

45: 15-16.27

LEGISLATIVE HISTORY CHECKLIST

NJSA: 45: 15-16.27

("Real Estate Full Disclosure Act")

LAWS OF: 1989

CHAPTER: 239

Bill No: S3850

Sponsor(s): Russo

Date Introduced: November 20, 1989

Committee: Assembly: -----

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: December 18, 1989

Senate: December 11, 1989

Date of Approval: January 2, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings attached:

See also:

Boyd, Brook, "Law for sale of out-of-state properties," 125 NJLJ 654 (3-8-90)

[FIRST REPRINT]
SENATE, No. 3850

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 20, 1989

LAW LIBRARY COPY
DO NOT REMOVE

By Senator RUSSO

1 AN ACT regulating the sale of real property located outside of
2 New Jersey by developers, supplementing Title 45 ¹of the
3 Revised Statutes¹ and repealing P.L.1975, c.235.

4
5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. This act shall be known and may be cited as the "Real
8 Estate Sales Full Disclosure Act."

9 2. As used in this act:

10 "Advertising" means the publication, or causing to be
11 published, of any information offering for sale, or for the purpose
12 of causing or inducing any other person to purchase or acquire, an
13 interest in the title to subdivided lands, including the land sales
14 contract to be used and any photographs or drawings or artist's
15 representation of physical conditions or facilities on the property
16 existing or to exist by means of any:

17 (1) Newspaper or periodical;

18 (2) Radio or television broadcast;

19 (3) Written or printed or photographic matter produced by any
20 duplicating process producing 10 copies or more;

21 (4) Billboards or signs;

22 (5) Display of model homes or units;

23 (6) Material used in connection with the disposition or offer of
24 subdivided lands by radio, television, telephone or any other
25 electronic means; or

26 (7) Material used by subdividers or their agents to induce
27 prospective purchasers to visit the subdivision; particularly
28 vacation certificates which require the holders of those
29 certificates to attend or submit to a sales presentation by a
30 subdivider or its agents.

31 "Advertising" does not mean: stockholder communications
32 such as annual reports and interim financial reports, proxy
33 materials, registration statements, securities prospectuses,

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLI committee amendments adopted November 30, 1989.

1 applications for listing securities on stock exchanges, or similar
2 documents; prospectuses, property reports, offering statements,
3 or other documents required to be delivered to a prospective
4 purchaser by an agency of any other state or the Federal
5 Government; all communications addressed to and relating to the
6 account of any person who has previously executed a contract for
7 the purchase of the subdivider's lands except when directed to
8 the sale of additional lands.

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

16 "Broker" or "salesperson" means any person who performs
17 within this State as an agent or employee of a subdivider any one
18 or more of the services or acts as set forth in this act, and
19 includes any real estate broker or salesperson licensed pursuant
20 to R.S.45:15-1 et seq. or any person who purports to act in any
21 such capacity.

22 "Commission" means the New Jersey Real Estate Commission.

23 "Common promotional plan" means any offer for the
24 disposition of lots, parcels, units or interests of real property by a
25 single person or group of persons acting in concert, where those
26 lots, parcels, units or interests are contiguous, or are known,
27 designated or advertised as a common entity or by a common
28 name regardless of the number of lots, parcels, units or interests
29 covered by each individual offering.

30 "Disposition" means the sale, lease, assignment, award by
31 lottery, or any other transaction concerning a subdivision if
32 undertaken for gain or profit.

33 "Notice" means a communication by mail from the commission
34 executed by its secretary or other duly authorized officer.
35 Notice to subdividers shall be deemed complete when mailed to
36 the subdivider's address currently on file with the commission.

37 "Offer" means every inducement, solicitation or attempt to
38 encourage a person to acquire an interest in a subdivision if
39 undertaken for gain or profit.

1 "Person" means an individual, corporation, government or
2 governmental subdivision or agency, business trust, estate, trust,
3 partnership, unincorporated association, two or more of any of
4 the foregoing having a joint or common interest, or any other
5 legal or commercial entity.

6 "Purchaser" means a person who acquires or attempts to
7 acquire or succeeds to an interest in a subdivision ¹[;].¹

8 "Time-share estates" includes both "fee simple" and "right to
9 use" time-share interests and means:

10 (1) An "interval estate" meaning a combination of an estate
11 for years in a lot, parcel or unit, during the term of which title
12 rotates among the time-share owners, coupled with a vested
13 undivided fee simple interest in the remainder in that unit as
14 established by the declaration or deed creating the interval
15 estate; or

16 (2) A "time-span estate" meaning a combination of an
17 undivided interest in a present estate in fee simple in a lot,
18 parcel or unit established by the declaration or deed creating the
19 time-span estate, coupled with the exclusive right to possession
20 and occupancy of the parcel or unit during a regularly recurring
21 period; or

22 (3) A "vacation license" meaning the exclusive right to
23 possession and occupancy of a lot, unit or parcel during a
24 regularly recurring period established by club membership, lease
25 or license.

26 "Subdivider" or "developer" means any owner of subdivided
27 ¹[land] lands¹ or the agent of that owner who offers ¹[it] the
28 subdivided lands¹ for disposition.

