT FOR THE MANNER IN WHICH ONGOING OPERATIONS MUST BE CONDUCTED.

THE NEED FOR AND PURPOSE OF REGULATION IS SET FORTH IN THE LEGISLATIVE INTENT SECTION OF CHAPTER 478, F. S.

(1) "IT IS EXPRESSLY RECOGNIZED BY THIS LEGISLATURE THAT THE SALE OF LAND BY INSTALLMENT LAND SALES CONTRACTS HAS A GREAT AND VITAL IMPACT ON FLORIDA'S ECONOMY AND THAT SUCH LAND SALES CONSTITUTE A MAJOR INDUSTRY WITHIN THIS STATE, EMPLOYING MANY CITIZENS, ATTRACTING THOUSANDS OF VISITORS AND NEW RESIDENTS, AND CONTRIBUTING COUNTLESS DOLLARS TO THE TOTAL ANNUAL GROSS INCOME OF THE STATE. THE LEGISLATURE ALSO RECOGNIZES THAT THE MANNER OF CONDUCTING THIS TYPE OF BUSINESS, INCLUDING SALES, FINANCING, ADVERTISING, AND PROMOTIONAL METHODS, IS OF DIRECT CONCERN NOT ONLY TO THOSE ENGAGED IN THE BUSINESS BUT TO THE PURCHASERS AND PUBLIC AS WELL.

(2) FURTHER, THE NEED TO HALT FALSE, MISLEADING, AND FRAUDULENT METHODS USED IN THE CONDUCT OF SAID BUSINESS, AS WELL AS THE CONTINUED DISCLOSURE OF SUCH METHODS AND THEIR SEVERE IMPACT UPON THE LAND SALES INDUSTRY AND UPON THE ECONOMIC AND POLITICAL CLIMATE OF THE STATE DIRECTLY REFLECTS AND EVIDENCES A RECOGNITION OF THE PROBABLE DETRIMENTAL EFFECTS OF DEFAULT BY COMPANIES ENGAGED IN THIS INDUSTRY.

(3) It is therefore the intent of the Legislature to provide safeguards regulating the financial operations entered into by companies and persons regulated under the provisions of the Uniform Land Sales Practices Act, thus preventing unsound financing techniques which could detrimentally affect not only remote land purchasers, but the land sales industry, the public, and the state's economic well-being."

A brief review of how this intent is carried out appears below in terms of the two chief concerns; Full Disclosure and Substantive Standards.

Full Disclosure: It is the belief of Florida that full disclosure to prospective purchasers of all material information relating to subdivided land is essential. The disclosure document which must be prepared and given to prospective purchasers is known as the "Florida Public Offering Statement". The general content of that document consists of the following:

1. Number & type of parcels with legal description
2. Critical disclosures highlighted
3. General location
4. Encumbrances
5. Physical access
6. Land use physical characteristics
7. Area facilities
8. Promised improvements
9. Maintenance provisions
10. Public utilities
11. Present development
12. Government control
13. Method of sale

Full disclosure is not as simple as it sounds. Some information concerning subdivided land is obviously material. Other information begins to fall in a grey area and its value to prospective purchasers is not as clear and infact, may vary

FROM INDIVIDUAL TO INDIVIDUAL.

FLORIDA'S BASIC APPROACH HAS BEEN THAT MORE IS NOT NECESSARILY BETTER. AN ATTEMPT HAS BEEN MADE TO BALANCE THE CONCERN FOR "COMPLETE DISCLOSURE" WITH THE CONCERN FOR PREPARING AN UNDERSTANDABLE, READABLE DOCUMENT CONTAINING MATERIAL INFORMATION.

SUBSTANTIVE STANDARDS: AT ONE TIME, WHEN ONLY FULL DISCLOSURE WAS REQUIRED, VIRTUALLY ANY PROPERTY COULD BE REGISTERED FOR SALE AS LONG AS ITS QUALITY AND CHARACTERISTICS WERE DISCLOSED. FLORIDA HAS FOUND FULL DISCLOSURE ALONE TO BE INADEQUATE AND HAS ESTABLISHED CERTAIN STANDARDS OF SUBSTANCE FOR NEW REGISTRATIONS IN TERMS OF BOTH INITIAL CRITERIA AND ONGOING OPERATION. (NOTE: PROPERTY REGISTERED PRIOR TO THE ESTABLISHMENT OF THESE STANDARDS GRANDFATHERED IN AND SOME IS STILL BEING SOLD). THE KEY AREAS OF SUBSTANTIVE REGULATION ARE AS FOLLOWS:

1. ASSURANCES FOR PROMISED IMPROVEMENTS

   WHERE SUBDIVIDED LAND IS OFFERED FOR SALE AND ALL PROMISED IMPROVEMENTS ARE NOT YET COMPLETE, ASSURANCES "ACCEPTABLE TO THE DIVISION" (ESTABLISHED BY RULE) ARE REQUIRED. THESE ASSURANCES NORMALLY TAKE ONE OF THREE FORMS.

   A. CORPORATE PERFORMANCE BONDS
   B. SURETY BONDS
   C. IMPROVEMENT TRUST ACCOUNTS (ITA)

   THE SIZE OF THIS ASSURANCE PORTFOLIO IS CURRENTLY APPROXIMATELY 730 MILLION DOLLARS. DIVISION RULES ESTABLISH REQUIRED FINANCIAL TESTS TO QUALIFY FOR CORPORATE PERFORMANCE BONDING. THE ITA APPROACH IS WIDELY USED AND INVOLVES THE ESCROWING OF A PREDETERMINED PERCENTAGE OF EACH SALES DOLLAR COLLECTED INTO AN ACCOUNT TO ASSURE EVENTUAL COMPLETION OF PROMISED IMPROVEMENTS.

2. PROVISION FOR PERPETUAL MAINTENANCE

PROVISIONS FOR THE PERPETUAL MAINTENANCE OF PROMISED IMPROVEMENTS MUST ALSO BE ESTABLISHED THESE PROVISIONS GENERALLY TAKE THE FORM OF:

   A. COUNTY OR MUNICIPAL MAINTENANCE
   B. PROPERTY OWNER ASSOCIATIONS
   C. SPECIALLY CREATED TAXING DISTRICTS

3. ADVERTISING

THE DFLS&C REVIEWS ALL ADVERTISING AND PROMOTIONAL MATERIAL PRIOR TO ITS USE AND WHEN IT IS FOUND TO MEET ESTABLISHED STANDARDS AN IDENTIFYING NUMBER IS ASSIGNED TO IT. THE GENERAL STANDARDS FOR ADVERTISING REQUIRE THAT MATERIAL NOT ONLY BE FACTUALLY ACCURATE BUT THAT AS A WHOLE IT IS REPRESENTATIVE AND IN NO WAY MISLEADING. THE SUBDIVIDER IS RESPONSIBLE FOR DEMONSTRATING TO THE SATISFACTION OF THE DIVISION THE VALIDITY OF ANY CLAIMS OR REPRESENTATIONS WITHIN THEIR PROMOTIONAL MATERIAL.

