

ACT 223

H. B. 35.

A Bill for an Act Relating to Sales Practices Concerning Land Located in Hawaii and Elsewhere to Be Known as the Uniform Land Sales Practices Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Definitions. When used in this Act, unless the context otherwise requires:

(1) "disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit;

(2) "offer" includes every inducement, solicitation or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(4) "purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(6) "subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into 2 or more lots, parcels, units or interests and also includes any land whether contiguous or not if 2 or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale;

(7) "commissioner of securities" means the director of regulatory agencies in his capacity as commissioner of securities.

SECTION 2. Administrative director. This Act shall be administered by the director of regulatory agencies who will hereinafter be called the director.

SECTION 3. Exemptions. (a) Unless the method of disposition is adopted for the purpose of evasion of this Act, the provisions of this Act do not apply to offers or dispositions of an interest in land:

(1) by a purchaser of subdivided lands for his own account in a single or isolated transaction;

(2) if fewer than 20 separate lots, parcels, units or interests in subdivided lands are offered by a person in a period of 12 months;

(3) on which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within 2 years from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for

the purpose of engaging, and do engage in the business of construction of building for resale;

- (5) pursuant to court order;
- (6) by any government or government agency;
- (7) as cemetery lots of interests;
- (8) established as a horizontal property regime pursuant to chapter 170A of the Revised Laws of Hawaii 1955.

(b) Unless the method of disposition is adopted for the purpose of evasion of this Act, the provisions of this Act do not apply to:

- (1) offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;
- (2) offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
- (3) a subdivision as to which the plan of disposition is to dispose to 10 or fewer persons;
- (4) a subdivision as to which the director has granted an exemption as provided in section 10;
- (5) offers or dispositions of securities currently registered with the commissioner of securities of this State; and
- (6) offers or dispositions of any interest in oil, gas or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the commissioner of securities of this State;
- (7) subdivisions of less than 20 lots, parcels, units, or interests, if they are all located in jurisdictions requiring the developer prior to sale to provide or post bond for road access, sewage disposal, water and other public utilities, if such requirements have been complied with.

SECTION 4. Prohibitions on dispositions of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by section 3:

- (1) no person may offer or dispose of any interest in subdivided lands located in this State, nor offer or dispose in this State of any interest in subdivided lands located without this State prior to the time the subdivided lands are registered in accordance with this Act;
- (2) no person may dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

SECTION 5. Application for registration. (a) The application for registration of subdivided lands shall be filed as prescribed by the director's rules and shall contain the following documents and information:

- (1) an irrevocable appointment of the agency to receive service of any lawful process in any non-criminal proceeding arising under this Act against the applicant or his personal representative;
- (2) a legal description of the subdivided lands offered for registration,

together with a map showing the division proposed or made, and the land area of the lots, parcels, units or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

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

(4) the applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this State;

(5) the name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application;

(6) a statement, in a form acceptable to the director, of the condition of the title to the subdivided lands including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the director;

(7) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(8) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(9) if there is a lien or encumbrance affecting more than one lot, parcel, unit or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(10) copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

(11) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

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

(13) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(14) the proposed public offering statement;

(15) any other information, including any current financial statement, which the director by his rules requires for the protection of purchasers.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate or incorporate by reference the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(c) The subdivider shall immediately report any material changes in the information contained in any application for registration.

SECTION 6. Public offering statement. (a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the director shall be in a form prescribed by his rules and shall include the following:

(1) the name and principal address of the subdivider;

(2) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;

(3) the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(4) a statement of the use for which the property is offered;

(5) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(6) additional information required by the director to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the director approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director requires it.

(c) The director may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

SECTION 7. Inquiry and examination. Upon receipt of an application for registration in proper form, the director shall forthwith initiate an examination to determine that:

(1) the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the director in his rules and afford full and fair disclosure;

(4) the subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order within the past 10 years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this Act have been satisfied.

SECTION 8. Notice of filing and registration. (a) Upon receipt of the application for registration in proper form, the director shall issue a notice of filing to the applicant. Within 45 days from the date of the notice of filing, the director shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within 45 days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the director affirmatively determines, upon inquiry and examination, that the requirements of section 7 have been met, he shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(c) If the director determines upon inquiry and examination that any of the requirements of section 7 has not been met, the director shall notify the applicant that the application for registration must be corrected in the particulars specified within 10 days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

SECTION 9. Annual report. (a) Within 30 days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the rules of the director. The report shall reflect any material changes in information contained in the original application for registration.

(b) The director at his option may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

SECTION 10. General powers and duties. (a) The director shall prescribe reasonable rules which shall be adopted, amended, or repealed in compliance with the administrative procedure act. The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other rules as are necessary and proper to accomplish the purpose of this Act.

