

HB

67

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

927

TO:  Members of the Committee

DATE: February 1, 1977

FILE NO:

TELEPHONE NO:

FROM: Julius J. Brecht, Director *AB*  
Division of Banking and Securities

SUBJECT: HB 67 Proposed Amendments

Subsequent to my testimony to the House Commerce Committee regarding HB 67, members of the real estate industry have expressed concern that two areas of the bill need clarification. Upon review of this, the Division of Banking and Securities in concert with the Alaska Realtors Association is proposing to your committee two housecleaning amendments that would not change the thrust or substance of HB 67 in any way but would more completely enunciate the 50 sale exemption and the term "common promotional plan." The result of these amendments would be to clarify the language of the proposed act.

The first amendment is to add the word "subdivider" and delete the word "a person" in two places in Section 7 of HB 67. This section would then read:

Section 7. AS 34.55.042(a)(2) is amended to read: If fewer than ten separate lots, parcels, or units or interests in subdivided land located outside this state are offered by a subdivider [a person] in a period of 12 months, or if fewer than 50 separate lots, parcels, units or interests in subdivided land located within this state are offered by a subdivider in a period of 12 months.

The second amendment is to add the following language to the end of Section 8:

Section 8. AS 34.55.044(6) is amended to read: (6)..... of advertising and sale. [;] 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.

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TESTIMONY OF JULIUS J. BRECHT, DIRECTOR  
DIVISION OF BANKING AND SECURITIES  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
BEFORE  
HOUSE JUDICIARY COMMITTEE  
February 4, 1977

Good morning, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am director of the Division of Banking and Securities within the Department of Commerce and Economic Development. I want to thank you for allowing me to appear before you on behalf of the administration to discuss HB 67.

The bill before you proposes to amend the Uniform Land Sales Practices Act, AS 34.55, to bring Alaskan subdividers under it. In addition, the bill strengthens the fraud provisions of the act. However, Alaskan subdividers are expressly exempted from registration with the Department of Commerce and Economic Development under AS 34.55.

I have had distributed to each of you a file containing (1) a copy of the bill, (2) a copy of those sections of the act effected by the bill, (3) a memorandum from me to the committee dated January 17, 1977, (4) a copy of my written testimony before the House Commerce Committee dated January 26, 1977 on this bill, (5) a copy of a fiscal note prepared by the division, and (6) a memorandum from me to the committee dated February 1, 1977.

A copy of the bill should be read in conjunction with the copy of item (2) which gives the corresponding present law. The memorandum of January 17 outlines provisions of HB 67. The copy of my written testimony before the House Commerce Committee places HB 67 in the proper context. That is, it briefly discusses the purpose of the Uniform Land Sales Practices Act and the need for the amendments to the act presented in the bill.

This bill passed the House Commerce Committee 6-1. The bill has the support of the Alaska Realtors Association. However, since the House Commerce Committee hearing on the bill, members of that association have expressed concern that two areas of the bill need clarification.

The Realtors are concerned that a real estate agent acting as a real estate agent under HB 67 not be subject to the Uniform Land Sales Practices Act. The intent of the bill is to apply the provisions of the act to in-state subdividers. It is not to apply to real estate agents, except where those agents are acting as subdividers.

In this context, upon review of the two areas of concern, I have drafted amendments to HB 67 that appear in my memorandum of February 1. These amendments make clear the intent of the bill is to apply to subdividers. Mr. Al Courtney, Chairman of the Legislative Committee for the Alaska Realtors Association, has polled the membership of the association. I am told by Mr. Courtney that with the two amendments provided in my February memorandum, the association is in full support of the bill.

I urge the members of the committee to consider thoughtfully the provisions of HB 67 plus the proposed amendments.

Thank you again for the opportunity to appear before you to discuss this proposed legislation.

JJB/s13/1

# STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

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JAY HAMMOND  
GOVERNOR

LANGHORNE A. MOTLEY  
COMMISSIONER

JULIUS J. BRECHT  
DIRECTOR/ADMINISTRATOR

## MONTHLY BULLETIN

SEPTEMBER 1976

### PART I - NOTICES

1. On October 1, 1976, Superior Court Judge Eben H. Lewis of the Third Judicial District in Anchorage signed a Temporary Restraining Order in the case of State of Alaska v. Rustic Wilderness, Inc., et al. The complaint for the restraining order and injunctive relief charges that the defendants in the course of their selling subdivided lots in the Willow area violated provisions of the Consumer Protection Act, AS 45.50; the Occupational Licensing Act, AS 08.88; and the registration and fraud sections of the Alaska Securities Act, AS 45.55. The Order restrains the defendants from making misrepresentations, advertisements, offering unregistered securities, disposing of corporate assets and monies, and destroying corporate records.
2. Defendant's appeal of the Permanent Injunction previously granted in State of Alaska v. Roger Y. Ford was dismissed by the Supreme Court of the State of Alaska on September 10, 1976. Please refer to prior bulletins for additional information in this matter.