4. FINANCIAL MONITORING

THE DFLS&C IS RESPONSIBLE FOR MONITORING FINANCIAL PRACTICES OF SUBDIVIDERS ON AN ONGOING BASIS. THE PURPOSE OF THIS IS DIRECTED PRIMARILY AT ASSURING THAT NO "MATERIAL CHANGE" OCCUR IN THE FINANCIAL CONDITION OF THE SUBDIVIDER WHICH WOULD AFFECT THE REGISTERED PROPERTY. OF SPECIAL CONCERN IS THE TITLE AND ENCUMBRANCE CONDITION OF THE PROPERTY, MAINTENANCE OF ADEQUATE IMPROVEMENT ASSURANCES, COMPLETION OF PROMISED IMPROVEMENTS ON TIME, THE PROPER MAINTENANCE OF OTHER REQUIRED ESCROW ACCOUNTS AND THE OVERALL FINANCIAL CONDITION OF THE SUBDIVIDER. THIS MONITORING IS ACCOMPLISHED THROUGH THE FOLLOWING MEANS:

   A. QUARTERLY ENCUMBRANCE REPORTS
   B. ANNUAL REPORTS
   C. ANNUAL AUDITED FINANCIAL STATEMENTS
   D. FIELD AUDITS
   E. PROPERTY INSPECTIONS

5. Material Changes

Chapter 478.121(3) requires that "after an Order of Registration has been issued, no material change, alteration, or modification of the offering shall be made by the subdivider without notifying the Division Director in writing and obtaining written approval of the Division Director."

This power is essential in maintaining the integrity and standards of the registered property and the financial condition of the subdivider.

The Division of Florida Land Sales & Condominiums (DFLS&C) and the Office of Interstate Land Sales Registration (OILSR)

The State of Florida believes that it has both the regulatory tools and the will to adequately regulate the sale of subdivided land within its jurisdiction. Florida also recognizes that this is not universally the case throughout the United States.

At present, the full disclosure requirements of OILSR overlap with similar requirements within areas of Florida jurisdiction.

During the last 8 to 10 months the DFLS&C and OILSR have been working cooperatively toward two fundamental goals:

1. Development of a single disclosure document acceptable to both Florida and OILSR and prepared according to the Federal format. This is being done not because Florida believes its current document to be inadequate but because two SEPARATE documents hinder rather than assist in informing consumers. Florida will continue its registration process except for the preparation of the disclosure document. Further, the DFLS&C resources will be directed toward its substantive review and improved enforcement.
2. Cooperation on all levels in the exchange of information and enforcement of mutual regulatory standards. Wherever possible requirements for filing documents and exhibits are being standardized. It is hoped that this approach will produce benefits to both the consumer and the subdivider.

Sunset Review

Chapter 478, F. S. is under Sunset review for the 1979 Florida Legislative session.. Unless re-enacted in its current or modified form the Chapter will be automatically repealed. It is our belief and recommendation that Chapter 478, F. S. be re-enacted in substantially its current form.

Legislative recognition of the continued need for this regulation has been evidenced during the 1978 Legislative session by improved funding for DFLS&C and an increase in Division staff by over 30 percent.

Florida believes in the need for strong and determined regulation of the Land Sales Industry.

Chairman ASHLEY. Thank you very much, Mr. Pfersich.

I am interested in the testimony of you, Mr. Pfersich, and you, Mr. Hempel, in which you strongly suggest—or indicate—some degree of agreement that HUD should be in a position to categorically exempt from registration developments in States that have standard disclosure requirements which, taken as a whole, provide either equivalent or greater consumer protection than the national standard.

Would you agree, Mr. Hempel, with Mr. Pfersich that the exemption would not be absolute? That is to say, that even where there is an exemption, the Federal Government would, in such case, retain authority—basic authority or jurisdiction?

Mr. HEMPEL. Yes, sir, I would. And in fact, in my statement, one of those conditions that we suggest dealt with that. That said that the developer should be held to account to do that which he had committed to do at the State level, which led to the development being exempt in the first place.

So that was our thought. And obviously, an exemption would exist, based upon the situation that existed at the time the exemption was granted, and therefore if that situation would change, then OILSR should be able to move back in with dispatch.

In our own case, we don't—I suppose sunset laws are something that everyone must be concerned with. We have not had that sort of experience in California, as yet. But the subdivision laws in California are about as stable as you can find.

We have had the disclosure requirement in the law since 1936. We have had the affirmative standards requirements since 1963. And the only really recent addition to our regulatory scheme—in other words, these requirements have been on the books for a long period of time and have been well received by the industry. You won't find the organized, or unorganized, major industry groups objecting to the subdivision controls exercised by the department of real estate in California. In fact, they are very highly supportive of them because they have added stability to the subdivision field.

It is very rare when you hear in California of a subdivision failure. Therefore, people have confidence that when they buy a subdivision lot, or a house in a subdivision, either way in California, that they are going to get it and it is going to be at least as formally represented.

Now I refer to "formally represented" meaning, based upon the approved legality of the offering. When there is fraud, there is fraud, and occasionally we do run into that sort of thing.

Chairman ASHLEY. You both agree that there should continue to be a Federal handle, then, even where there would be exemptions?

What about enforcement? Would you look to the States for enforcement? Or would you look to the Federal Government for enforcement?

Mr. PFERSICH. If I might answer that, I think that should be one of the fundamental roles of the State. In fact, in States such as California and Florida where strong, substantive requirements exist, it is in fact very necessary.

I believe, in Florida, that we have a strong enforcement staff to follow up on the substantive standards that are in fact in existence.

Chairman ASHLEY. Do you have a strong enforcement arm?

Mr. PFERSICH. Yes; we believe we do. I don't think historically that has been the case, but I believe the movement in the last 2 to 3 years

has been to substantially improve and increase that enforcement arm—and I think that that is essential.

Chairman ASHLEY. Is that borne out by the number of complaints that you receive and that are processed to some degree of satisfaction?

Mr. PFERSICH. I would definitely say yes. One of the problems in evaluating that question is, the very nature of the sale of subdivided land by installment contract means that you frequently don't learn of certain problems and certain difficulties until substantially after they have occurred.

I think that we have a very aggressive and strong movement over the last 12 months in the State of Florida toward cleaning up many problems. Most of these problems are not current problems; they are problems that have occurred over a period from, let us say, the early seventies to about 1975 or 1976.

So I don't think that your recent aggressive action in the State of Florida is a reflection of a large increase in either fraud, misrepresentation, or a negative trend in our industry.

I think, rather, it is a recognition on the part of those that the problems are now being identified; and, two, we now have the enforcement staff to take care of those problems.

Chairman ASHLEY. You say that the complaints that would be subject to possible enforcement may, in large measure, be attributable to earlier years. Would that be a product of the boom/bust cycle? Or the sharp swings in the housing and land development industry that we have experienced from 1972 through 1975 or 1976?

