

LEGISLATIVE BILL 1311

Approved by the Governor March 29, 1972

Introduced by Fern Hubbard Orme, 29th District

AN ACT requiring full disclosure by developers of retirement communities and subdivisions; to define terms; to provide duties; to provide for liaison representation on governing bodies; and to provide for violations and penalties.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that, in order to insure the economic security of Nebraskans of retirement age it is necessary to require those persons who develop retirement communities to make a full and periodic disclosure of their fiscal condition.

The Legislature also finds it to be in the best interest of the tenants of such concerns, as well as in the best tradition of participatory democracy, that such tenants have a voice in the affairs of such concerns through liaison representation on the board of directors when the retirement community is owned and managed by a nonprofit entity.

Sec. 2. For the purposes of this act, unless the context otherwise requires:

(1) Retirement subdivision or subdivision shall mean any land which is divided or proposed to be divided into ten or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan when such subdivision is advertised or represented as a retirement subdivision or as a subdivision primarily for retirees or elderly persons, or when there is a minimum age limit tending to attract persons who are nearing retirement age;

(2) Retirement community or community shall mean any complex or proposed complex of more than ten units, whether contained in one or more buildings or whether constructed on separate lots, offered for sale or lease as part of a common promotional plan when such community is advertised or represented as a retirement community or as a community primarily for retirees or elderly persons, or when there is a minimum age limit tending to attract persons who are nearing retirement age;

(3) Unit shall mean any apartment or structure intended primarily as a residence and consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, including a single residence dwelling;

(4) Common promotional plan shall include an offer for sale or lease of lots or units in a subdivision or community by a single developer, or a group of developers acting in concert when such lots or units are contiguous, or are known, designated, or advertised as a common entity or by a common name;

(5) Person shall mean an individual, or any unincorporated organization, partnership, association, corporation, trust, or estate;

(6) Developer shall mean 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 retirement subdivision or any units in a retirement community;

(7) Agent shall mean 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 retirement subdivision or any units in a retirement community, but shall not include an attorney at law whose representation of another person consists solely of rendering legal services;

(8) State shall mean the State of Nebraska;

(9) Purchaser shall mean an actual or prospective purchaser or lessee of any lot or unit in a subdivision or community;

(10) Offer shall include any inducement, solicitation, or attempt to encourage a person to acquire a lot or unit in a subdivision or community;

(11) Disposition shall include sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision or community;

(12) Agency shall mean the State Real Estate Commission of the State of Nebraska; and

(13) Lease shall mean a contract for the use and occupancy of real estate primarily as a residence when the contract term is for more than one year or is for life and when the lessee is required to pay an initial fee which is more than reasonably necessary to cover a

deposit for damages and restoration of the premises, the last month's rent and the first month's rent in advance.

Sec. 3. (1) The provisions of this act shall be administered by the State Real Estate Commission.

(2) All rules, regulations and administrative procedures adopted by the agency pursuant to this act shall be promulgated with the advice and counsel or a representative group of administrative personnel of those retirement communities and subdivisions affected by such rules, regulations and administrative practices.

Sec. 4. Unless the method of disposition is adopted for the purpose of evasion of the provisions of this act, the provisions of this act do not apply to offers or dispositions of an interest in land by a purchaser of subdivided lands for his own account in a single or isolated transaction, nor shall the provisions of this act apply to the following:

(1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(3) The sale or lease of real estate under or pursuant to court order;

(4) The disposition in any manner whatsoever of any unit of public housing under the administrative jurisdiction of a local public housing authority;

(5) Offers or dispositions of securities currently registered with the Director of Banking under the provisions of the Security Act of Nebraska;

(6) Homes for the aged or infirm, licensed by the Department of Health pursuant to sections 71-2041 to 71-2045, Revised Statutes Supplement, 1969.

Sec. 5. Unless the retirement subdivisions or community lands or the transaction is exempt by section 4 of this act:

(1) No person may offer or dispose of any lot or unit in any retirement subdivision or community located in this state, nor offer or dispose in this state of any lot or unit in any retirement subdivision or community located without this state prior to the time such

subdivision or community is registered in the manner prescribed by this act; or

(2) No person may dispose of any lot or unit in any retirement subdivision or community unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity, under no circumstances less than forty-eight hours, to examine the public offering statement prior to the disposition.

Sec. 6. (1) A retirement subdivision or community may be registered by filing with the agency a statement of record containing the following documents and information:

(a) An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under the provisions of this act against the developer or his agent;

(b) A legal description of the lands offered for registration as a retirement subdivision or community, together with a map showing the subdivision proposed or made, and the dimensions of the lots, parcels, units or interests and the relation of such lands to existing streets, roads, and other improvements;

(c) The states or jurisdictions, including the federal government, in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivision or community lands by the regulatory authorities in each jurisdiction or by any court;

(d) The applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(e) The name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status, performing similar functions or having an interest in the subdivision or community lands, or the extent and nature of his interest in the applicant or the subdivision or community lands as of a specified date within thirty days of the filing of the application;

(f) A statement, in a form acceptable to the agency, of the condition of the title to the subdivision or community lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney,

not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency;

(g) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivision or community lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the subdivision or community lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(i) If there is a lien or encumbrance affecting more than one lot, parcel, unit or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivision or community lands;

(k) A statement of the zoning and other governmental regulations affecting the use of the subdivision or community lands and also of any existing taxes and existing or proposed special taxes or assessments which affect such lands;

(l) The proposed public offering statement;

(m) A current financial statement, which shall include such information concerning the developer as the agency deems to be pertinent, including, but not restricted to, a profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy against the developer or any principal owning more than ten per cent of the interests in the subdivision or community at the time of filing; and

(n) Any other information which the agency by its rules requires for the protection of purchasers.

