MINUTES - COMMERCE COMMITTEE - 56TH ASSEMBLY -
March 3, 1971

Present: Lingenfelter, Hafen, Hilbrecht, Capurro, Poggione, Ashworth, Branch, McKissick

Absent: Dini

Others Present: Bob Bowers, Vice Pres., Nev. Ass'n. of Realtors
Dr. Tom White, Commerce Commission
Herb Matthews
Hugh McMullen, Real Estate Commission
George Vargas, Representative for American Insurance Assoc.
Proctor Hug, Horizon Corp.
James Bilboy, American Land Co. & Preferred Equity
Norma Fink, Real Estate Broker
Chuck Ruthe, Las Vegas Board of Realtors
Assemblyman Darrell Dreyer
Paul Argeres, Pres., Reno Realtors Board
Paul Nutter, Mgr., Better Business Bureau, southern Nevada
Phil Samovar, Preferred Equitable Corp.
Dick , Boise Bascade
Fred Ballou, Real Estate Broker
Ben Roscoe, Horizon
Al Levy

Vice Chairman Lingenfelter convened the meeting at 10:10 A.M. and asked for proponents to speak on A.B.249 - Provides for professional development of real estate brokers. Bob Bowers, Vice President of Nevada Association of Realtors spoke first. A copy of his statement is attached and shall become a part of these minutes.

Hilbrecht asked Mr. Bowers if this education requirement wouldn't force new people wishing to enter the field out of the industry. He asked for competitive data showing jurisdictions. Lingenfelter said that California just started to get license control but most states do not have it. Hilbrecht asked what requirements were in other states for securing brokers licenses. Mr. Bowers assured him that they were not interested in excluding applicants from the real estate field, just wanted to upgrade the qualifications. He said that most of the citations were against new people in the business.

Dr. Tom White, Commerce Commission, appeared in support of AB-249. He stated this bill would be in the best interest in protecting the public. He stated that the public should be protected as buying real estate usually is the biggest investment the ordinary person makes. He stated the purchaser needs professional help when buying real estate. He said the real estate broker should have expertise in this field to give the public adequate protection. He further stated

there would be no monopoly as the state officials have control. He stated the new education requirements this bill seeks would be slowly attained. He said in this changing society of cashless-checkless management, the public must be protected.

Capurro asked how many violations or complaints have been received by the Commerce Commission regarding real estate transactions. He asked in whose judgement the field is now suffering from inexperience or instability factors. Dr. White said they would need 150 investigators alone if all complaints were investigated and that it should be handled by seeing that qualified persons enter the field before they are licensed. As to the instability and inexperience in this field, Dr. White replied it is the Commerce Department that feels this is the problem. Capurro asked how they could base the education requirements on California's experience since they just recently passed such a bill. Dr. White replied that he would secure some data for the committee.

Poggione asked if the educational requirements would be readily available through the universities for people seeking licenses. Dr. White replied that the initial course is now available to anyone who seeks it.

McKissick asked Dr. White if the Dept. of Commerce would only accept this education requirement bill as part of the real estate package, remaining under that department. Dr. White replied that he would like to see real estate under the supervision of the state or by state officials. He stated he would like to see the advisory board be under commission or real estate commissioner authority.

Hilbrecht brought up that no state agency retains enough control and said he thought this proposal should be in regulations and asked how Mr. White could go on record for this quantum of very specific standards as being necessary on one year's experience of our sister state. He stated this should be in the regulations to be guidelines. Dr. White said they could be modified by regulations and Hilbrecht said this would be repealing everything we put into statute. Dr. White said there would be no objection if this were put into regulations and have the approval of political authority.

There were no opponents present to speak on AB-249.

Next bill called for discussion was AB-66 - Increases licensing requirements for real estate brokers.

This bill requires that persons must have 2 years experience as a salesman of real estate before they can apply for a broker's license. Both Mr. Bowers and Dr. White said they were for this proposed bill.

A.B. 197 - Requires bond of new real estate brokers.
A.B. 198 - Allows Nevada real estate advisory commission more time for conducting hearings and rendering decisions.
A.B. 199 - Defines crimes that are ground for disciplinary action against real estate brokers and salesmen.

A.B. 199 - has already gone to the Senate.

Herb Mathews said that AB-197 said this would take out the individuals who are poor financial businessmen and get into trouble handling funds that do not belong to them.

Mr. Mathews said he was for AB-199 also.