Mr. PFERSICH. Sir, in part, but in very small part, I think. In 1973, and again in 1976, major amendments were made to the Florida law to increase the substantive standards and the ongoing requirements for the manner in which business must be conducted in the sale of subdivided land.

I think that many of those problems will not occur again, for the most part, with the new subdivisions. The subdivisions that are currently being registered in the State of Florida I believe are substantially of higher quality than those subdivisions that were registered with us in the late sixties and early seventies.

Chairman ASHLEY. Do you know how many of the indictments that were referred to by the previous witness representing HUD—were any of those indictments attributable to complaints emanating from Florida or California?

Mr. PFERSICH. Sir, I can't answer that question, but knowing that Florida is one of the major States engaged in the sale of subdivided land, I can guess that some of them probably did involve Florida.

Chairman ASHLEY. I am advised that there were—that none of the indictments—none of the 21 of the 16 indictments that were referred to in the testimony involved either California or Florida.

It would seem to me that it would be interesting, if there is an ability to do so—and I don't see why there shouldn't be—for there to be an exchange of information between the States and the Federal Government. That is to say, that if either the Inspector General or the Department of Justice would find the means to convey to you either matters being referred to the Justice Department, or matters under investigation by the Justice Department, it seems to me that there is a mutual interest.

I am advised by staff that a recent civil suit filed by HUD through the Department of Justice resulted in the developer of a Florida subdivision offering refunds to buyers of approximately $13 million.

Are you familiar with that?

Mr. PFERSICH. Which one was that, sir?.

Chairman ASHLEY. It doesn't say.

Mr. PFERSICH Yes, I am familiar with that. It also involved—there was an enforcement action on the part of Florida, as well, in that particular case.

Chairman ASHLEY. I see. So it isn't that you were blindsided by them.

Mr. PFERSICH. No. As a matter of fact, that is why I stressed: I think it is important that jurisdiction be retained irrespective of any provision for an exemption from the registration process.

We currently have ongoing several what I consider to be very significant investigations, and we are working on almost a daily basis with staff members of OILSR in carrying out those investigations. And I really don't care—if it involves a criminal matter, I don't care whether it's the State that prosecutors or the Federal Government, as long as it gets done. And I think, on occasion, if we have better tools and resources at a particular time, we will pool our information and we will go forward.

In other matters, if we feel that OILSR got the headstart on it, we will make our information available to them in the hope that they will go forward with it. We have had every indication that they intend to do so.

Chairman ASHLEY. What is the size of your respective enforcement divisions that are able to devote full time to enforcement?

Mr. PFERSICH. My enforcement division is approximately 25 members at the present time, and I believe that it is generally adequate to monitor the subdivisions under our regulations.

Chairman ASHLEY. That is very interesting, but that seems to be just almost an identical number, in fact, it exceeds by one, I believe, the entire enforcement complement of OILSR.

Mr. PFERSICH. If I may point out, however. that enforcement staff is also responsible for enforcement of another chapter, chapter 718, which is our condominium act, which our agency is also responsible for regulating. So, we do have additional responsibilities.

Chairman ASHLEY. Mr. Hempel, could you respond to that?

Mr. HEMPEL. Yes, sir.

Chairman ASHLEY. Could you tell me what the size of your enforcement staffs are?

Mr. HEMPEL. We have a separate division which issues subdivision public reports, subdivision violations, either stemming from a violation of the subdivision law or by a broker or an agent in the selling of subdivision properties done by our major enforcement operation, which also handles all types of complaints involving real estate licenses and others. So, I would have to estimate the proportion out of our 150 who are devoted to subdivision matters, because we don't categorize them in that way.

They work more likely on territories and with such supervision and attorney help from three different offices throughout the State and the like.

We have 14 attorneys, a half dozen appraisers, about 80 investigators and possibly 30 or 40 clerical people who are involved in license law and subdivision law enforcement. And I would estimate that possibly 15 percent of their work is involved in subdivision law violation.

So, that would mean possibly 20 or 22, something like that.

Mr. PFERSICH. We have 25 on our enforcement staff.

Chairman ASHLEY. Mr. Steinman, since most of the consumer complaints regarding land sales appear to involve deceptive marketing practices, would it make sense to consolidate enforcement for fraud in the FTC instead of maintaining the dual jurisdiction involving both the FTC and HUD?

Mr. STEINMAN. Mr. Chairman, since it is the position of the Bureau that this agency's efforts in the interstate land sales area should wind down, I would have to say no. As you probably are well aware, the Bureau of Consumer Protection of the FTC has broad jurisdiction over numerous business practices and industries. We cover areas such as energy, credit practices, product reliability, professional services, automobile repair, and national advertising. Because of budgetary constraints, the FTC cannot give the time and attention to land sales regulation that HUD and its OILSR section can.

We have limited resources. We have spent considerable amount of time already in land sales. Our principal effort now is to try through amendments to the Interstate Land Sales Full Disclosure Act to make HUD, which has the most direct involvement in land sales, more effective in its regulation.

Chairman ASHLEY. Actually, what you are saying is that given the budget resources that you have available involvement in investigating fraudulent land sales probably won't continue at the same level that has existed in the past. Is that right?

Mr. STEINMAN. That is absolutely correct. One other thing, Mr. Chairman, that I would like to point out is that we have stated in our comments which we filed with OILSR concerning their proposed regulations that HUD has governing registration of subdivisions incorporate in its regulations that advertising be submitted by developers in their statements of record. Under section 5, FTCA, we begin to regulate a problem involving fraud or deception after it occurs. As a result our job in many instances is to put the pieces back together after the consumers in may cases have been badly injured.

Under its statute, OILSR has the ability if there are inaccuracies or omissions in the statement of record to suspend the registration which has the effect of terminating sales at the subdivision. We think that this is a much more logical remedy to take where there are unfair or in this case fraudulent or deceptive actions by the developers, rather than have an agency like the FTC to come in and attempt to ameliorate these practices after they have occurred.

Chairman ASHLEY. Mr. Gonzalez was directing interest earlier at the apparent shift in focus from interstate transactions to those which are more of an intrastate character.

Should the Federal law, Mr. Hempel and Mr. Pfersich, cover transactions where the vast majority of purchasers reside in the same State as the offered property, where advertising and promotion is essentially limited to that same State?

What about this shifting focus that Mr. Gonzalez directed his questions to?

Mr. HEMPEL. Well, Mr. Chairman, it was very apparent to us a year or two ago—I have not talked to our subdivision people in the last 6 months—but it was very apparent to us a year or two ago that OILSR was very much interested in interstate—intrastate filing, because we have received all kinds of applications from people who were not aware of the fact that they were in any way, shape or form under Federal jurisdiction.

They said they had been advised by OILSR that they were. As I understand it, we heard figures about 50 lots, but I understand if they are 300 or more another rule comes into play.