29 "Subdivision" and "subdivided lands" mean any land situated
30 outside the State of New Jersey whether contiguous or not, if one
31 or more lots, parcels, units or interests are offered as a part of a
32 common promotional plan of advertising and sale and expressly
33 means and includes such units or interests commonly referred to
34 as a "condominium," defined in the "Condominium Act,"
35 P.L.1969, c.257 (C.46:8B-1 et seq.). In addition to condominiums,
36 this definition shall also specifically include, but shall not be
37 limited to, any form of homeowners association, any housing
38 cooperative, any community trust, or other trust device and any
39 form of time-sharing.

1 3. The Bureau of Subdivided Land Sales Control within the
2 Division of the New Jersey Real Estate Commission in the
3 Department of Insurance, established pursuant to section 3 of
4 P.L.1975, c.235 (C.45:15-16.5), shall continue.

5 4. Unless the subdivided lands or the transaction is exempt
6 pursuant to section 6 of this act:

7 a. No person may offer, dispose or participate in this State in
8 the disposition of subdivided lands or of any interest in subdivided
9 lands unless in accordance with the provisions of this act.

10 b. No person may dispose or participate in the disposition of
11 any interest in subdivided lands unless a current public offering
12 statement, disclosing fully all information required in section 12
13 of this act, is delivered to the purchaser and the purchaser is
14 afforded a reasonable opportunity to examine the public offering
15 statement prior to the disposition.

16 5. Disposition of subdivision or subdivided lands are subject to
17 this act if:

18 a. Any offer or disposition of subdivided lands is made in this
19 State; or

20 b. Any offer of subdivided land originating outside this State is
21 directed by the subdivider or his agent to a person or resident
22 within this State.

23 6. a. Unless the method of disposition is adopted for the
24 purpose of evasion of this act, the provisions of this act are not
25 applicable to offers or dispositions of an interest in a subdivision:

26 (1) By an owner for his own account in a single or isolated
27 transaction;

28 (2) Wholly for industrial or commercial purposes;

29 (3) Pursuant to court order;

30 (4) By any governmental agency¹[:]₁¹

31 (5) As cemetery lots or interests;

32 (6) Of less than 100 lots, parcels, units or interests; but, this
33 exemption shall not apply to condominiums, cooperatives,
34 time-shares, retirement communities and offers or dispositions
35 by entities comprised of or acting on behalf of the owners of
36 other units in the subdivision, including, but not limited to
37 entities designated as homeowners associations, regardless of the
38 number of lots, parcels, units or interests offered or disposed of;

39 (7) Where the common elements or interests, which would

1 otherwise subject the offering to this act, are limited to the
2 provision of unimproved, unencumbered open space, except where
3 registration is required by the "Interstate Land Sales Full
4 Disclosure Act," Pub. L. 90-448 (15 U.S.C. §1701 et seq.) with
5 the Office of Interstate Land Sales Registration, in the
6 Department of Housing and Urban Development; or

7 (8) In a development comprised wholly of rental units, where
8 the relationship created is one of landlord and tenant; but this
9 exemption shall not apply to time-shares, regardless of the
10 manner in which an interest in such a time-share subdivision is
11 evidenced.

12 b. Unless the method of disposition is adopted for the purpose
13 of evasion of this act, the provisions of this act are not applicable
14 to:

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

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

20 (3) Offers or dispositions of securities currently registered with
21 the Bureau of Securities in the Department of Law and Public
22 Safety; or

23 (4) Offers or dispositions of any interest in oil, gas or other
24 minerals or any royalty interest therein if the offers or
25 dispositions of such interests are regulated as securities by
26 federal law or by the State Bureau of Securities.

27 c. The commission may, from time to time, pursuant to any
28 rules and regulations promulgated pursuant to this act, exempt
29 from any of the provisions of this act any subdivision or any lots
30 in a subdivision, if it finds that the enforcement of this act with
31 respect to that subdivision or the lots therein, is not necessary in
32 the public interest, or required for the protection of purchasers,
33 by reason of the small amount involved or the limited character
34 of the offering.

35 7. a. Upon the filing of an application for registration at the
36 offices of the commission, naming the brokers licensed as real
37 estate brokers pursuant to R.S.45:15-1 et seq. who are the
38 authorized representatives of the subdivider, and accompanied by
39 the proper registration fee in the proper form, and a statement of

1 record as provided for in section 10 of this act, and the proposed
2 public offering statement, the commission shall issue a notice of
3 filing to the applicant. Within 90 days from the date of the
4 notice of filing, the commission shall enter an order registering
5 the subdivision or subdivided lands or rejecting the registration.
6 If no order of rejection is entered within 90 days from the date of
7 notice of filing, the subdivisions or subdivided lands shall be
8 deemed registered unless the applicant has consented in writing
9 to a delay.

10 b. If the commission affirmatively determines upon inquiry and
11 examination that the requirements of section 9 of this act have
12 been met, it shall enter an order registering the subdivision or
13 subdivided lands and shall designate the form of the public
14 offering statement.

15 c. If the commission determines upon inquiry and examination
16 that any of the requirements of section 9 of this act have not
17 been met, the commission shall notify the applicant that the
18 application for registration must be corrected in the particulars
19 specified within 30 days from the date the notice is received by
20 the applicant. These findings shall be the result of the
21 commission's preliminary inquiry and examination and no hearing
22 shall be required as the basis for those findings. The receipt of a
23 written request for a hearing shall stay the order of rejection
24 until a hearing has been held and a determination has been made.

