

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1573

H. P. 1205

House of Representatives, March 21, 1973

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Norris of Brewer.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Establishing the Maine Land Sales Full Disclosure Act.

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

Sec. 1. R. S., T. 33, c. 10-A, additional. Title 33 of the Revised Statutes is amended by adding a new chapter 10-A to read as follows:

CHAPTER 10-A

LAND SALES FULL DISCLOSURE ACT

§ 591. Short title

This chapter may be cited as the "Maine Land Sales Full Disclosure Act."

§ 592. Definitions

For the purposes of this chapter, unless the context otherwise requires, the following words shall have the following meanings:

1. Agent. "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 an attorney-at-law whose representation of another person consists solely of rendering legal services.

2. Blanket encumbrance. "Blanket encumbrance" means a trust deed, mortgage, judgment or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

3. Developer. "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.

4. Offer. "Offer" includes any inducement, solicitation or attempt to encourage a person to acquire a lot in a subdivision.

5. Person. "Person" means an individual, or an unincorporated organization, partnership, association, corporation, trust or estate.

6. Purchaser. "Purchaser" means an actual or prospective purchaser or lessee of any lot in a subdivision.

7. Secretary. "Secretary" means Secretary of State.

8. State. "State" includes the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

9. Subdivision. "Subdivision" means any land which is divided or proposed to be divided into 25 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan and where subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and such land is contiguous or is known, designated or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan.

§ 593. Exemptions

1. Exemptions. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

A. The sale or lease of real estate not pursuant to a common promotional plan to offer or sell 25 or more lots in a subdivision;

B. The sale or lease of lots in a subdivision, all of which are 5 acres or more in size;

C. The sale or lease of any improved land on which there is a residential, commercial or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon with a period of 2 years;

D. The sale or lease of real estate under or pursuant to court order;

E. The sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate;

F. The sale of securities issued by a real estate investment trust;

G. The sale or lease of real estate by any government or government agency;

H. The sale or lease of cemetery lots ;

I. The sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business ; or

J. The sale or lease of real estate which is free and clear of all liens, encumbrances and adverse claims, if each and every purchaser or his or her spouse has personally inspected the lot which he purchased and if the developer executes a written affirmation to that effect to be made a matter of record in accordance with rules and regulations of the Secretary. As used in this paragraph, the terms "liens," "encumbrances" and "adverse claims" are not intended to refer to 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 nor to taxes and assessments, which, under applicable state or local law, constitute liens on the property before they are due and payable.

2. —additional. The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this chapter any subdivision or any lots in a subdivision, if he finds that the enforcement of this chapter 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.

§ 594. Prohibitions relating to the sale or lease of lots in subdivisions

1. Prohibition. 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 :

A. 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 597 and a printed property report, meeting the requirements of section 598, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser ; and

B. 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 a material misrepresentation 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 and upon which the purchaser relies, 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.

2. Contract voidable. Any contract or agreement for the purchase or leasing of a lot in a subdivision covered by this chapter, where the property report has not been given to the purchaser in advance or at the time of his

signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement within 48 hours, where he has received the property report less than 48 hours before he signed the contract or agreement, and the contract or agreement shall so provide, except that the contract or agreement may stipulate that the foregoing revocation authority shall not apply in the case of a purchaser who has received the property report and inspected the lot to be purchased or leased in advance of signing the contract or agreement, and acknowledges by his signature that he has made such inspection and has read and understood such report.

§ 595. Registration of subdivisions

1. Registration. A subdivision may be registered by filing with the Secretary a statement of record, meeting the requirements of this chapter and such rules and regulations as may be prescribed by the Secretary in furtherance of the provisions of this chapter. A statement of record shall be deemed effective only as to the lots specified therein.

2. Fee. At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Secretary a fee, not in excess of \$500, in accordance with a schedule to be fixed by the regulations of the Secretary, which fees may be used by the Secretary to cover all or part of the cost of rendering services under this chapter.

3. Filing. The filing with the Secretary 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.

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

§ 596. Information required in statement of record

1. Information. The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section:

A. The name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

B. A legal description of, 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 and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

C. A statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

D. A statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

E. 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 by the developer and his estimated schedule for completion;

F. In the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

G. A copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company or any other form of organization; and if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

H. Copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

I. Copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

J. Copies of instruments creating easements or other restrictions;

K. Such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers.

§ 597. Taking effect of statements of record and amendments thereto

1. Effective date. Except as otherwise provided in this chapter, the effective date of a statement of record, or any amendment thereto, shall be the 30th day after the filing thereof or such earlier date as the Secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation, the developer shall include

in the consolidated statement of record any material changes in the information contained in the earlier statement.

2. Additional information. If it appears to the Secretary that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until 30 days after the developer files such additional information as the Secretary shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within 20 days of receipt of such request by the Secretary.