And there are a lot of large subdivisions in the State of California that thought they were selling intrastate, and that is where we got quite a bit of work, as many as 400 or 500 and I may be a little high on that, but some hundreds of subdividers in California came to us in a big hurry here in the last year and told us they found out they received a letter from HUD threatening them with the need to make rescission offers to everybody for the previous several years and the like, and there was quite a bit of consternation.

Now, whether that is persistent or not, I don't know. If HUD swept those all up, then that job was done, but the job apparently brought them very much into, in fact—when I brought a few samples along here, there was one of them that I threw out, because I thought it might be controversial, but it dealt with a 51- or 52-lot subdivision in an area that it is a vacant lot area. It is a place where people go when they retire. It is a city.

In fact, it has the name Paradise. And it has all of the usual city amenities, but it is in the foothills of the Sierras, and it is very appealing to people to go there and retire. There are a lot of mobile home subdivisions up there, as well as those with larger parcels.

And I know that there were some of them that found themselves swept in, but none of them had been engaging in the typical interstate sales. They did not have sales staffs out. They did not conduct direct mail programs, and the like.

Mr. PFERSICH. As far as Florida is concerned, from a personal standpoint I can't comment because I have only been with the Division of Florida Land Sales and Condominiums for a little over a year now. However, I do have two comments on that point.

No. 1, I have not received a lot of input from deelopers within the State that that has been a problem in Florida. However, that may be as a result of the fact that the majority of subdivisions within the State of Florida are also marketed outside the State of Florida, so most of them would be interstate in nature.

Chairman ASHLEY. Mr. Steinman, HUD doesn't assume responsibility, I take it, for the regulation of advertising at the present time. Is that right?

Mr. STEINMAN. They have issued guidelines relating to advertising, but as I understand it, there have not been any enforcement actions.

Mr. TIFFORD. We are not aware of any enforcement actions that have been brought to enforce the provisions of these guidelines. HUD at one time indicated that they thought there were a few, but they have never been able to supply us with the names of those cases. We have not found them.

Chairman ASHLEY. Have any of the actions that you have brought been based on advertising?

Mr. STEINMAN. All of our actions have been based on advertising, and that is principally one of the reasons why we have recommended to HUD that it include in its regulations governing registrations of developments a requirement that the developers submit advertising, so if there are any inaccuracies in the advertising that would fall within the act, and the developer could be suspended.

Chairman ASHLEY. In other words, what you are suggesting to HUD is that they proceed on the basis of something like the same criteria that you are proceeding on now, but you would like to get out of that game and let them be lead department or lead agency in the Federal Government.

Mr. STEINMAN. That is correct. We have learned quite a bit about land sales, and we are now attempting to give OILSR the benefit of our experience so that in the future its enforcement efforts can be more effective.

Chairman ASHLEY. What do your two States do about advertising?

Mr. HEMPEL. In California land projects, in connection with the sale of land projects, they have to submit their advertising to us before the permit is issued, and then it is considered a material change.

If they change the advertising they are after—and one of our regulations requires land project developers or their agents to submit any changed advertising before use. Now, we have not gone so far as to say that they have to wait until they get our OK, but they do have to get our approval before they get the permit.

Once they are in the sales program, when they go to change their advertising, have to submit it to us before use, and then if we find anything wrong, we jump right on it. But we have found out ever since we required the submission of advertising, and I would say that it is a good idea.

We found out that the advertising just changed quite dramatically. It took about 3 months of us kicking things back, and we noticed in the big display ads having to do with promotional subdivisions a big cleanup to say nothing of the brochures and the like.

Chairman ASHLEY. Are your requirements consistent with that, Mr. Pfersich?

Mr. PFERSICH. I think our go one step beyond. We require the submission of all advertising to us prior to its use, and we require division review and approval prior to the time it can be put into use.

We believe that review of advertising is important. One of the things that highlights, I think, the need for regulation of advertising is we do not assert the same jurisdiction over subdivisions who qualify under one of our exemptions. That is, if you are an exempt subdivision for reasons of qualifying under one of a number of exemptions that the State of Florida has, you need not submit your advertising for a review or approval and the assignment of a designating, identifying number.

We have frequently had registered subdividers complain to us that they have seen advertising materials that are being circulated by exempt subdividers that could not meet our standards, and in fact, that is the case, and it is something that we are looking into, that even if the subdivider is exempt from our registration requirements,

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whether or not we should still require the submission of advertising—and we have not decided whether or not to go that direction yet——

Chairman ASHLEY. Staff was just pointing out that you undoubtedly still have the ability to go after deceptive advertising on the basis of fraud.

But it would be after the fact. What would be your response to that?

Mr. PFERSICH. Well, we do require that advertising material be submitted to us in advance and in fact that it not be used.

Chairman ASHLEY. We are talking now about the exempt situation.

Mr. PFERSICH. About what, sir?

Chairman ASHLEY. About the developer who is exempt and whose advertising is of a different character than his counterpart.

Mr. PFERSICH. Frequently we find that advertising material is in that large, vast gray area in between outright fraud or misrepresentation, and untruthful disclosure of the character of the subdivision.

Chairman ASHLEY. It is interesting that Ms. Hynes who testified yesterday, stated that while it would be beneficial for OILSR to have the authority to set standards for advertising, it would be a mistake to require that it be submitted to HUD as part of the registration statement, because she said unscrupulous land developers can clean their advertising when submitted to HUD for approval, and the approval can be implied.

Do you see what she was getting at?

Mr. PFERSICH. Certainly. I've heard on many occasions and in part it is true that the very requirement that there be a disclosure document prepared under the supervision of any regulatory agency serves the same purpose.

Chairman ASHLEY. Of course, you require the approval of the advertising.

Mr. PFERSICH. Yes.

Chairman ASHLEY. I am sure that she felt that the advertising copy would be received in massive amounts and simply would not be reviewed. It could not be reviewed by the agency involved.

Mr. PFERSICH. We have not found that to be a problem. In fact, we have a 10-day time requirement in which all advertising must be approved once it is submitted, and that has not been a real problem for us.

At one time it was.

Chairman ASHLEY. Well, if you had all 50 States though or all except the exempt States, then it might be a problem.

Mr. PFERSICH. Yes; depending upon the size of the staff.

Chairman ASHLEY. How do you answer that, Mr. Steinman?

Mr. STEINMAN. Mr. Chairman, I think you answered it yourself this morning when you referred to the shell game. We are concerned with the deterrent effect caused by industry not knowing which developer will have its advertising reviewed by HUD.

The developer is not going to know which piece of advertising or which developments are going to be scrutinized by OILSR. We are not suggesting that OILSR has to laboriously go over all of the advertising and approve the advertising.

I'm just saying that it should be there. If OILSR receives complaints from purchasers or others about developer's sales practices, it can look at the advertising and decide whether or not it is inaccurate or omits a material fact.

Mr. TIFFORD. By filing the advertising as part of the statement of record, it really adds to the enforcement capabilities of HUD, because any inaccurate or misleading statement in the statement of record would permit HUD to take action to suspend the developer's sales.

Chairman ASHLEY. There has to be a provision, of course, for changes in advertising.