25 8. a. (1) The fee for an initial registration shall be \$500 plus
26 \$35 for each lot, parcel, unit or interest which fee shall not
27 exceed \$3,000. The initial registration shall be valid for a period
28 of one year from the date of approval of the registration. If the
29 fees are insufficient to defray the cost of rendering services
30 required by the provisions of this act, the commission may, by
31 regulation, establish a revised fee schedule. Any revised fee
32 schedule shall assure that the fees collected reasonably cover,
33 but do not exceed, the expenses of administering the provisions of
34 this act.

35 (2) Annual renewal of registration shall be made in accordance
36 with the provisions of section 14 of this act.

37 (3) Any current registration filed with and approved by the
38 commission pursuant to the provisions of P.L.1975, c.235
39 (C.45:15-16.3 et seq.) prior to the date of enactment of this act

1 shall be exempt from initial registration under this act.

2 b. The application for registration shall be made on forms
3 prescribed by the commission and shall be accompanied by the
4 appropriate filing fee. As provided in ¹[paragraph (6) of]¹
5 subsection ¹[a.] f.¹ of section 15 of this act, the commission may
6 determine, at its discretion, that an onsite investigation or
7 inspection is required. The commission shall advise the registrant
8 of the amount of the cost of travel from New Jersey to the
9 location of the subdivided lands and return and any additional
10 expenses of an inspection, which shall be the amount of the
11 inspection fee. All inspection fees shall be accounted for to the
12 applicant.

13 c. The fee for a consolidated filing, filed pursuant to section
14 13 of this act, shall be the same as set forth in subsection a. of
15 this section.

16 9. Upon receipt of an application for registration in proper
17 form, accompanied by a statement of record, the commission
18 shall initiate an examination to determine that:

19 a. The subdivider can convey or cause to be conveyed the
20 interest in subdivided lands offered for disposition if the
21 purchaser complies with the terms of the offer, and when
22 appropriate, that release clauses, conveyances in trust or other
23 safeguards have been provided;

24 b. There is reasonable assurance that all proposed
25 improvements will be completed as represented;

26 c. The advertising material and the general promotional plan
27 are not false, misleading, or discriminatory and comply with the
28 standards prescribed by the commission in its rules and
29 regulations and afford full and fair disclosure;

30 d. The subdivider has not, or if a corporation, its officers,
31 directors, and principals have not, been convicted of a crime or
32 civil offense involving land dispositions or any aspect of the land
33 sales business in this State, the United States, or any other state
34 or foreign country; and that the developer has not been subject to
35 any permanent injunction or final administrative order restraining
36 a false or misleading promotional plan involving real property
37 dispositions, the seriousness of which in the opinion of the
38 commission warrants the denial of registration; and

39 e. The public offering statement requirements of section 12 of

1 this act have been satisfied.

2 10. The statement of record shall contain the information and
3 be accompanied by the documents specified as follows:

4 a. The name and address of each person having an interest in
5 the lots in the subdivision to be covered by the statement of
6 record and the extent of that interest;

7 b. A legal description of, and a statement of the total area
8 included in, the subdivision and a statement of the topography,
9 together with a map showing the subdivision proposed and the
10 dimensions of the lots, parcels, units, or interests to be covered
11 by the statement of record and their relation to existing streets,
12 roads and other improvements. The map shall be drawn to scale,
13 signed and sealed, by a licensed professional engineer or land
14 surveyor;

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

18 d. A statement of the general terms and conditions proposed
19 to dispose of the lots in the subdivision;

20 e. A statement of the present condition of access to the
21 subdivision, the existence of any unusual conditions relating to
22 noise or safety, which affect the subdivision and are known or
23 should reasonably be known to the developer, the availability of
24 sewage disposal facilities and other public utilities, including
25 water, electricity, gas, and telephone facilities, in the subdivision
26 to nearby municipalities, and the nature of any improvements to
27 be installed by the developer and his estimated schedule for
28 completion;

29 f. A statement as to whether the property or any portion
30 thereof is regularly or periodically subject to natural forces that
31 would tend to adversely affect the use or enjoyment of the
32 property and whether the property or any portion thereof is
33 located in a federally designated flood hazard area;

34 g. In the case of any subdivision or portion thereof against
35 which there exists a blanket encumbrance, a statement of the
36 consequences for an individual purchaser of a failure, by the
37 persons bound, to fulfill obligations under the instruments
38 creating such encumbrances and the steps, if any, taken to
39 protect the purchaser in such eventuality;

1 h. (1) Copy of its articles of incorporation, with all
2 amendments thereto, if the developer is a corporation; (2) copies
3 of all instruments by which the trust is created or declared, if the
4 developer is a trust; (3) copies of its articles of partnership or
5 association and all other papers pertaining to its organization, if
6 the developer is a partnership, unincorporated association, joint
7 stock company, or any other form of organization; and (4) if the
8 purported holder of legal title is a person other than the
9 developer, copies of the appropriate documents required pursuant
10 to this subsection for that person;