3. Amendments. If, at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

4. Suspension. If it appears to the Secretary at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing, at a time fixed by the Secretary, within 15 days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

5. Examination. The Secretary is hereby empowered to make an examination in any case to determine whether an order should issue under subsection 4. In making such examination, the Secretary or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents or any other person, in respect of any matter relevant to the examination. If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

6. Notice. Any notice required under this section shall be sent to or served on the developer or his authorized agent.

§ 598. Information required in property report

1. Information. A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretary may deem necessary, but

need not include the documents referred to in subsection 1, paragraphs G to K of section 596. A property report shall also contain such other information as the Secretary may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

2. Limitations. The property report shall not be used for any promotional purposes before the statement of record becomes effective and then only if it is used in its entirety. No person may advertise or represent that the Secretary approves or recommends the subdivision or the sale or lease of lots therein. No portion of the property report shall be underscored, italicized or printed in larger or bolder type than the balance of the statement unless the Secretary requires or permits it.

§ 599. Cooperation with state authorities

In administering this chapter, 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 chapter and may accept for filing under section 595 and declare effective as a statement of record, if he finds such action to be appropriate in the public interest or for the protection of purchasers, material filed with and found acceptable by such authorities.

Nothing in this chapter shall affect the jurisdiction of the Real Estate Commission over any subdivision or any person.

§ 600. Civil liabilities

1. Suit. 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.

2. Developer or agent. Any developer or agent, who sells or leases a lot in a subdivision in violation of section 584 or 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.

3. Damages. The suit authorized under subsection 1 or 2 may be to recover such damages as shall represent the difference between the amount paid for the lot and the reasonable cost of any improvements thereto, and the lesser of the value thereof as of the time such suit was brought, or the price at which such lot shall have been disposed of in a bona fide market transaction before suit, or the price at which such lot shall have been disposed of after suit in a bona fide market transaction but before judgment.

4. Contribution. 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.

5. Limitation. 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.

§ 600-A. Court review of orders

Any person, aggrieved by an order or determination of the Secretary issued after a hearing, may obtain a review of such order or determination in the Superior Court of the county wherein such person resides or has his principal place of business, by filing in such court, within 60 days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order or determination complained of was entered. No order or determination of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the Superior Court shall be exclusive and its judgment and decree, affirming, modifying or setting aside, in whole or in part, any order of the Secretary, shall be final, subject to appeal to the Supreme Judicial Court.

The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

§ 600-B. Limitation of actions

No action shall be maintained to enforce any liability created under section 600 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 subsection 2, unless brought within 2 years after the violation upon which it is based. In no event shall any such action be brought by a purchaser more than 3 years after the sale or lease to such purchaser.

§ 600-C. Contrary stipulations void

Any condition, stipulation or provision binding any person acquiring any

lot in a subdivision to waive compliance with any provision of this chapter or of the rules and regulations of the Secretary shall be void.

§ 600-D. Additional remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

§ 600-E. Investigations, injunctions and prosecution of offenses

1. Injunction. Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or of any rule or regulation prescribed pursuant thereto, he may, in his discretion, bring an action in the Superior Court of the county where the person resides or the land is located, to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Secretary may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this chapter.

2. Investigations. The Secretary may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Secretary shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Secretary is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices or matters which he may deem necessary or proper to aid in the enforcement of this chapter, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

3. Subpoena power. For the purpose of any such investigation, or any other proceeding under this chapter, the Secretary, or any officer designated by him, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memorandums or other records which the Secretary deems relevant or material to the inquiry.

4. Witnesses. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of the Superior Court within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums and other records and documents. Such court may issue an order requiring such person to appear before the Secretary or any officer designated by the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished

by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

5. Incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memorandums and other records and documents before the Secretary, or in obedience to the subpoena of the Secretary or any officer designated by him, or in any cause or proceeding instituted by the Secretary, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

§ 600-F. Administration

The authority and responsibility for administering this chapter shall be in the Secretary who may delegate any of his functions, duties and powers to employees of the department or to boards of such employees, including functions, duties and powers with respect to investigating, hearing, determining, ordering or otherwise acting as to any work, business or matter under this chapter.

All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing.

§ 600-G. Unlawful representations

The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the Secretary that the statement of record is true and accurate on its face, or be held to mean the Secretary has in any way passed upon the merits of, or given approval to such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

§ 600-H. Penalties

Any person who willfully violates any of the provisions of this chapter or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this chapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be punished by a fine of not more than \$5,000 or by imprisonment for not more than 5 years, or by both.

§ 600-I. Rules, regulations and orders

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 him elsewhere in this chapter. For the purpose of his rules and regulations, the Secretary may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

§ 600-J. Jurisdiction of offenses and suits

The Superior Court shall have jurisdiction of offenses and violations under this chapter and under the rules and regulations prescribed by the Secretary pursuant thereto, of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein and process in such cases may be served in any county of which the defendant is an inhabitant or wherever the defendant may be found.

Sec. 2. **Appropriation.** There is appropriated to the Secretary of State from the General Fund the sum of \$15,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1973-74	1974-75
SECRETARY OF STATE		
Personal Services	(1) \$ 5,000	(1) \$ 7,000
All Other	1,000	1,000
Capital Expenditures	1,000	—
	<hr/> \$ 7,000	<hr/> \$ 8,000

STATEMENT OF FACT

The purpose of this legislation is to provide a State Land Sales Disclosure Act similar to a Federal Land Sales Disclosure Act in order to comply with an expected state statutory requirement before the Federal Government will return funds to the state for rural and urban housing and community facilities, grants, direct and insured loans and also in order to police more effectively the responsible development and sale of Maine land.