Mr. TIFFORD. Certainly. The Federal Trade Commission recommended to HUD that it make advertising part of the statement of record. We are not suggesting that HUD approve the advertising, but by requiring its submission HUD can make its enforcement efforts more effective.

Chairman ASHLEY. And that outweighs in your judgment the sug-question of Ms. Hynes and her testimony of yesterday?

Mr. TIFFORD. I believe so. I think that certainly there are some unscrupulous salespersons who could maintain that the advertising has been approved, but HUD distributes a property report that clearly indicates the fact that although the subdivision has been registered with HUD it has not been approved. I think that the beneficial effects of having advertising part of the statement of record far outweighs any chance of increasing the credibility given to salespersons who say that HUD has approved the advertising.

Chairman ASHLEY. Would you agree with that gentlemen?

Mr. PFERSICH. Yes, sir.

Mr. HEMPEL. Yes.

Chairman ASHLEY. Mr. Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman. I think I should take the opportunity to congratulate Mr. Hempel and Mr. Pfersich for being here and also for representing a State or two that have enacted extensive legislation, perhaps the leading two States out of the 50 States. And I think that our congratulations should be on the record.

I wanted to ask you if you feel that in case such things as preclearance of advertising powers being given to the Office of Interstate Land Sales Registration and other powers that would tend to continue this trend of immersing the Federal agency into what otherwise are fairly regulated, local sales practices where you have developed properties, you have local ordinances and State statutes that provide for such things as disclosure in zoning requirements, building code requirements and other requirements. Do you feel that that is necessary, and in view of the possibility of that happening, would you both then recommend Mr. Hempel's suggestion that we provide an exemption for those States that provide equal or stronger laws than what the Federal regulations provide for?

Mr. PFERSICH. I would say, sir, that the addition of any requirement such as this would make the process of having some form of an exemption more necessary. The more requirements that you add that duplicate those requirements—I could see ourselves faced with a situation where approval of advertising was required by both the State and the Federal Government and there was a conflict with respect to the content of that advertising, and it could result in a serious problem.

It would seem to me that the more requirements such as this that were added and they may be very necessary in cases where no regulation at all currently exists. I think that that would make the exemption process for certain States who have high standards more necessary.

Mr. GONZALEZ. I will ask this question of both of you gentlemen. Do you feel that it is necessary to sustain and continue this act on the Federal level, or do you feel that it could be wiped off the statute books and have the malpractices that it was intended that the act would correct handled by the existing agencies such as the Federal Trade Commission and the Securities and Exchange Commission?

Do you feel there is a continuing need for this legislation on the Federal level?

Mr. PFERSICH. In the State of Florida we feel that we have the tools and the desire to adequately regulate the sale, as I previously described it, within our jurisdiction. However, we are pleased to have available to us the cooperative resources of a Federal agency, and I think that because no regulation exists in certain States, it may be necessary for their continued existence.

We would like to be able to continue to avail ourselves in working cooperatively with them on enforcement matters, so I don't think that it would be reasonable to assume that they could be abolished at this stage of the game.

Mr. HEMPEL. Mr. Gonzalez, in 1966, I believe it was, I came to Washington with an assistant attorney general for California to speak in support of the Williams bill, but to ask at that time that there be an appropriate State exemption where standards were at least as high as those required at the Federal level.

We also recognized that where land was being sold in a different State than the situs State that the Feds can be very helpful to us.

And we would like that sort of help, and the exemption suggestion that I made in connection with the statement delivered earlier is consistent with that, and nothing has happened to change our mind.

We believe there certainly—when you begin with the most horrible example—land in a State that has no subdivision regulation whatsoever being sold in another State in a highly promotional manner, that only through some sort of Federal intercession can there probably be appropriate relief.

Mr. GONZALEZ. Yesterday we had the attorney general of New Mexico and the deputy attorney general of Nevada; both testified in favor of certain provisions of the Minish bill, which I happen to sponsor. One provision provides for the extension of the doctrine of parens patriae, which the Congress recently went into in the case of antitrust.

Both officials said they welcomed that provision and would like to see it incorporated into the law because it would give them a chance to enter enforcement areas in which, up till now, they feel they have been restricted.

If you are familiar with that, do you have any opinion on that subject?

Mr. HEMPEL. No; I am not familiar with it, Mr. Gonzalez. I cannot speak intelligently to it.

Mr. GONZALEZ. In effect, it would give the attorney general of each individual State the right to prosecute a case under the law, on a coterminus basis, I guess, with the Federal officials. But, in effect, both officials testified as to the need for that provision which appears in the Minish bill, and I just wondered if you had any idea as to whether or not you felt this was necessary or whether you felt that, in view of the legislative action taken in your respective States, that

this would be wholly unnecessary because the attorney general in your State is fully empowered to follow the rule now.

Mr. PFERSICH. I was just going to say I am not specifically familiar with that provision, but it would seem to me to be far more important in those States lacking regulations than in States such as ours.

Mr. HEMPEL. It might be useful. My gut reaction is it would be useful, perhaps even in a State such as California, because there are occasions, of course, where a California developer will sell elsewhere and feel that he has, in his sales elsewhere, that he is outside our jurisdiction.

Chairman ASHLEY. Of course, he would not be, in the case of Florida; would he?

Mr. PFERSICH. No, sir.

Mr. GONZALEZ. Mr. Steinman, would you say that the FTC has taken a more active role in the prosecution of consumer abuses than OILSR has? I believe I heard from one of the witnesses that this was the case, that you had more experience and more success in this type of endeavor thus far than what HUD has had.

Mr. STEINMAN. Well, Congressman, I think that I would rather let our record speak for itself.

Chairman ASHLEY. This is no place for modesty, Mr. Steinman. [Laughter.]

Mr. STEINMAN. I will say this: We have initiated 35 investigations; we have gotten 5 orders against land sales companies; we have 2 final orders and 1 pending order involving subdivisions located in the State of Florida. We also have three cases that are currently in litigation.

I think, in terms of investigations, prosecutions, and enforcement actions, we probably have somewhat more expertise.

Mr. GONZALEZ. These are land sales cases?

Mr. STEINMAN. Yes.

Mr. GONZALEZ. Let me ask you about the mechanics. You will have to forgive my ignorance, but I think it is very important for us to understand.

When HUD reaches the point where they have assembled the facts in a case, as I understand it, they turn it over to the Justice Department; is that correct? Do you know if that is true?

Mr. STEINMAN. In terms of injunctive actions, I believe that is the procedure; yes.

Mr. TIFFORD. They do their own administrative suspension work, I believe.

Mr. STEINMAN. Criminal prosecutions are done by the Department of Justice.

Mr. GONZALEZ. What about in your case, FTC?

Mr. STEINMAN. We do not have any criminal prosecutorial authority. Ours is civil.

In terms of civil penalties which arise from violations of cease-and-desist orders, our principal effort is in getting the cease-and-desist order. Once an order is outstanding, under section 16 of the FTC Act. We are required to give notice to the Department of Justice of our intention to institute a civil penalty action, the Department is given 45 days to take it or we will take it ourselves.