11 i. Copies of the deed or other instrument establishing title to
12 the subdivision in the developer or other person and copies of any
13 instrument creating a lien or encumbrance upon the title of
14 developer or other person or copies of the opinion of counsel in
15 respect to the title to the subdivision in the developer or other
16 person or companies of the title insurance policy guaranteeing
17 that title;

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

20 k. Copies of instruments creating easements or other
21 restrictions;

22 l. Certified and uncertified financial statements of the
23 developer as required by the commission;

24 m. Copies of any management contract, lease of recreational
25 areas, or similar contract or agreement affecting the use,
26 maintenance, or access of all or any part of the subdivision;

27 n. A statement of the status of compliance with the
28 requirements of all laws, ordinances, regulations, and other
29 requirements of governmental agencies, including the federal
30 government, having jurisdiction over the premises;

31 o. The developer shall immediately report any material
32 changes in the information contained in an application for
33 registration. The term "material changes" shall be further
34 defined by the commission in its regulations; and

35 p. Any other information and any other documents and
36 certification as the commission may require as being reasonably
37 necessary for the protection of purchasers.

38 11. The information contained in any statement of record and
39 any additions or corrections required by section 10 of this act

1 shall be made available to the public under regulations
2 promulgated by the commission pursuant to this act and copies
3 shall be furnished to every applicant at a reasonable charge
4 prescribed by the commission.

5 12. a. A public offering statement shall disclose fully and
6 accurately the physical characteristics of the subdivided lands
7 offered and shall make known to prospective purchasers all
8 unusual and material circumstances or features affecting those
9 lands. The proposed public offering statement submitted to the
10 commission shall be in a form prescribed by the rules and
11 regulations promulgated pursuant to this act and shall include the
12 following:

13 (1) The name and principal address of the developer and his
14 authorized New Jersey representative who shall be a licensed real
15 estate broker licensed to maintain offices within this State;

16 (2) A general description of the subdivision or subdivided lands
17 stating the total number of lots, parcels, units or interests in the
18 offering;

19 (3) A summary of the terms and conditions of any management
20 contract, lease of recreational areas, or similar contract or
21 agreement affecting the use, maintenance, or access of all or any
22 part of the subdivision or subdivided lands, the effect of each
23 agreement upon a purchaser, and a statement of the ¹[relation]
24 relationship¹, if any, between the developer or subdivider and the
25 managing agent or firm;

26 (4) The significant terms of any encumbrances, easements,
27 liens and restrictions, including zoning and other regulations
28 affecting the lands and each unit or lot, and a statement of all
29 existing taxes and existing or proposed special taxes or
30 assessments which affect the lands;

31 (5) A statement of the use for which the property is offered,
32 including, but not limited to:

33 (a) Information concerning improvements, including hospitals,
34 health and recreational facilities of any kind, streets, water
35 supply, levees, drainage control systems, irrigation systems,
36 sewage disposal facilities and customary utilities; and

37 (b) The estimated cost, date of completion and responsibility
38 for construction and maintenance of existing and proposed
39 improvements which are referred to in connection with the

1 offering or disposition of any interest in the subdivision or
2 subdivided lands;

3 (6) The notice, as required in subsection d. of this section,
4 shall, in addition to being contained in all contracts or
5 agreements, be conspicuously located and simply stated in the
6 public offering statement; and

7 (7) Additional information required by the commission to assure
8 full and fair disclosure to prospective purchasers.

9 b. The public offering statement shall not be used for any
10 promotional purposes before registration of the subdivided lands
11 and afterwards only if it is used in its entirety. No person may
12 advertise or represent that the commission approves or
13 recommends the subdivided lands or the disposition thereof. No
14 portion of the public offering statement may be underscored,
15 italicized, or printed in larger or heavier or different color type
16 than the remainder of the statement unless the commission
17 requires or permits it.

18 c. The commission may require the subdivider to alter or
19 amend the proposed public offering statement in order to assure
20 full and fair disclosure to prospective purchasers, and no change
21 in the substance of the promotional plan or plan of disposition or
22 development of the subdivision may be made after registration
23 without notifying the commission and without making an
24 appropriate amendment to the public offering statement. A
25 public offering statement is not current unless all amendments or
26 consolidations are incorporated.

27 d. Any contract or agreement for the purchase or the leasing
28 of a lot may be rescinded by the purchaser or lessee without
29 cause of any kind by sending or delivering written notice of
30 cancellation by midnight of the seventh calendar day following
31 the day on which the purchaser has executed the contract or
32 agreement. Every contract or agreement shall be in writing and
33 shall contain the following notice in 10-point bold type or larger,
34 directly above the space provided for the signature of the
35 purchaser or lessee:

36 **NOTICE to PURCHASER or LESSEE: You are**
37 **entitled to the right to cancel this contract by**
38 **midnight of the seventh calendar day following the**
39 **day on which you have executed this**

1 **contract or agreement.**

2 e. The subdivider shall make copies of the public offering
3 statement available to prospective purchasers prior to their
4 signing any contract or agreement.

5 13. A subdivider may register additional subdivided lands
6 pursuant to the same common promotional plan as those
7 previously registered by submitting an additional filing providing
8 the additional information necessary to register the additional
9 lots, parcels, units or interests which shall be designated as "a
10 consolidated filing."