Poggione asked how the $5,000 bond figure was arrived. Dr. White said it was given by their legal counsel. Capurro asked if surety companies had been contacted. They have not. Hilbrecht asked if only new entrants in the brokerage field were the only ones required to secure the bond and was told "yes". Dr. White explained there is a recovery fund which protects at present. He explained that this would keep people out of the industry who would not be able to make it financially as there would be too much competition. Hugh McMullen, real estate commission, said they are charged with the job of deciding who qualifies and it is a fact that a man can falsify their financial statement and they do not have the manpower to check out everyone. He stated that securing the bond would put the bonding company in the position of checking out the financial statements of applicants. Capurro said you mean you don't want to tell the applicant that he isn't financial stable but want the bonding company to.

Hilbrecht asked if this bond requirement wouldn't make the rates go higher and this would reflect on the public. Also, the fact that the man would have to eventually have a baccalaureate degree besides the maintenance of recovery fund should make the rates go higher. He was informed that it wouldn't. Lingenfelter explained that this recovery fund has a surplus so it wouldn't make rates higher. Frank W said that the fund sets aside $20,000 for recoveries and the balance of money is used each year with $10,000 funded for education - continuing education. Lingenfelter stated that brokers pay their license fee plus $10 for the recovery fund.

George Vargas spoke in opposition to AB-197. He said the 1967 legislature put into effect NRS 656.841 - real estate education research and recovery fund. He said this provides protection for recovery to the public up to $10,000. He said this proposed bill was not for the protection of the public but a bill which would make surety companies have the responsibility of policing. He stated this is neither

proper or ethical and is not rightfully the surety companies responsibility, and this law would prove that most citations are against new business people. He said it has been stated that people seeking bonds would have no prior experience or financial ability and it would be difficult to get surety companies to bond them. He said he was also in opposition as they should not be put into the field where their function is not public protection but policing. He stated that line 7 of AB-197 should be amended by adding"the aggragation liability of the surety for all breaches of the conditions of the bonds shall in most excel somewhat the sum of the bond. The surety company shall have the right to cancel the bond and individually be relieved after said cancellation."

Dr. White stated that for proper growth of the industry, real estate brokers must be identified with Commerce and controlled by them.

Proctor Hug, of Horizon Corporation Interstate Sales, brought up that owners selling their own land shouldn't be required to go through a salesman or broker.

James Bilbray, American Land Corp. and Preferred Equities,, said land companies are in competition with real estate. He said their salesmen didn't need to secure the higher education to sell land as real estate salesmen need. He said that AB-252 was a bad law.

Norma Fink, real estate broker, said that all should be governed by real estate commission.

Proctor Hug spoke on AB-269. He was in favor of this. He stated that individuals selling one particular owners land shouldn't have to have the requirements of a broker. He stated that this bill was a good bill and would place land salesmen under control.

Lingenfelter asked if the limited license wouldn't be against people professionally trained. He asked if they wouldn't be salesmen-at-large.

McKissick stated that regulations and guidance efforts would make them just a position as land salesmen and under land companies jurisdiction.

Paul Argeres, President of Reno Realtors Board spoke against AB-269. He said there should be better control of licensing. He brought out the residency requirements and said that this limited licensing would be not governing much.

Paul Nutter, Manager of Better Business Bureau in Las Vegas, agreed with Dr. White with regards to qualifications. Stated there should be a standard of ethics.

Hafen stated that the Dept. of Commerce would have the authority on limited licenses to enforce Nevada laws.

Phil Samovar, Preferred Equitable Corp., said that all land companies make HUD filings. They make a statement of record and a property report. He said that HUD, the federal agency, makes a record of all land sales and was in favor of limited licenses. He said that California recognizes HUD. He stated that land salesmen didn't have to have the education that real estate licensed salesmen need.

David Hagen, Boise Cascade, stated they were against AB-269. Stated they were covered in land sales under the HUD Act. He stated that with the residency requirements it would be difficult for their salesmen to acquire limited licenses due to residency. He stated also that they have to comply with county regulations.

Ben Roscoe, Horizon, explained the company's financial responsibility. He stated that they comply with the HUD act and are under the county's inspection.

Al Levy, Realtor of Las Vegas, stated that limited licenses should be a regulatory problem. He stated that their was too much education requirement.

Meeting was adjourned at 12:05 P.M.

#1

I WOULD LIKE TO INTRODUCE FRED SCHULTZ, PRESIDENT 28 MEMBER INCLINE

BOB HAAS, PRESIDENT 49 MEMBER C.D.T.