Mr. GONZALEZ. So that in a matter of a criminal prosecution, you have no jurisdiction, and, therefore, of necessity, would you refer that to the Justice Department?

Mr. STEINMAN. Well, one thing I should like to make clear—and this applies to States such as the State of Florida—when we look at a case, we get the information and determine the nature of the practice, and one of the principal things we do is to see who is the appropriate entity to handle the case.

We will look at the State agencies involved to see whether or not they have the interest or the authority to properly go forward with the case, and if they do, we just advise them of it and refer it to them.

If it is a criminal violation or we think it is a criminal violation, then we are very likely to call on the Department of Justice and have them look at it.

It is only after we have gone through this kind of process and we determine that we are the appropriate agency to handle it do we then go forward with it.

Chairman ASHLEY. Would the gentleman yield?

Mr. GONZALEZ. Certainly.

Chairman ASHLEY. I wonder if you would be good enough to submit, for the record, when you can, the tools that you have available to remedy violations, practices that you find in your investigations. In other words, you have mentioned cease-and-desist orders. I would like to get an idea as to other remedies that are made use of, which remedies are made use of most often. Information of that kind would be very helpful.

Mr. STEINMAN. We would be happy to do that, Congressman.

[In response to the request of Chairman Ashley for additional information, Mr. Steinman furnished the following response for inclusion in the record:]

RESPONSE FROM MR. STEINMAN

During the land sales hearings held on August 3, 1978, Congressman Ashley asked us for information concerning the resources allocated by the Federal Trade Commission toward land sales matters and a brief description of our accomplishments to date.

For the 3 year period July 1, 1974 through June 30, 1977, the Commission spent approximately $2,500,000 of its budget for land sales matters. During that time, 56 professional work years were employed for land sales work.

Some of the Commission's accomplishments in land sales matters were listed on pages 1 and 2 of our testimony. I have enclosed an additional copy of this testimony for your convenience, with relevant portions therof underlined for your benefit. In addition to the tangible evidence of achievement, I believe that two additional, though non-quantifiable, benefits should be noted. First, consumers have been more cautious in buying land as a result of the publicity from FTC activities. Second, some land sales companies voluntarily changed their practices after observing FTC activities against other companies.

Mr. TIFFORD. I might add, of the achievements Mr. Steinman has listed, including the consent orders and the cash refunds and the additional commitments that developers have made to make capital expenditures on behalf of the development, they have all been obtained through our own efforts, rather than through the efforts of others. I mean, that is all FTC work.

Chairman ASHLEY. Well, we are interested in the nature of the abuses that you have been able to remedy through the use of these various tools, and you can give us within a certain time period that there were *x* number of investigations handled by the staff of however many people who were responsible, and, as I indicated earlier, the remedies that were obtained in those situations.

Mr. STEINMAN. Congressman, the full text of our statement today does reflect some statistics that you want. We will be happy to supplement that.

Chairman ASHLEY. We want to focus on that, and that will be a way of bringing it back to our attention.

Thank you, Mr. Gonzalez.

Mr. GONZALEZ. Mr. Steinman or Mr. Tifford, how do we handle the accusation that this is one area where we could avoid duplication, the charge that there is duplication in this field?

Mr. STEINMAN. I do not think that you have an inordinate amount of duplication and regulation of the business practices. By their very nature, with multiple agencies, there is always some overlapping jurisdiction. We have overlapping jurisdiction with the Department of Justice. We have overlapping jurisdiction with the Food and Drug Administration over certain kinds of advertising. I think that is healthy.

I think what you will find is that where this does occur the agencies involved attempt to communicate, and as long as the communications are open and free you are going to find that the business interests are not overly burdened, because neither agency wants to duplicate efforts of others because it would be a waste of resources.

What we are trying to do is to suggest ways—and the Minish bill does, in many respects; to make OILSR more effective in its regulation. The more effective OILSR becomes, the less need there is for an agency like the Federal Trade Commission to use its authority. And when it would, it would be supplementing OILSR's authority because of some reason OILSR did not want to go forward, and we felt that it would be proper to do so.

Mr. GONZALEZ. This is why I was interested in the presentation of some of the facts by Mr. Hempel, for example, and yourself. It seems that, given the number of persons that, say, the California agency has—if I remember correctly, about 60; that is a little bit more than half of what HUD has. It seems to me that neither HUD nor FTC is sufficiently staffed, even if it wanted to, to handle the job on the national level, as well as what is being done here. The extent of the work that is done and the accomplishment and the number of cases, for example, that you have followed through, as compared to what HUD has over the same period of time does not reflect too well on HUD.

And given the tendency here of HUD's agency to concentrate in the area such as in the case of California, where you had, I would consider, a tremendous reaction, where you had 500 businessmen involved, who are obviously puzzled because they had never intended, and have, in fact, not done anything that would indicate they were interested in interstate land sales.

And yet, here is HUD concentrating on these individuals who, through their practice clearly indicate they never went out of their own local area or county. Because of the definition of interstate commerce that focuses on whether they had used the telephone or the mail these people come under the jurisdiction of the act without ascertaining whether the use of the mail or the telephone is for the transaction of interstate or purely intrastate sales.

In other words, once they have a phone, once they use a letter for whatever purpose: wholly intrastate, intracity, or intracounty trans-

actions—it makes no difference—they are covered according to HUD, and immediately the full weight of HUD's enforcement is exercised.

This seems to me a radical straying from the basic congressional intent to concentrate on these fraudulent interstate land sales transactions.

I am just wondering how, up to now, I could successfully defend the record on the Federal level, given this as a factual situation. I am one of those that was in on the beginning, as I said, going back over 10 years ago when the effort was first made on the House level, and I have supported the legislation and I am on the Minish bill, though there are some provisions there that I have great doubts about.

Chairman ASHLEY. Would the gentleman yield?

Mr. GONZALEZ. Yes.

Chairman ASHLEY. Just to point out, that 10 years ago I suspect that there weren't a half a dozen States that had any State laws regulating land sales.

Mr. GONZALEZ. They were just about starting up in Florida, I believe.

Mr. PFERSICH. We began in 1963, but the Uniform Land Sales Practices Act was not passed until 1967.

Chairman ASHLEY. My point is simply that at that time I suspect that the statute was drafted as it was so that it could apply to intrastate as well as interstate transactions because so few States, less than a handful, had shown any interest in the problem at hand or had addressed it through the adoption of State laws regulating intrastate or interstate land sales.

Mr. PFERSICH. Mr. Chairman, I might point out, I am not here as an advocate of OILSR, necessarily, but I think I have indicated a couple of strong reasons why we believe that there is some continued need for their existence.

I might also point out, if there was an absence of regulation of the sale of subdivided land in a State, such as Florida, which is an extremely large State—if you drive from Pensacola to Key West, you are talking about 800-plus miles; the geography, the climate, and all the characteristics are very dissimilar—I think that you could accurately refer to someone who is being solicited in Pensacola for the purchase of property in Key West to be a "remote purchaser," so even on an intrastate basis, on occasion, I think that the effects of full disclosure are very useful.