11 14. a. Within 30 days after each annual anniversary date of an
12 order registering the subdivided lands, or on or before a date set
13 by the commission, and while the subdivider retains any interest
14 therein, the subdivider of these lands shall file a report in the
15 form prescribed by the rules and regulations promulgated by the
16 commission. The report shall reflect any material changes in the
17 information contained in the original application for registration;
18 except that, with respect to any registration filed with and
19 approved by the commission prior to the date of enactment of
20 this act, no additional information shall be required on the
21 subdivided land covered by such registration other than that
22 necessary to indicate any material changes in information
23 contained in the original application for registration.

24 b. The commission shall process and review requests for
25 amendments to a registration in accordance with the standards
26 and procedures established in this act for review of applications
27 for registration. Requests for amendment, other than price
28 changes and advertising, shall be accompanied by a fee as the
29 commission may prescribe by rule.

30 c. Upon a determination by the commission that an annual
31 report is no longer necessary for the protection of the public
32 interest or that the developer no longer retains any interest and
33 no longer has any contractual, bond or other obligations in the
34 subdivision, the commission shall issue an order terminating the
35 responsibilities of the developer under this act.

36 15. The commission may:

37 a. Accept registrations filed in this State, in other states or
38 with the federal government;

39 b. Contract with similar agencies in this State or other

1 jurisdictions to perform investigative functions;

2 c. Accept grants in aid from any governmental or other source;

3 d. Cooperate with similar agencies or commissions in this
4 State or other jurisdictions to establish uniform filing procedures
5 and forms, uniform public offering statements, advertising
6 standards, rules and common administrative practices;

7 e. Grant exemptions pursuant to the rules and regulations
8 adopted pursuant to section 23 of this act;

9 f. Make any necessary public or private investigations within
10 or outside of this State to determine whether any person has
11 violated or is about to violate any provision of this act, or to aid
12 in the enforcement of this act or in the prescribing of rules and
13 regulations and forms hereunder;

14 g. Require or permit any person to file a statement in writing,
15 under oath or otherwise, as the commission determines, as to all
16 the facts and circumstances concerning the matter to be
17 investigated;

18 h. For the purpose of any investigation or proceeding under
19 this act, the commission or any officer designated by rule, may
20 administer oaths, or affirmations, and upon its own motion or
21 upon request of any party may subpoena witnesses and compel
22 their attendance, take evidence, and require the production of
23 any matter which is relevant to the investigation, including the
24 existence, description, nature, custody, condition and location of
25 any books, documents, or other tangible things and the identity
26 and location of persons having knowledge of relevant facts or any
27 other matter reasonably calculated to lead to the discovery of
28 material evidence; and

29 i. Upon failure to obey a subpoena or to answer questions
30 propounded by the investigating officer and upon reasonable
31 notice to all person affected thereby, the commission may apply
32 to the Superior Court for an order compelling compliance.

33 16. a. If the commission determines after notice and hearing
34 that a person has:

35 (1) Violated any provision of this act;

36 (2) Directly or through an agent or employee engaged in any
37 false, deceptive, or misleading advertising, promotional or sales
38 methods in the State of New Jersey to offer or dispose of an
39 interest in the subdivision or subdivided lands;

1 (3) Made any material change in the plan of disposition and
2 development of the subdivision or subdivided lands subsequent to
3 the order of registration without first complying with the
4 provisions of subsection o. of section 10 of this act;

5 (4) Disposed of any subdivision or subdivided lands which have
6 not been registered with the commission; or

7 (5) Violated any lawful order or rule or regulation of the
8 commission;

9 ¹[The] the¹ commission may issue an order requiring the person
10 to cease and desist from the unlawful practice and to take such
11 affirmative action as in the judgment of the commission will
12 carry out the purposes of this act.

13 b. If the commission makes a finding of fact in writing that
14 the public interest will be irreparably harmed by delay in issuing
15 an order, it may issue a temporary cease and desist order. Every
16 temporary cease and desist order shall include in its terms a
17 provision that upon request a hearing will be held within 15 days
18 of the receipt of the request.

19 17. a. A registration may be revoked after notice and hearing
20 upon a written finding of fact that the subdivider has:

21 (1) Failed to comply with the terms of a cease and desist order
22 issued pursuant to subsection a. of section 16 of this act;

23 (2) Been convicted in any court for a crime or civil offense
24 involving fraud, deception, false pretenses, misrepresentation,
25 false advertising, dishonest dealing, or other like offense
26 subsequent to the filing of the application for registration;

27 (3) Disposed of, concealed, or diverted any funds or assets of
28 any person so as to defeat the rights of subdivision purchasers;

29 (4) Failed faithfully to perform any stipulation or agreement
30 made with the commission as an inducement to grant any
31 registration, to reinstate any registration, or to approve any
32 promotional plan or public offering statement;

33 (5) Advertised his subdivision or responded to applications for
34 his subdivision in a manner which was discriminatory on the basis
35 of marital status, sex, race, creed, ¹color, religion¹ or national
36 origin;

37 (6) Willfully violated any provision of this act or of a rule or
38 regulation promulgated pursuant to section 23 of this act; or

39 (7) Made intentional misrepresentation or concealed material

1 facts in the documents and information submitted in the
2 application filed for registration. Findings of fact, if set forth in
3 statutory language, shall be accompanied by a concise and
4 explicit statement of the underlying facts supporting the findings.