PAUL ARGERES, PRESIDENT 265 MEMBER RENO BOARD

CHUCK RUTHE, PRESIDENT 600 MEMBER LAS VEGAS

FRED DESIDERIO, PRESIDENT 970 MEMBER NEV. ASSO(REALTORS.

THIS REPRESENTS 52.7% OF THE 1,840 ACTIVE R.E. LICENSEES IN THE STATE THIS WE ARE PROUD TO SAY IS THE LARGEST PERCENTAGE MEMBERSHIP IN A STATE REALTORS ASSOCAITION OF ANY STATE IN THE UNION.

I WISH TO STATE FIRST THAT SOME MEMBERS OF OUR ASSOCIATION MAY NOT AGREE WITH EVERY BILL WE ARE SUPPORTING. AFTER ALL,MOST OF THE LEGISLATION WE SUPPORT PUTS EXTRA RESTRICTIONS & REQUIREMENTS ON OUR OWN MEMBERS. HOWEVER, THE OVERWHELMING MAJORITY OF OUR ASSOCIATION FEEL THAT PEOPLE WHO ARE BUYING AND SELLING REAL ESTATE MAKING WHAT IS USUALLY THE LARGEST FINANCIAL TRANSACTIONS OF THEIR LIVES ARE ENTITLED TO THE HIGHEST CALIBER OF REPRESENTATION. THE REAL ESTATE PROFESSION MUST OPERATE ON THE FRINGE OF THE LEGAL PROFESSION, PARTICULARLY AS IT PERTAINS TO LAWS OF PRINCIPAL & AGENT, FIDUCIARY RELATIONSHIPS, REAL ESTATE CONVEYANCING, CONTRACTING, INTERNAL REVENUE LAWS & RULINGS & MANY OTHER LEGAL ASPECTS OF THE BUSINES WE FEEL THAT ALL BROKERS SHOULD HAVE ENOUGH KNOWLEDGE IN THESE PROBLEMS SO THEY WILL KNOW WHEN TO INSIST THAT THEIR CLIENTS SEEK ADVISE FROM THEIR ATTORNEY & C.P.A.. FURTHRR ALL BROKERS SHOULD BE MUCH MORE FAMILIAR WITH STRUCTURES, BUILDING QUALITY, SOIL CONDITIONS, HEATING PLANTS, PLUMBING, ELECTRICAL ETC., ECT. THE REAL ESTATE PROFESSION IS THE ONLY PROFESSION THAT HAS NO DIRECTION OR CONTROL EXCEPT THAT FROM THE PRICIPAL HIMSELF. FOR EXAMPLE: AN INSURANCE AGENT MUST HAVE AN UNDERWRITER WHO CONTROLS TO A GREAT EXTENT WHAT THEY MAY DO. ATTORNEYS MUST WORK WITH THE CONSTANT CHANGING LAW & COURT DECISIONS & FURTHER

ARE CONTROLLED

ARE CONTROLLED AS OFFICERS OF THE COURTS WHERE THEY PRACTICE. BY CONTRAST THE TITLE INSURANCE & ESCROW COMPANIES EXCERCISE NO INFLUENCE OVER REAL ESTATE TRANSACTIONS EXCEPT TO PROTECT THEIR OWN INTEREST. TITLE COMPANIES CAN ACCEPT TRANSACTIONS THAT ARE OBVIOUSLY VIOLATIONS OF THE STATE REAL ESTATE LAW AND FURTHER REFUSE ACCESS TO RECORDS BY THE REAL ESTATE DIVISION WITHOUT A COURT ORDER. THE REAL ESTATE PROFESSION IN THE STATE OF NEVADA HAS MADE TREMENDOUS STRIDES FOREWARD IN FURTHERING THE KNOWLEDGE & COMPETANCE OF OUR LICENSEES DURING THE LAST 3 YEARS. HOWEVER, AS MIGHT BE EXPECTED, SOME OF THOSE THAT NEED THE KNOWLEDGE MOST ARE THOSE WHO HAVE NOT & WILL NOT VOLUNTARILY ACQUIRE THIS NECESSARY EDUCATION. WE THEREFORE WISH TO URGE PASSAGE OF AB - 249 FOR THE FOLLOWING REASONS:

