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Subdivided Land Sales Act

Elliott H. DeJarnette
University of Richmond

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SUBDIVIDED LAND SALES ACT

In response to a committee study on the sale of recreational property, the 1978 Virginia General Assembly passed the Subdivided Land Sales Act.¹ This act is designed to control the typical recreational land developer whose development consists of a hundred or more lots, part of which are sold by land sales installment contracts pursuant to a common promotional plan and where the purchasers are to have the use of and access to common facilities and amenities for which they pay annual assessments.² It is estimated that there are over three hundred and fifty such recreational developments already existing in Virginia.³ Another important purpose of the bill is to prevent fraud and deceit in the sale of property and misrepresentation of the facilities that are available or planned. It will restrict the use of installment contracts and will require a general or specific warranty deed when title is actually conveyed.⁴

The act is intended to affect only recreational developments, but no useful definition of that phrase is provided.⁵ It does specifically exempt the sale of a lot which will have or has a residential, commercial, or industrial building on it or where the lot is larger than five acres. Commercially zoned property, cemeteries and condominiums also are exempt.⁶ This act resembles the Federal Interstate Land Sales Full Disclosure Act which imposes certain registration requirements, but fails to provide substantive measures.⁷ The Federal Act applies to developments with fifty lots or more,

1. VA. CODE ANN. §§ 55-336 to 350 (Cum. Supp. 1978). See VA. REAL ESTATE COMMISSION, REPORT ON RECREATIONAL LAND DEVELOPMENT, House Doc. No. 5 (1978) [hereinafter referred to as REPORT] which was largely responsible for this legislation. The bill was sponsored by Delegate Vincent F. Callahan, Jr., R-Fairfax and was endorsed by the Virginia Land Association, a trade group for recreational developers. Pear, *Recreation Land Control Bill Would Curb Fraudulent Developers*, Washington Star, Jan. 27, 1978 [hereinafter referred to as Pear].

2. VA. CODE ANN. § 55-337(5) (Cum. Supp. 1978).

3. Pear, *supra* note 1.

4. VA. CODE ANN. § 55-341 (Cum. Supp. 1978):

5. REPORT, *supra* note 1, at 5.

6. VA. CODE ANN. § 55-338 (Cum. Supp. 1978).

7. Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 to 20 (Cum. Supp. 1978). This Act was passed as part of the Housing and Urban Development Act of 1968 and became effective in April 1969. For a discussion of this Act, see Martin, *Workouts, Takeovers, and the Interstate Land Sales Act*, 6 REAL ESTATE REV. Winter 37 (1977). See also Pridgen, *The Interstate Land Sales Full Disclosure Act: The Practitioner's Problems and Suggestions for Improvements*, 4 REAL ESTATE L. J. 127 (1975-1976) [hereinafter referred to as Pridgen]; Kerr, *Guide to the Interstate Land Sales Full Disclosure Act: A Checklist for Developers*, 4 REAL ESTATE L. J. 416 (1975-1976). The federal act applies to any developer who "makes use of any means or instruments of transportation or communication in interstate commerce or of the mail" which means practically all large scale developers. 15 U.S.C. § 1703(a) (1971).

whereas the Virginia Act applies to those of one hundred lots or more.⁸ The Virginia Act attempts to cure those abuses that are encountered in land sales. The abuses include: failure to deliver clear title; failure to pay taxes and resultant liens on lots and common areas; misrepresentation; completion of common facilities and amenities; control of property owners' associations; ownership of common facilities; and unreasonable deed restrictions.⁹

Under the new Act, a developer planning such a subdivision must file a notice with the Virginia Real Estate Commission prior to the sale of any lots.¹⁰ This Notice of Intention to Offer and Dispose of Real Estate must include: an irrevocable appointment of the Commission to receive service in any legal proceeding; a legal description of the lots offered for sale, accompanied by a plat; the name and address of each principal, officer, director, partner, or trustee of the developer and any violations, bankruptcy or disciplinary actions taken against such persons; and a copy of the developer's HUD Property Report if one has been filed (pursuant to the Interstate Land Sales Full Disclosure Act).¹¹ A filing fee between one hundred fifty and three hundred dollars (according to the number of lots) is also required.¹²

To ensure that a purchaser obtains a clear title, free of encumbrances, a general or special warranty deed is required.¹³ Blanket encumbrances on the subdivision will make any sale unlawful unless the encumbrance contains a release provision freeing any purchaser from the encumbrance. If no release provision is made, the developer will be allowed to sell or lease only if he does one of three things: places the buyer's payments in a proper escrow account meeting Commission requirements; places title to the subdivision in trust; or furnishes a bond in such amount and form as the Commission deems acceptable.¹⁴

Even if there is no blanket encumbrance, the land must either be held in trust or the purchase money put in an escrow account until proper title is conveyed.¹⁵ Thus the developer has a number of alternatives. However,

8. VA. CODE ANN. § 55-337(5) (Cum Supp. 1978); 15 U.S.C. § 1701(3) (Cum. Supp. 1978). Both federal and state acts exempt a subdivision where the lots are larger than five acres, but all of the lots in the subdivision must be that size or larger. Martin, *supra* note 7, at 41.