5 b. If the commission finds, after notice and hearing, that the
6 subdivider has been guilty of a violation for which revocation
7 could be ordered, it may, in lieu thereof, issue a cease and desist
8 order pursuant to subsection a. of section 16 of this act.

9 18. a. If it appears that a person has engaged, or is about to
10 engage, in an act or practice constituting a violation of a
11 provision of this act, the commission, with or without prior
12 administrative proceedings, may bring an action in the Superior
13 Court to enjoin the acts or practices and to enforce compliance
14 with this act or any rule, regulation or order hereunder. Upon
15 proper showing, injunctive relief or temporary restraining orders
16 shall be granted, and a receiver may be appointed. The
17 commission shall not be required to post a bond in any court
18 proceeding.

19 b. The commission may intervene in a suit involving any
20 subdivision. In any such suit, by or against the developer or
21 subdivider, the developer or subdivider shall promptly furnish the
22 commission with notice of the suit and copies of all pleadings.

23 19. a. For purposes of this act, an applicant for registration
24 submitted to the commission shall be deemed as submission, by
25 the applicant, to the jurisdiction of the Courts of the State of
26 New Jersey.

27 b. In addition to the methods of service provided for in the
28 Rules Governing the Courts of the State of New Jersey, service
29 may be made by delivering a copy of the process to the person in
30 charge of the office of the commission at its office, but that
31 service shall not be effective unless the plaintiff, which may be
32 the commission in a proceeding instituted by it:

33 (1) Sends a copy of the process and the pleading by certified
34 mail to the defendant or respondent at his last known address; and

35 (2) The plaintiff's affidavit of compliance with this section is
36 filed in the case on or before the return day of the process, if
37 any, or within the time as the court allows.

38 c. If any person, including any nonresident of this State,
39 engaged in conduct prohibited by this act and has not filed a

1 consent of service of process and personal jurisdiction over him
2 cannot otherwise be obtained in this State, that conduct
3 authorizes the commission to receive service of process in any
4 noncriminal proceedings against him or his successor which grows
5 out of that conduct and which is brought under this act with the
6 same force and validity as if served on him personally. Notice
7 shall be given as provided in subsection a. of this section.

8 20. a. Any broker or salesperson who violates any of the
9 provisions of this act shall, in addition to the penalties set forth
10 herein, be subject to the penalties as set forth in R.S.45:15-17.

11 b. Any person who violates any provision of this act or any
12 person who, in an application for registration filed with the
13 commission, makes any untrue statement of a material fact or
14 omits to state a material fact shall be fined not less than \$250,
15 nor more than \$50,000, per violation.

16 c. The commission may levy and collect the penalties set forth
17 in subsection b. of this section after affording the person alleged
18 to be in violation of this act an opportunity to appear before the
19 commission and to be heard personally or through counsel on the
20 alleged violations and a finding by the commission that said
21 person is guilty of the violation. When a penalty levied by the
22 commission has not been satisfied within 30 days of the levy, the
23 penalty may be sued for and recovered by, and in the name of,
24 the commission in a summary proceeding pursuant to "the penalty
25 enforcement law" (N.J.S.2A:58-1 et seq.).

26 d. The commission may, in the interest of justice, compromise
27 any civil penalty, if in its determination the gravity of the
28 offense or offenses does not warrant the assessment of the full
29 fine.

30 21. a. Any person who suffers any ascertainable loss of
31 moneys as a result of the failure of another to comply fully with
32 the provisions of this act may bring an action or assert a
33 counterclaim in any court of competent jurisdiction. In any
34 action filed under this section in which a defendant is found to
35 have knowingly engaged in any false, deceptive, misleading
36 promotional or sales methods or discriminatory advertising on the
37 basis of race, sex, creed, color ¹, marital status, national origin¹
38 or religion, concealed or fraudulently diverted any funds or assets
39 so as to defeat the rights of subdivision purchasers, made an

1 intentional misrepresentation or concealed a material fact in an
2 application for registration, or disposed of any subdivision or
3 subdivided lands required to be registered under section 7 of this
4 act which are not so registered, the court shall, in addition to any
5 other appropriate legal or equitable remedy, award double the
6 damages suffered, and court costs expended, including reasonable
7 attorney's fees. In the case of an untruth, omission, or
8 misleading statement the developer sustains the burden of
9 proving that the purchaser knew of the untruth, omission or
10 misleading statement, or that he did not rely on such information,
11 or that the developer did not know, and in the exercise of
12 reasonable care could not have known, of the untruth, omission,
13 or misleading statement.

14 b. The court may, in addition to the remedies provided in this
15 act, frame any other relief that may be appropriate under the
16 circumstances including, in the court's discretion, restitution of
17 all monies paid and, where a subdivider has failed to provide to a
18 purchaser a copy of the current public offering statement
19 approved by the commission prior to execution of the contract or
20 agreement, rescission of the contract. If the purchaser fails to
21 establish a cause of action, and the court further determines that
22 the action was wholly without merit, the court may award
23 attorney's fees to the developer or subdivider.