## MEMORANDUM

State of Alaska

TO: Langhorne A. Motley  
 Commissioner  
 Department of Commerce and  
 Economic Development

DATE: October 15, 1975

FILE NO:

TELEPHONE NO:

FROM: Jon Tillinghast  
 Asst. Attorney General

SUBJECT: Amendments to Uniform Land  
 Sales Practices Act

A case study will best demonstrate the genesis of the attached proposed bill. In May of this year, I was requested by the Department of Environmental Conservation to investigate a situation which had developed in Robe River Subdivision in Valdez. The story:

In 1972, an Alaskan subdivider acquired property in the Valdez area. He divided the land into quarter-acre lots, and filed a "paper plat" (i.e. no improvements on the property other than tractor-blade streets and boundary markers). The land lies adjacent to a sensitive anadromous stream, and has a very high water table.

This developer held an auction for this subdivision. It was advertised in the Anchorage media as a sale for "high, dry lots," with "streets in," and "suitable for residential development!"

Of course, this was all inaccurate. Streets were not in. The tractor-trail streets were not of sufficient quality to be accepted by the City of Valdez for dedication. Thus, Valdez does not to this day provide 1) snow clearance (a must in Valdez); 2) school bus service (the kiddies must walk a mile in the snow to Richardson Highway); or police or fire service, except in dire emergencies when the roads in the subdivision are passable.

Nor are the lots high and dry, or suitable for residential housing. The lots are so small, and the water table so high, that on lot water and sewer systems cannot be approved by ADEC. The result-- people must buy 2 or 3 lots (selling, incidently, for \$12,000-\$17,000 each) for one house or trailer.

Of course, the buyers were not aware of these problems when they purchased. In a "boom" situation, where any property is at a premium and immigrants are blinded by the rush for the buck, it is all too common that lots are bought sight-unseen, or, at least, without careful soil and borings analysis, and title searches.

Now, of course, the developer has exited, and the buyers are left holding the swampy bag. And, just as surely, the developer did not go out of his way to be candid with these folk.

The Department of Law attempted to piece together a prosecution of the developer. The Consumer Protection Act was discussed. However, the misrepresentations of the developer occurred three years ago--hardly the type of "imminent future harm" necessary to obtain an injunction. And these presentations were made before the Act was passed.

Yet, even assuming the Act was available, its utility in shaping of relief was questioned. We could enjoin future harm, yet we could do little to rectify past injury. Land--unlike other

Langhorne A. Motley

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October 15, 1975

consumer goods--is not fungible. Particularly in areas marked by a critical housing shortage, such as Valdez, replacement may not be available and, hence, compelled rescission is of dubious value.

With land, then, especially, the remedy for such situations should be preventive in nature, rather than corrective. Obviously, the Uniform Land Sales Practices Act provides precisely that type of preventive remedy. Of course, as you are aware, that act applies only to instate solicitations for out-of-state land. A rather silly limitation, since I would assume that the Alaska land consumer is injured more by Alaska developers than those from the outside. The argument that an Alaska consumer can better inspect land located inside the state is of some academic interest. Yet, realistically, it is unusual for the small-lot buyer, particularly in the Valdez-type situation, to perform all the necessary subsurface and documentary investigations necessary to become aware of the Robe River-type problems. In a seller's market, the developer's edge extends beyond pricing--it includes timing of the sale ("By the time you perform these inspections, I'll have 10 other buyers willing to close"), and buyer attitudes ("Look, buddy, you need this land. If you don't buy this lot, there is nothing else for you in Valdez.")

Especially in light of the series of "booms" which this state can expect in coming years, this type of legislation seems imperative. Obviously, as the administering agency, your approval and support is necessary. The motivation of Law and ADEC for this bill evolved from the Robe River experience, and similar problems in the Kenai Borough. Please give this matter some thought--I would appreciate the opportunity to talk this over with you at your convenience.

Finally, other amendments are being prepared by Commerce and Julius Brecht of our office on the Land Sales Act, relating to the exemption threshold. If you decide to go with the coverage amendments attached, consideration should be given to putting both bills together in one package. The Governor's office wants consolidation of legislation, but sometimes politics dictates otherwise, and the Governor's staff recognizes this.

w/encl.

cc: Julius Brecht, Legal Assistant  
Sandy Sagalkin, Asst. Attorney General  
Ernst Mueller, Commissioner, Department of Environmental Conservation  
Randy Bayliss, Environmental Field Officer, ADEC, Valdez