

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1140

S. P. 313

In Senate, March 4, 1969

Taken from the Table by Senator Quinn of Penobscot. Referred to Committee on Legal Affairs. Sent down for concurrence and 1,000 ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Quinn of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Requiring the Registration of Real Estate Subdivisions.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 33, c. 8, additional. Title 33 of the Revised Statutes is amended by adding a new chapter 8, to read as follows:

CHAPTER 8

MAINE LAND SALES PRACTICES ACT

§ 461. Definitions

When used in this chapter, unless the context otherwise requires:

1. Commission. "Commission" means the Maine Real Estate Commission.
2. Developer. "Developer" means any owner of a subdivision who offers it for sale or an employee or agent of a developer.
3. Offer. "Offer" includes every inducement, solicitation or attempt to encourage a person to acquire or sell or transfer an interest in land, if undertaken for gain or profit.
4. Person. "Person" means an individual, corporation, government or governmental subdivision or agency, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing who are associated or affiliated or have a joint or common interest, or any other legal or commercial entity.
5. Purchaser. "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land or an employee or agent of a purchaser.

6. Sale. "Sale" includes sale, lease, transfer, assignment, award by lottery or any other transaction concerning a subdivision, if undertaken for gain or profit.

7. Subdivision. "Subdivision" means any land which is divided or is proposed to be divided for the purpose of sale into 10 or more lots, parcels, units or interests and includes any land whether contiguous or not if 10 or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale.

§ 462. Administration

This chapter shall be administered by the commission. Any action, proceeding or prosecution arising out of any violation of this chapter may be instituted by the Attorney General.

Each member of the commission shall receive his full compensation for each day actually spent on the work of said commission the sum of \$50 and his actual and necessary expenses incurred in the performance of the duties pertaining to his office.

The commission may employ such clerical assistants, technical assistants and investigators as it deems necessary to discharge the duties imposed by this chapter.

The application fees required under section 465 shall be sent forthwith by the commission to the Treasurer of State with a detailed statement thereof and shall be part of the "Real Estate Fund."

§ 463. Exemptions

1. Method of purchase or sale. Unless the method of purchase or sale is adopted for the purpose of evasion of this chapter, this chapter does not apply to:

A. A sale or offer to sell an interest in land by a person in a single and isolated transaction;

B. A purchase or offer to purchase an interest in land by a person without intent to subdivide in a single and isolated transaction. An intent to subdivide will be presumed if more than 10 separate lots, parcels, units or interests in the land purchased are offered by the person in a period of 12 months;

C. A sale or offer to sell an interest in land pursuant to court order;

2. Method of sale. Unless the method of sale is adopted for the purpose of evasion of this chapter, this chapter does not apply to:

A. Offers or sales of evidences of indebtedness secured by a mortgage of real estate;

B. Offers or sales of securities currently registered under Title 11; and

C. Offers or dispositions of any interest in oil, gas or other minerals or any royalty interest therein if the offers or sales of such interests are regulated as securities by the United States or under Title 11.

§ 464. Disclosure and registration of purchases and sales of interests in land and subdivisions

Unless the subdivision or the transaction is exempt by section 463:

1. Registration. No person may offer or sell any interest in a subdivision located in this State, nor offer or sell in this State any interest in a subdivision located without this State, prior to the time the subdivision is registered in accordance with this chapter.

2. Public offering statement. No person may sell any interest in a subdivision unless a current public offering statement in the form required by section 466 is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement.

3. Purchase. No person acting directly or indirectly on account of or as agent or employee of another person or persons may purchase any land subject to this chapter in this State of over 2 acres unless that person discloses to the seller prior to the making of any agreement relating thereto the identity of the person or persons for whose account such purchase is made and, if one or more of such persons is a corporation, the identity of all stockholders owning 5% or more of the outstanding shares of capital stock thereof and the president, treasurer and secretary or clerk.

§ 465. Application for registration

1. Application and fee. The application for registration of a subdivision shall be made in the office of the commission. The application fee will be \$75 plus \$2 for each subdivision lot. The application for registration shall contain the following documents and information:

A. An appointment of the Secretary of State to receive service of any process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;

B. A legal description of the subdivision offered for registration, together with a map showing the division proposed or made, and 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;

C. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

D. The applicant's name, address and the form, date and state or city or town of organization of the applicant's business; and the address of each of its offices in this State;

E. The name, address and principal occupation for the past 5 years of every director and officer of the applicant or person occupying a similar status or performing similar functions and of every holder of 20% or more of the outstanding shares of capital stock of the applicant and of every corporation holding 20% or more of such stock; the extent and nature of

his interest in the applicant or the subdivision as of a specified date within 5 days of the filing of the application;

F. A statement of the condition of the title to the subdivision including encumbrances as of a specified date within 30 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;

G. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivision 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 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;

K. A statement of the zoning and other governmental regulations affecting the use of the subdivision and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivision;

L. A statement of the existing provisions for access, sewage disposal, water and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion and a statement as to the provisions for completion and improvement maintenance;

M. 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;

N. The proposed public offering statement as outlined in section 466;

O. Any other information, including any current financial statement, which the law requires for the protection of purchasers.

2. Changes. The person shall immediately report any changes in the information contained in an application for registration during the 90 days the commission is inquiring and examining under section 467.

§ 466. Public offering statement

1. Terms. A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all material circumstances or features affecting the subdivision in order that full disclosure of all facts concerning the subdivision are known to the prospective purchaser prior to the purchase of

any interest therein. The proposed public offering statement submitted to the commission shall be in a form prescribed by the commission and shall include the following :

- A. The name and principal address of the person registering the subdivision and, if different, the person owning the subdivision ;
- B. A description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering ;
- C. The terms of any encumbrances, easements, liens and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or special assessments which affect the subdivided lands ;
- D. A statement of the use for which the property is offered ;
- E. Information concerning improvements, including 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 subdivided lands ;
- F. Additional information required by law to assure full and fair disclosure to prospective purchasers.