24 c. Every person who directly or indirectly controls a
25 subdivision or developer and violates the provisions of subsection
26 a. of this section, every general partner, officer, or director of a
27 developer, and every person occupying a similar status or
28 performing a similar function, shall be jointly and severally liable
29 with and to the same extent as the developer. The person
30 otherwise liable pursuant to this subsection sustains the burden of
31 proof that he did not know, and in the exercise of reasonable care
32 could not have known, of the existence of the facts by reason of
33 which the liability is alleged to exist. There is a right to
34 contribution among persons found liable.

35 d. Any stipulation or provision purporting to bind any
36 purchaser acquiring a parcel, lot, unit, or interest in any
37 development subject to the provisions of this act to a waiver of
38 compliance with the provisions of this act, shall be void.

39 e. Any party to an action asserting a claim, counterclaim or

1 defense based upon any violation of this act shall mail a copy of
2 the initial or responsive pleading containing the claim,
3 counterclaim or defense to the commission within 10 days of the
4 filing of the pleading with court. Upon application to the court
5 where the matter is pending, the commission shall be permitted
6 to intervene or to appear in any status appropriate to the matter.

7 22. Any registration of a subdivision or amendment thereto, or
8 consolidation, or renewal thereof approved by the commission
9 prior to August 2, 1989, under the "Land Sales Full Disclosure
10 Act," P.L.1975, c.235 (C.45:15-16.3 et seq.) shall, upon the
11 enactment of this act, be deemed in force and effect for the
12 remainder of the 12-month period for which it was issued.

13 23. The commission shall, pursuant to the provisions of the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), promulgate rules and regulations necessary to effectuate
16 the provisions of this act. The rules may include, but shall not be
17 limited to: a. provisions for advertising standards to insure full
18 and fair disclosure; b. provisions for adequate bondings or access
19 to some escrow or trust fund not otherwise required by the
20 municipal governing body to be located within this State, or the
21 state or country where the property is located, ¹[or] so¹ as to
22 insure compliance with the provisions of this act, and to
23 compensate purchasers for failure of the registrant to perform in
24 accordance with the terms of any contract or public statement;
25 c. provisions that require a registrant to deposit purchaser down
26 payments, security deposits or other funds in an escrow account,
27 or with an attorney licensed to practice law in this State, or the
28 state or country where the property is located, until such time as
29 the commission by its rules and regulations deems it appropriate
30 to permit such funds to be released; d. provisions to insure that
31 all contracts between developer and purchaser are fair and
32 reasonable; e. provisions that the developer must give a fair and
33 reasonable warranty on construction of any improvements; f.
34 provisions that the budget for the operation and maintenance of
35 the common or shared elements or interest shall provide for
36 adequate reserves for depreciation and replacement of the
37 improvements; g. provisions for operating procedures; and h.
38 other rules and regulations necessary to effectuate the purposes
39 of this act, and taking into account and providing for, the broad

1 range of development plans and devises, management
2 mechanisms, and methods of ownership, permitted under the
3 provisions of this act.

4 24. P.L.1975, c.235 (C.45:15-16.3 et seq.) is repealed.

5 25. This act shall take effect immediately.

6

7

8

COMMERCE AND INDUSTRY

9

Consumer Affairs

10

11 Designated the "Real Estate Sales Full Disclosure Act."

SPONSOR'S STATEMENT

S 3570 (1989) STATEMENT

This bill regulates the disposition of subdivided lands situated outside the State of New Jersey which are offered as part of a common promotional plan of advertising and sale in New Jersey. The bill repeals the current "Land Sales Full Disclosure Act," P.L.1975, c.235 (C.45:15-16.3 et seq.) which was recently held to violate the commerce clause of the United States Constitution.

Under the bill, no subdivider or developer may advertise or sell subdivided lands located outside of New Jersey without submitting an application for registration with the New Jersey Real Estate Commission. The bill provides that if the registration is accepted based upon the commission's determination, then an order registering the subdivision is entered and the form of the public offering statement will be designated. Prior to issuing the order registering the subdivision, the commission must determine that: (1) the subdivider can convey the interest in the land; (2) there is assurance that the proposed improvements will be completed as represented; (3) the advertising material and general promotional plan are not false or misleading; (4) the subdivider has not been convicted of a crime involving land dispositions; and (5) the public offering statement requirements have been satisfied.

The bill states that disposition of subdivided lands are subject to the provisions of the bill if: (1) any offer or disposition of subdivided lands is made in this State; or (2) any offer of subdivided land originating outside this State is directed by the subdivider or his agent to a person or resident of this State.

The bill provides that the provisions of the bill do not apply to the following offers or dispositions of an interest in a subdivision: (1) by an owner for his own account in a single or isolated transaction; (2) wholly for industrial or commercial purposes; (3) pursuant to a court order; (4) by any governmental agency; (5) as cemetery lots or interests; (6) of less than 100 lots, units or interests, except condominiums, cooperatives, time-shares, or retirement communities; (7) where the common elements or interests are limited to the provision of unimproved, unencumbered open space; or (8) in a development comprised wholly of rental units.

Unless the subdivided lands or transaction are exempt, no person may offer, dispose or participate in the disposition of subdivided lands unless in accordance with the provisions of the bill. In addition, no person may dispose or participate in the disposition of any interest in subdivided lands unless a current public offering statement has been delivered to the purchaser and the purchaser has a reasonable opportunity to examine the public offering statement prior to disposition under the bill. The bill further provides that the purchaser or lessee of any subdivided land has the right to cancel a contract for the purchase or lease of the land within seven days of signing the contract. Any person violating the provisions of the bill would be fined not less than \$250 nor more than \$50,000 per violation. The penalties may be collected pursuant to "the penalty enforcement law."