9. REPORT, *supra* note 1, at 5-6.

10. VA. CODE ANN. § 55-339 (Cum. Supp. 1978).

11. *Id.*

12. *Id.* § 55-340. The fee is determined by charging one dollar per lot offered for sale within the subdivision, but it must be between one hundred fifty and three hundred dollars. *Id.*

13. *Id.* § 55-341.

14. *Id.* § 55-342.

15. *Id.*

the result should be to discourage the use of installment land sale contracts and to assure that the purchaser gets either the title contracted for or his money back.¹⁶ The Act prohibits any restraints on alienation of affected lots, thereby making such lots more attractive to prospective purchasers. It also voids any right of first refusal in excess of thirty days and any restriction on the right to post "for-sale" signs of reasonable size.¹⁷

The Act requires that prior to the sale of the first lot in the subdivision, a property owner's association be formed for the management, regulation and control of the facilities and amenities. Such services will be paid for by the lot owners through regular or special assessments.¹⁸ Thus any covenant, restriction, article of incorporation, or by-laws which establishes subdivision control must provide for the formation of the association and a description of the areas or interests that the association will control, especially those facilities on which the lot owners are paying dues to maintain.

The developer must transfer title, control, and maintenance responsibilities of common areas and facilities to the association no later than the time when he has sold at least seventy-five per cent of the lots in the subdivision or when all facilities and amenities are completed, whichever is first.¹⁹ In no event, however, will the developer be forced to do this any sooner than two years from the date of the sale of the first lot.²⁰ Even if transfer is made, the developer still has the duty to complete the common areas and facilities.²¹ The covenants or by-laws must establish procedures for determining and collecting regular assessments for ownership and use of common facilities, for any capital improvements, and for any annexation of new property to the development.²² Procedures for resale, creation of a board of directors with an enumeration of their powers, the preparation of an annual balance sheet, and quorum requirements must also be addressed.²³ The property owners' association, after five years from its forma-

16. REPORT, *supra* note 1, at 7. This blanket encumbrance section hopefully will help prevent encumbering tax liens even though they were specifically excluded as a blanket encumbrance under the definition section. VA. CODE ANN. § 55-337(2) (Cum. Supp. 1978). The problem arises when a developer does not pay his real estate taxes on property he has sold by installment contract.

17. VA. CODE ANN. § 55-343 (Cum. Supp. 1978).

18. *Id.* § 55-344 (Cum. Supp. 1978). For a discussion of homeowner's associations, see Jackson, *A Developer's Guide to Home-Owner's Associations*, 7 REAL ESTATE REV. Fall 1977 at 79.

19. VA. CODE ANN. § 55-344(a)(1), (2), (3) (Cum. Supp. 1978).

20. *Id.* § 55-344(A)(3).

21. *Id.* § 55-344(b).

22. *Id.* § 55-344(A)(4) to (6).

23. *Id.* § 55-344(A)(9) to (12).

tion, will have the authority to pass special assessments if needed for proper maintenance of the development, and will hold a lien on any property where the owner has not paid such assessments.²⁴

To insure that the common facilities are completed as planned or as promised by the developer, the Act provides that any developer, successor or otherwise, is obligated to complete such facilities as promised and outlined in the required covenants or by-laws.²⁵

The Act gives the Real Estate Commission broad investigative powers by which they may gather information and ascertain whether any violations have taken place.²⁶ Also, the Commission may prescribe rules and regulations implementing the Act. The power to issue a cease and desist order is given to the Commission if proper notice and an opportunity for a hearing has been given.²⁷ The order may be issued if the Act or Commission rules are violated or there is false, deceptive or misleading advertising.²⁸ The Commission may bring action in the appropriate Circuit Court of the City of Richmond to enjoin or enforce compliance. A violation of certain provisions of the Act is a Class 2 misdemeanor.²⁹ It also makes unlawful any representation by the developer that the State of Virginia, the Real Estate Commission, or any employee of either has given approval to his subdivision.³⁰

The Subdivided Land Sales Act should insure that large development schemes will not deteriorate over a period of time because of lack of concern over their maintenance. Fraud will be prevented and protection is given to landowners to ensure that they receive what they purchased. This Act should supplement the Federal Interstate Land Sales Full Disclosure Act. Because the federal act does not preempt the field,³¹ there should be no problem of constitutionality. The Act will have only narrow application since it sets up a state review for only a certain type of development. A developer, or the lawyer working for the developer, must follow this Act to establish these recreational developments. Although the requirements are not extensive, the developer must comply with its substantive provisions to assure that he will not be fined and that the buyers will not be able to rescind their contracts.

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24. *Id.* § 55-344(C).

25. *Id.* § 55-344(B).

26. *Id.* § 55-346(A) and (B).

27. *Id.* § 55-345(1)(a) to (d).

28. *Id.*

29. *Id.* § 55-347.

30. *Id.* § 55-350.

31. Pridgen, *supra* note 7, at 138.