In a State like Rhode Island, that might not necessarily be the case.

Mr. GONZALEZ. Well, I would agree with that. And actually, when we touched on that matter, even though it was peripheral, on the various occasions that this came up, I was one of those that expressed the same views as you are because I come from a State whose boundaries are 900 miles apart, either way. And I could see that there had not been sufficient legislation on the State basis.

But on the other hand—and this, I don't know how we can control from the legislative level; I don't know that we can devise a statute that is going to give a reason to a judgment made by an official, a human being, in the course of administering the act.

And I think poor individual judgment is really what it amounts to particularly in the case that I had personal experience with, where the man involved had never taken any action whatsoever or uttered a

word on behalf of interstate land sales, and it involved a person who was living there in the locality and intended, upon completing his service, to retire in that area and in the home that he was purchasing; yet he found himself entrapped by all of this HUD procedural requirement and prohibition.

So, it seems to me that there, I don't know what we can do in the law itself, except that I do not want to unwittingly provide anything in the law that would further encourage what I would consider to be an administrative abuse of discretion.

Mr. PFERSICH. One suggestion I might have is, again, to look toward the concept of providing exemptions from regulation for those States that at least meet or are equivalent to the Federal standards.

You have cured the problem in those cases, and I think that you have served to encourage those States who do not bring their standards up to that minimum threshold.

Mr. GONZALEZ. I agree with you, and I support you, and I support that concept.

As a matter of fact, I was the author of an attempt of an amendment to provide the same kind of legal exemption in the case of closing costs disclosure and real estate settlement costs. And since I came from a State that has for years had one of the strongest State legislative enactments on that, I felt that we were entitled to an exemption, but it was very difficult. We were not able to get it.

So, it is not that easy to legislate exemptions on this level, I believe, unless we can really have very specific language that would enable us to sell it.

Mr. PFERSICH. I had not had an opportunity to meet Mr. Hempel before this morning, nor review what he is proposing, but I think that the basic concept of his ideas are very well-conceived, and something along those lines makes a great deal of sense.

Chairman ASHLEY. Let me ask just a couple of questions, if I might.

You suggested that HUD be given the authority to exempt States that meet appropriate standards.

Would this, in fact, be an encouragement to other States to adopt their own statutory framework, enforcement arm, and so forth?

I mean, it sounds persuasive, but I am not sure of that. I mean, if the Federal Government will do it for you, then why should they get into it?

Mr. PFERSICH. I cannot speak for other States, but I think that given the attitude and the mood that I feel in the State of Florida, I think that the State officials feel that the agency that they have created to perform that regulatory function best knows and understands——

Chairman ASHLEY. Well, I am sure of that, from the standpoint of Florida, but I am talking about the real nonparticipants.

Mr. PFERSICH. That is very difficult to answer, sir.

Chairman ASHLEY. Do you have any comment on that, Mr. Hempel?

Mr. HEMPEL. Well, I think, Mr. Chairman, that it would be an inducement, even in a State that has nothing on the books, because most of the people whom I have talked to, no matter where they come from, would prefer to see Government as local as possible, and there is a fear. Washington is a long way off, and I think that perhaps developers themselves, in some of the States that have no regulations, if there was such an exemption possible, they would possibly lobby

their own State legislature so that they could get the control at the local level.

Chairman ASHLEY. Let me ask just a couple of cleanup questions.

The installment contract has come under a good deal of scrutiny by members of this committee, particularly, as you know, in the Minish bill.

What would be the impact on the land-sales industry, in your judgment, if the Federal law provided that the developer could only provide financing for the purchase of the lot if the contract included the protections as specified in the Minish proposal, whereby title would be transferred to the purchaser within 30 days and the purchaser established equity in the proportion of payments, and damages could not exceed the developer's proven damages?

Mr. TIFFORD. Those are the kind of changes we think would be tremendously beneficial to consumers, and they are examples of the problems that we found consistently throughout our investigations at our level.

Chairman ASHLEY. That was not the question, though, if I may say so.

The question was: What would the impact be on the land-sales industry? You see, I stipulate going in, that on those consumers that would otherwise be "had," adoption of these provisions would be very beneficial. But again, we would be broadly legislating in order to correct potential abuses.

And the thrust of my question was: Really, what would the impact be on the industry, on an overall basis, not just on those players in the industry that make use of fraud and deceptive practices and so forth?

Mr. HEMPEL. I would like to comment, Mr. Chairman.

I think, in California, although I have not studied that aspect of the bill, just based on your words, I think it would have an adverse effect, both on the development industry and upon consumers, because, you see, in California, we have a number of sections which are already designed to protect consumers in connection with sales on land-sales contracts.

For instance, it is a felony for any person, whether it is a subdivision or not, for any person to encumber property beyond the amount due on the contract of sale.

That is one of several sections that were adopted during our beefing up during the past years.

Chairman ASHLEY. The problem, you see, is: The Minish proposal would not be appropriate to California, but what about State X, that has nothing on the books? Now, there is the problem, you see.

In that situation, is this overlegislation, or is it not? That is what I am asking.

Mr. HEMPEL. My suggestion is that perhaps—and perhaps committee staff can take a look at some of these things that are peculiar to California that might be useful at the Federal level—you see, at first glance, it would be helpful because title would have to pass within 30 days. Well, it means that nobody is going to sell any property for a low downpayment because, once you pass title and take a deed of trust back, at least under the laws in our State and in many others, you have to go through a full blown foreclosure procedure.

So, that is one of the reasons why contracts of sale are used in the first place. We have designed local protections, but if, in States where

they do not have any protections at the local—and by that, I mean the State level—then perhaps some sort of alternatives to that, such as we have adopted in California to adopt against abuses that we used to have——

Chairman ASHLEY. Rather than outright prohibition of that kind of a sales instrument?

Mr. HEMPEL. Yes, sir.

Mr. STEINMAN. I think from the FTC's perspective, the point we would like to leave you with today is, we are interested in those actions that protect consumers, and we would urge you in considering the question of the burden on the developers, that in attempting to remedy that concern, that Congress not take action that is going to adversely affect the protections that consumers already have.

The principal areas that we think are important are creating private rights of action for consumers, because the Government, even if we had the resources, can't possibly bring enough actions to protect all of the consumers. If they had private rights of actions in the bill, they could bring actions to protect themselves.

The other thing is that in terms of information, while we don't think that it is necessary to have detailed property reports, we think that there is important information which should be made available to the purchasers, and that it should be presented in a readable manner.

We are concerned that consumers have these rights. We are not particularly concerned whether they get the right from the Federal Government or from the States. We are just concerned that the rights be there.

So I think one of the roles of Congress should have is to establish minimum standards, and that if States can provide those standards, then I would think the Federal Government would not want to intercede. But where the States are not providing those standards, for whatever reason, then the Federal Government could consider whether or not it should take action.