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3850

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 30, 1989

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate Bill No. 3850.

Since 1975 the "Land Sales Full Disclosure Act," P.L.1975, c.235 (C.45:15-16.3 et seq.) has regulated the sale of land located outside the State of New Jersey through promotional plans to residents of New Jersey. In Old Coach Development Corp., Inc. v. Tanzman, 692 F.Supp. 424 (D.N.J. 1988), that act was held unconstitutional under the Commerce Clause. The United States Court of Appeals for the Third Circuit upheld that decision on August 2, 1989. While the courts upheld the right of the State of New Jersey to regulate out-of-state subdividers selling land, condominiums and time-shares to New Jersey residents, the courts held that the act discriminated in some respects against out-of-state developers and was therefore violative of the Commerce Clause of the United States Constitution. Both courts enumerated similar lists of defects in that act. This bill, entitled the "Real Estate Sales Full Disclosure Act," re-enacts the current act that was declared unconstitutional but makes those changes that are necessary to remedy all the deficiencies cited by the court decisions. As under the old act, the provisions of this bill will continue to be administered and enforced by the Bureau of Subdivided Land Sales Control within the Division of the New Jersey Real Estate Commission in the Department of Insurance.

The bill makes numerous changes in the old act and the most significant changes are as follows:

1. The bill specifically includes homeowners associations, housing cooperatives, community trusts and other trust devices and forms of time-sharing under the provisions of the bill. Time-shares are defined to include an "interval estate," "time-span estate" and "vacation license."

2. In addition to the current exemptions under the old act, the bill exempts offers or dispositions of an interest in a subdivision wholly for industrial or commercial purposes; of less than 100 lots, parcels, units or interests (this exemption does not apply to condominiums, cooperatives, time-shares, retirement communities or homeowners associations); where the common elements or interests are limited to the provision of unimproved, unencumbered open space (this exemption does not apply if this unimproved, unencumbered open space is required to register under the federal "Interstate Land Sales Full Disclosure Act"; and in a development comprised wholly of rental units involving a landlord-tenant relationship.

3. The bill increases the fees required under the old act. Under the old act, the fee for initial registration was \$250 for a subdivision containing less than 100 lots, parcels, units or interests, plus \$1 for each lot, parcel, unit or interest in excess of 100, with a maximum fee of \$1,000. The bill raises the fees to \$500 for an initial registration, plus \$35 for each lot, parcel, unit or interest, and the fee may not exceed \$3,000. The commission may establish a revised fee schedule if the fees are insufficient to defray the cost of rendering services required by the provisions of the bill. The revenue raised by the revised fees may not exceed the expenses of administering the provisions of the bill. The annual renewal registration fee under the old act is eliminated and replaced by a fee on amendments made to a registration and by the filing of an annual report setting forth any material changes in the original application for registration. Upon a determination by the commission that an annual report is no longer necessary for the protection of the public or the developer no longer retains any interest, the commission must issue an order terminating the responsibilities of the developer under this bill.

4. The bill does not contain those provisions in the old act which required the developer to provide to the commission the range of selling prices or rents of the subdivision and a report of a licensed civil engineer verifying that the overall design of the entire subdivision is adequate to prevent damage to property by reason of flooding or other natural occurrences. In their place the bill provides that the map which the developer must provide the commission showing the subdivision and the dimensions of the lots, parcels, units or interests and their relationship to other improvements must be drawn to scale and signed and sealed by a licensed professional engineer or land surveyor; and the developer must provide the commission with a statement as to whether the

property is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property is located in a federally designated flood hazard area. In addition to other information currently required from a developer, the bill requires the developer to include copies of management contracts, leases of recreational areas and similar contracts and a statement of the status of compliance with local, state and federal law.

5. In addition to other information required to be included in an offering statement under the old act, the bill provides that it must contain a summary of the terms and conditions of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the subdivision, the effect of each agreement upon a purchaser, and a statement of any relationship between the developer and the managing firm; and a notice of the current seven-day right of recession of any purchase. A subdivider must make copies of the public offering statement available to the prospective purchasers prior to their signing of any contract.

6. The bill adds a provision which allows the commission to revoke a registration if the subdivider does not comply with the provisions of the bill.

7. Currently, any person who violates the old act may be fined not less than \$500 or double the amount of gain from the transaction, whichever is the larger, but no more than \$50,000, or imprisoned for not more than one year, or both. The bill provides that any person who violates any provision of the bill is subject to an administrative fine of not less than \$250, nor more than \$50,000 for each violation. The commission may compromise any civil penalty if it determines the gravity of the offense does not warrant the assessment of the full fine.

8. Under the bill, developers sustain the burden of proof in suits involving allegations of untruths, omissions or misleading statements that the purchaser knew of the untruth, omission or misleading statement or that he did not rely on such information.

9. Every person who directly or indirectly controls a subdivision or developer or is a general partner, officer or director of the developer is jointly and severally liable with and to the same extent as the developer.

10. Any waiver of rights by purchasers is void under the bill.

The committee made technical amendments to the bill.