(2) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the agency a fee, not in excess of one hundred dollars, in accordance with a schedule to be fixed by the regulations of the agency, which fees may be used by the agency to

defray part of the cost of rendering services under this act.

(3) The filing with the agency of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (2) of this section.

(4) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the agency may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the agency may prescribe.

(5) If the developer registers additional subdivision or community lands, he may consolidate the subsequent registration with any earlier registration offering such lands for disposition under the same promotional plan.

(6) The developer shall immediately report any additional liens, adjudication of bankruptcy against the developer or any of its principal officers, or any action or development which materially changes the condition of the title to the subdivisions or community lands.

(7) Nothing in this act shall require retirement subdivisions or community lands in existence on the effective date of this act to prepare certified financial statements from the date of their inception, but such certified financial statements for the most recent fiscal year ending before the effective date of this act shall be filed as otherwise required by the terms of this act.

Sec. 7. (1) A public offering statement shall disclose fully and accurately the physical characteristics of the retirement subdivision or community. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and shall as a minimum include the following:

(a) The name and principal address of the developer;

(b) A general description of the subdivision or community 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 zoning and other regulations affecting such lands and each unit or lot, and a statement of all existing taxes and existing

or proposed special taxes or assessments which affect such lands;

(d) A statement of the use for which the property is offered;

(e) Information concerning improvements, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities 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 interest in the subdivision or community;

(f) A statement that a certified financial statement for the community is on file with the Nebraska Real Estate Commission; and

(g) Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

(2) The public offering statement shall not be used for any promotional purposes before registration of the retirement subdivision or community and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the subdivision lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires or permits it.

(3) The agency may require the developer to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the plan of disposition or development of the subdivision or community may be made after registration without notifying the agency and without making an appropriate amendment to the public offering statement. A public offering statement is not current unless all amendments are incorporated.

Sec. 8. Upon receipt of a statement of record in proper form, the agency shall forthwith initiate an examination to determine that:

(1) 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;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) Such developer has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(4) The public offering statement requirements of this act have been satisfied.

Sec. 9. (1) Upon filing of the statement of record in proper form, the agency shall issue a notice of filing to the applicant. Within ten days from the date of the notice of filing, the agency shall enter an order registering the subdivision or community or rejecting the registration. If no order of rejection is entered within ninety days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(2) If the agency affirmatively determines, upon inquiry and examination, that the requirements of section 8 of this act have been met, it shall enter an order registering the retirement subdivision or community.

(3) If the agency determines upon inquiry and examination that any of the requirements of section 8 of this act have not been met, the agency shall notify the applicant that the statement of record must be corrected in the particulars specified within twenty days. If the requirements are not met within the time allowed, the agency shall enter an order rejecting the registration containing the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing upon request.

Sec. 10. Within thirty days after each annual anniversary date of an order registering a retirement subdivision or community, the developer of such lands shall file a report in the form prescribed by the rules of the agency. The report shall reflect a current financial statement including, but not restricted to, a

profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy against the developer or any principal owning more than ten per cent of the interest in the subdivision or community at the time of filing.

Sec. 11. The agency shall adopt, amend, or repeal such rules and regulations as are necessary for the enforcement of the provisions of this act, in accordance with Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, regarding the adoption of such rules and regulations. The agency shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the agency in investigating such real estate and the proposed sale thereof shall be borne by the developer and the agency shall require a deposit sufficient to cover such expenses prior to incurring the same.

Sec. 12. (1) The agency 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 the provisions of this act or any rule or order under the provisions of this act, or to aid in the enforcement of the provisions of this act or in the prescribing of rules and forms under the provisions of this act; and

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the agency 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 agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall 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.

Sec. 13. When the developer of a Nebraska retirement subdivision or community is incorporated under

Nebraska statutes as a nonprofit corporation, and when such corporation governs the management of the retirement subdivision or community, then:

(1) The residents, purchasers, or lessees of lands or units in the subdivision or community shall annually have the opportunity to democratically select and designate one individual to represent the residents, purchasers, and lessees as a liaison representative before the governing body of the corporation. Such liaison representative shall have the right to be present at all meetings of the governing body, to speak and to express opinions, but shall not have the right to vote on any of the business to come before the governing body. Such liaison representative shall be deemed to have been duly installed and to have his or her term commence upon his or her election;

(2) The election provided for in subdivision (1) of this section shall be conducted in total by the residents, purchasers, and lessees described in subdivision (1) of this section pursuant to rules adopted by them in open session; and

(3) The developer shall in no way attempt to interfere with, influence, or abridge the right of the residents, lessees, and purchasers to organize and conduct the aforementioned election, nor the results of that election.

Sec. 14. Any person or corporation wishing to contest any ruling or action of the agency may request and shall be granted a public hearing before the State Real Estate Commission. If the results of such hearing are unsatisfactory to the person or corporation, a civil action may be filed in the district court of appropriate jurisdiction.

Sec. 15. Any person who willfully violates any provision of this act or of a rule adopted under it or any person who willfully, in a statement of record filed for registration, makes any untrue statement of a material fact or omits to state a material fact shall, upon conviction thereof, be fined not less than two hundred fifty dollars or double the amount of gain from the transaction, whichever is the larger but not more than ten thousand dollars, be imprisoned for not more than one year, or both fined and imprisoned.