Chairman ASHLEY. Well, we are in no real disagreement on that.

I would like to have before us consideration of alternatives, however, in the States that have nothing on the books that would not be subject to an exemption.

Under the proposals under discussion, I simply wonder whether the Minish approach would be desirable or whether alternatives, such as were proposed by Mr. Hempel, whether they might better be able to permit a balanced approach.

I understand from your standpoint that the protection of the consumer is the No. 1 priority, and that is a worthy priority. It is not the only priority, however. What we are trying to do is protect the consumer within a framework which permits honest land development with as little possible interference by the Government as possible.

There are a number of objectives here.

Mr. STEINMAN. We recognize that.

Chairman ASHLEY. I know we have been here a long time. Let me just ask one or two additional brief questions.

OILSR recommends raising to 100 the lot limit for the fundamental statutory exemptions, to 150 the lot limit for the regulatory limited offering exemption and to 300 the lot limit for the primary homesite exemption.

I am wondering, do different abuses occur more regularly in developments of 300 lots than those of 100 lots?

Why not exempt from disclosure requirements all developments containing less than 300 lots?

In other words, is there something unique about the size of a development in terms of the kind of abuses that we find?

Mr. HEMPEL. Yes; Mr. Chairman, I think there is. I think the larger the development, the more likely it is to be marketed widely, because it isn't economically sound to market a small subdivision on a national basis.

However, I noticed that the larger number dealt with the first home approach, and I don't know how they attempt to define that, if that is a representation to be made by the developer or what, but I guess what they are trying to do is carve out the so-called recreational home or the vacation home.

And it is true that in California we have large tracts, admittedly mostly built with houses, but it is not unusual to have vacant land tracts, too, large tracks in highly urban areas that are all marketed right in that urban area.

In southern California it is not unusual to have 200- or 300-lot subdivisions.

So I think that the approach that the administration bill has is probably healthy, and I think the numbers game has to be played in this area.

Even in our subdivision law in California, as proud as we are of it, they decided that five or more lots or parcels constituted a subdivision, and they figured, I guess, that the legislation, when it was first decided, and it has been subsequently ruled, that it is constitutional classification—they figured anything less than that was just a casual sale. But if you're going to be in the business, then it lends itself to the possibility of sharp practices, and it is appropriate for State regulation.

The same thing, I think, would flow in connection with Federal jurisdiction.

Chairman ASHLEY. Gentlemen, you have been more than generous with your time. God knows, you have. You came here at 10 o'clock, and it is going on 2:30 p.m. now. Your testimony, obviously, has gained the interest of the subcommittee. If it weren't important, we would not have held you here so long.

But we are trying to draft legislation that is responsive to a very serious problem, and we are trying to do that in the most responsible way possible, and each and every one of you has made a contribution to that; the subcommittee is most grateful to you.

Thank you.

The subcommittee will stand in recess, subject to the call of the Chair.

[Whereupon, at 2:25 p.m., the subcommittee adjourned.]

[The following letter, dated July 28, 1978, from Congressman Robert McClory of Illinois, with an attached letter dated May 22, 1978, from Jack L. Lawson, executive vice president, Elgin (Ill.) Board of Realtors, was received for inclusion in the record:]

ROBERT McCLORY
13th District, Illinois

Room 2469
Rayburn House Office Building
(202) 225-5221

RANKING REPUBLICAN
JUDICIARY COMMITTEE

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

U.S. INTERPARLIAMENTARY
UNION DELEGATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 28, 1978

DISTRICT OFFICES:
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Record Clerk
House Banking, Finance and Urban Affairs Committee
Subcommittee on Housing and Community Development
2132 Rayburn House Office Bldg.
Washington, D. C. 20515

Dear Sir:

The attached letter from the Elgin Board of Realtors concerns the Interstate Land Sales Full Disclosure Act. I have been informed that the Nelson Amendment provision of S. 3084 has been eliminated from the version of the Housing and Community Development Amendments of 1978 and that your subcommittee will be holding hearings on this subject August 1, 2, and 3. Would you please include my constituent's letter in the hearing record. I feel he makes some very valid points that should receive consideration during subcommittee deliberations on this legislation.

Sincerely yours,

Robert McClory
Member of Congress

RMcC:lr

Enclosure

REALTOR®

NATIONAL ASSOCIATION OF REALTORS®

Elgin Board of Realtors
1726 Grandstand Place, Elgin, Illinois 60120
Telephone 312 695-7607

MAY 25 1978

May 22, 1978

Honorable Robert McClory
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative McClory:

In response to INTERSTATE LAND SALES FULL DISCLOSURE ACT (Nelson Amendments to S.3084, Section 715 and H.R. 12467), I offer the following:

.....For months, Congress has been trying to find ways of reducing Federal red-tape which engulfs small businessmen in America. Through support of Senator Nelson's amendment, Congress can accomplish this.

.....The Nelson Amendment is now Section 715 of S.3084, and must be approved by the Full Senate and House of Representatives.

.....The cost of housing goes up with every addition to Federal paperwork and when Congress has a chance to strike a blow against the bureaucracy it should seize that chance.

.....Thanks to the bill offered by Sen. Gaylord Nelson, Chairman of the Senate Small Business Committee, the opportunity to remove, as a practical matter, land sales registration of intrastate sales from Federal jurisdiction is at hand.

.....The Senate Committee on Banking, Housing and Urban Affairs has voted to include the Nelson Amendment in the HUD authorization bill for 1979.

.....The full Senate, first, and then the whole House will have an opportunity to retain the Nelson Amendment as part of the HUD bill. Urge them to do so.

.....OILSR (in HUD) by administrative dictation has established a Federal licensing bureaucracy accompanied by administrative red-tape, excessive costs and bureaucratic procrastination.

.....The Nelson exemptions do not impair any protection provided to consumers under the ILSFDA. The ELGIN BOARD OF REALTORS support the original purposes of the original Act to provide such consumer protection...before HUD got its hands on it.

.....OILSR is so preoccupied with its assumed authority of regulating all land developers that it is unable to protect consumers from fraudulent interstate land sales operation, the original intent of the Act.

.....OILSR is driving the small intrastate developer out of business, or in order to avoid OILSR's complex and costly rules and regulations, small land developers are holding their lots off the consumer market or are selling only to builders.

continued . . .

.....Local land developers are being excessively over-regulated by OILSR and by over-regulation the consumer is now paying more for undeveloped lots without being afforded any additional value or protection.

In 1968, Congress acted to require registration of sales in order to protect, typically, the purchaser of the recreational-retirement type lot, usually in another state far from home, from fraud. HUD, however, has gone far beyond that concept to include intrastate registration for purely local sales. That was NOT the intent of Congress. We would appreciate you taking this chance to do something about it.

Your response to this problem will be appreciated...

Sincerely,

ELGIN BOARD OF REALTORS

Jack

Jack L. Lawson
Executive Vice-President

skr

DATE DUE			