(b) The director by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this Act, or a rule or order hereunder, the director, with or without prior administrative proceedings may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this Act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The director is not required to post a bond in any court proceedings.

(d) The director may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the director notice of the suit and copies of all pleadings.

(e) The director may:

(1) accept registrations filed in other states or with the federal government;

(2) contract with similar agencies in this State or other jurisdictions to perform investigative functions;

(3) accept grants in aid from any source.

(f) The director shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

(g) The director may exempt a subdivision of 100 or fewer lots, parcels, units or interests from the provisions of this Act if he determines that the plan of promotion and disposition is primarily directed to persons in the local community or county in which the subdivision is situated.

SECTION 11. Investigations and proceedings. (a) The director may:

(1) make necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this Act or any rule or order hereunder, or to aid in the enforcement of this Act or in the prescribing of rules and forms hereunder;

(2) require or permit any person to file a statement in writing, under

oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this Act, the director or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court for an order compelling compliance.

(d) Except as otherwise provided in this Act, all proceedings under this Act shall be in accordance with the administrative procedure act.

SECTION 12. Cease and desist orders. (a) If the director determines after notice and hearing that a person has:

- (1) violated any provision of this Act;
- (2) directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (3) made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the director;
- (4) disposed of any subdivided lands which have not been registered with the director;
- (5) violated any lawful order or rule of the director;

he may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this Act.

(b) If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order he may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

SECTION 13. Revocation. (a) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

- (1) failed to comply with the terms of a cease and desist order;
- (2) been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses,

misrepresentation, false advertising, or dishonest dealing in real estate transactions;

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

(4) failed faithfully to perform any stipulation or agreement made with the director as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;

(5) made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the director finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, he may issue a cease and desist order instead.

SECTION 14. Judicial review. Proceedings for judicial review shall be in accordance with the administrative procedure act.

SECTION 15. Penalties. Any person who willfully violates any provision of this Act or of a rule adopted under it or any person who willfully, in an application for registration makes any untrue statement of a material fact or omits to state a material fact is guilty of a felony and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or he may be imprisoned for not more than 2 years; or both.

SECTION 16. Civil remedy. (a) Any person who disposes of subdivided lands in violation of section 4, or who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(b) In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit or interest in subdivided lands together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs, and reasonable attorneys fees less the amount of any income received from the subdivided lands upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a recon-

veyance less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under subsection (a), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) A person may not recover under this section in actions commenced more than 4 years after his first payment of money to the subdivider in the contested transaction.

(g) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this Act or any rule or order under it is void.

SECTION 17. Jurisdiction. Dispositions of subdivided lands are subject to this Act, and the circuit courts of this State have jurisdiction in claims or causes of action arising under this Act, if:

(1) the subdivided lands offered for disposition are located in this State; or

(2) the subdivider's principal office is located in this State; or

(3) any offer or disposition of subdivided lands is made in this State, whether or not the offeror or offeree is then present in this State, if the offer originates within this State or is directed by the offeror to a person or place in this State and received by the person or at the place to which it is directed.

SECTION 18. Interstate rendition. In the proceedings for extradition of a person charged with a crime under this Act, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

SECTION 19. Service of process. (a) In addition to the methods of service provided for in the Rules of Civil Procedure service may be made by delivering a copy of the process to the office of the director, but it is not

effective unless the plaintiff (which may be the director in a proceeding instituted by it):

(1) forthwith sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his last known address, and

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

(b) If any person, including any nonresident of this State, engages in conduct prohibited by this Act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct authorizes the director to receive service of process in any noncriminal proceeding against him or his successor which grows out of that conduct and which is brought under this Act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (a).

SECTION 20. Fees and inspection expenses. (a) Notices of filing pursuant to section 8 shall not be issued until the applicant has paid to the director the proper registration fee and advanced the inspection expenses, which shall not be refunded in the event registration is rejected. The fee shall be based upon the number of lots, parcels, units, or interests to be registered, at the following rates:

- (1) up to one hundred lots\$25.00
- (2) 101 to 500 lots 50.00
- (3) over 500 75.00

(b) In addition to the registration fee, the applicant shall deposit with the director sufficient sums to cover the following inspection expenses:

- (1) round trip air and ground transportation from Honolulu to the site of the subdivision;
- (2) per diem of \$30 per day for each day in which travel is required, plus one day for site inspection.

(c) The director may waive the requirement for inspection.

SECTION 21. Uniformity of interpretation. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 22. Short title. This Act may be cited as the Uniform Land Sales Practices Act.

SECTION 23. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SECTION 24. Repeal. Sections 170-30 to 170-38 are repealed.

SECTION 25. Effective date. This Act shall take effect upon approval.

(Approved June 5, 1967.)