2. How used. The public offering statement shall not be used for any purpose before registration of the subdivided lands and afterwards unless it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided 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.

3. No change after registration. No change in the promotional plan or plan of sale or development of the subdivision may be made after registration without notifying the commission and making amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

§ 467. Inquiry and examination

Upon receipt of an application for registration the commission shall forthwith initiate an examination to determine that :

1. Ability to convey. The applicant can convey or cause to be conveyed the interest in a subdivision offered for sale if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust or other safe-guards have been provided.

2. Improvements. There is reasonable assurance that all proposed improvements will be completed as requested.

3. Advertising. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by law to afford full and fair disclosure.

4. Crimes. The applicant has not, or if a corporation, its officers, directors, stockholders and principals have not, been convicted of a crime involving theft, involving fraud or misrepresentation or similar crime, or involving land dispositions or any aspect of the land sales business, in this State, the United States or any other state or foreign country within the past 30 years and has not been subject to any injunction or administrative order within the past 30 years restraining a false or misleading promotional plan.

5. Statements. The public offering statement requirements of this chapter have been satisfied.

§ 468. Receipt of application and registration

Upon receipt of the application for registration, the commission shall issue a notice of receipt to the applicant. The commission shall then inquire into and examine the application as provided in section 467. Within 60 days of the date of receipt of the application, the commission shall, if it determines that the application conforms to this chapter and is by inquiry and examination not in any part false or fraudulent, refer the application to the Department of the Attorney General. The Attorney General will then view the application to determine if the application is valid on its face and will review the investigation. The fee for approval by the Attorney General shall be \$20. Within 20 days of its receipt the Attorney General will return the application to the commission indicating approval or disapproval. If approved by the Attorney General, the commission may then in its discretion approve the application. If no decision of disapproval or rejection of the application is made by the commission within 90 days from the date of receipt of the application, the application shall be deemed approved unless the applicant has consented in writing to an extension of time within which the commission may act. Once approved by the commission, the application shall be returned to the applicant who must then file a copy of the application for registration in the registry of deeds in the county where the land is situated, in a book kept for that purpose. A copy thereof certified by such register shall be filed in the office of the Secretary of State, who shall enter the date of the filing thereon and on the original application to be kept by the applicant. The fee for filing in the Registry shall be \$5 and the fee for filing in the Secretary of State's office shall be \$20, plus an additional \$5 for every lot in the subdivision and shall be for the use of the State.

The application for registration shall be deemed valid when filed in the Secretary of State's Office.

§ 469. Annual report

Within 30 days after each annual anniversary date of filing of the approved registration with the Secretary of State as described, the subdivider shall file with the Secretary of State a report reflecting any changes in the information contained in the original application for registration. The filing fee for such a report shall be \$2.

§ 470. General powers and duties

1. Rules. The commission shall prescribe reasonable rules which may be adopted, amended or repealed. The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure;

provisions for escrow or trust agreements 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; provisions for operating procedures; and other rules as are necessary and proper to accomplish the purpose of this chapter.

2. Injunction. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, the commission or the Attorney General may bring an action in the Superior court for the county within which the land is located to enjoin the acts or practices and to enforce compliance with this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver may be appointed.

3. Notice. In any suit by or against an applicant involving a subdivision, the applicant shall furnish the commission notice of the suit.

4. Contracts and acceptance. The commission may contract with similar agencies in this State or other jurisdictions to perform investigative functions and accept grants in aid from any source.

5. Cooperation. The commission shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements and advertising standards.

§ 471. Investigations and proceedings

1. Investigations. The commission shall make necessary investigations within or outside of this State to determine whether any person has violated or is about to violate this chapter or to aid in the enforcement of this chapter.

2. Subpoena. For the purpose of any investigation or proceeding under this chapter, the Attorney General may administer oaths or affirmations and upon his 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.

3. Compliance. Upon failure to obey a subpoena or answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Attorney General may apply to the court for an order compelling compliance.

§ 472. Penalties

Any person who knowingly violates any provision of this chapter or any person who knowingly, in an application for registration, makes a false or fraudulent statement of a fact or omits to state a material fact shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$500 nor more than \$5,000.

§ 473. Civil remedy

1. **Untruths or omissions.** Any person who disposes of a subdivision or purchases land in violation of section 464, or who in disposing of a subdivision makes an untrue statement of a material fact, or who in disposing of a subdivision omits a material fact required to be stated in a registration statement or public offering statement 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 by the person so charged that the purchaser knew of the untruth or omission or that the person offering or disposing of a subdivision did not know and in the exercise of reasonable care could not have known of the untruth or omission or that the purchaser did not rely on the untruth or omission.

2. **Recovery.** In addition to any other remedies, the purchaser, under the subsection 1, may recover the consideration paid for the lot, parcel, unit or interest in a subdivision 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 a subdivision, 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. **Joint liability.** Every person who directly or indirectly controls a subdivider liable under subsection 1, every general partner, officer, director or holder of 20% or more of the outstanding shares of capital stock of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who aids in the disposition, and every agent who aids in the disposition is 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. **Statements.** Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

5. **Tender.** A tender of reconveyance may be made at any time before the entry of judgment.

6. **Waive compliance.** Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or order under it is void.

§ 474. Short title

This chapter may be cited as the Maine Land Sales Practices Act.