FIRST - THIS BILL DEMANDS THAT EVERY REAL ESTATE LICENSEE MUST COMPLETE 6 HOURS OF CONTINUING EDUCATION EACH YEAR OR PASS AN EXAMINATION COVERING THE SUBJECTS TAUGHT. OUR CONCEPTION OF THIS CONTINUING EDUCATION IS AS FOLLOWS: THE REAL ESTATE ADVISORY COMISSION SHALL PROVIDE, FREE OF CHARGE - OF COURSE, IN ALL SECTIONS OF THE STATE, PROBABLY A TOTAL OF 8 TO 10 DAYS THROUGHOUT ~~THE~~ EACH YEAR, THE 6 HOUR COURSE IN ADDITION CORRESPONDENCE COURSES COULD BE OFFERED TO ANY ONE NOT ~~XXXXX~~ DESIRING TO ATTEND THE CLASSES TO OBTAIN THE KNOWLEDGE. THE SUBJECTS COVERED WOULD BE FIRST THE NEW LAWS AND THEIR APPLICATION, SECOND: COURT DECISIONS REGLECTING ON REAL ESTATE PRACTICES AND THIRD: THE R.E. EDUCATION IN THE AREAS WHERE MOST OF THE COMPLAINTS & VIOLATIONS ARE GENERATED AGAINST BROKERS. WE SINCERELY BELIEVE THAT DEMANDING SUCH EDUCATION AS THIS BILL REQUIRES WOULD MOST CERTAINLY PROVIDE THE CONSUMER WITH THE BEST PROFESSIONAL REAL ESTATE REPRESENTATION IN THE UNITED STATES.

AB - 249 GRADUATES REQUIREMENTS FOR BROKER LICENSEES FROM NOW TO 1982 TWO YEARS FROM NOW, 3 SEMESTER UNITS IN REAL ESTATE LAW & PRACTICE AND

AN INTERNSHIP AS A SALESMAN WOULD BE REQUIRED AS A BROKER.

FOUR YEARS FROM NOW, WOULD ADD TWO - 3 SEMESTER UNITS OF COLLEGE LEVEL COURSES IN REAL ESTATE APPRAISING & FINANCING

SIX YEARS FROM NOW, BACALAUREATE DEGREE OR EQUIVALENT HIGHER LEVEL EXAM THAN PRESENTLY OR 4 YEARS FULL TIME AS A SALESMAN. AT THAT TIME THIS BILL REQUIRES REGULAR INSPECTION OF ALL BROKERS OFFICES.

EIGHT YEARS FROM NOW, REQUIRES 42 SEMESTER UNITS COLLEGE LEVEL IN THE FIELD OF REAL ESTATE OR BUSINESS (OR STUDIES UNDER THE REAL ESTATE DIVISION WHICH COULD BE APPROVED PRIVATE SCHOOLS OR EQUIVALENT EXAM.

TEN YEARS FROM NOW, ADDS 4 YEARS INTERNSHIP AS SALESMAN ~~&~~ TO BECOME A BROKER.

TWELVE YEARS FROM NOW, REQUIRES A BACALAUREATE DEGREE AND 4 YEARS INTERNSHIP

I KNOW YOU GENTLEMEN ARE AS FAMILIAR WITH THE PROVISIONS OF AB - 249 AS I. I HOPE YOU REALIZE THAT THE PASSAGE OF THIS BILL WOULD HAVE A TREMENDOUS STABILIZING EFFECT ON THE REAL ESTATE PROFESSION.

IN 1963 THERE WERE A TOTAL OF 1,418 REAL ESTATE LICENSEES IN NEVADA JULY 1 OF LAST YEAR THERE WERE 1,766 LICENSEES, HOWEVER, DURING THAT PERIOD THERE WERE 1,656 NEW LICENSEES ISSUED SHOWING A TURNOVER OF 74% OF ACTIVE LICENSES. THOSE OF US WHO HAVE BEEN IN THE PROFESSION DURING THESE YEARS FEEL THAT THE BASIC PROBLEM CAUSING THIS FANTASTIC TURN OVER WAS THE LACK OF KNOWLEDGE WHICH WE ARE ATTEMPTING TO CORRECT. WE FEEL THAT EDUCATION BEFORE IS FAR MORE IMPORTANT THAN ENFORCEMENT LATER, AND THE CONSUMER WOULD ACTUALLY BE THE ONE BEST SERVED.

I would like to introduce Fred Schultz, President 28 Member, Incline
Bob Haas, President 49 Member CDT
Paul Argeres, President 265 Member Reno
Chuck Ruthe, President 600 Member Las Vegas
Fred Desiderio, President 970 Member
Nevada Assoc. Realtors.

This represents 52.7% of the 1,840 Active R.E. Licensees in the State This we are proud to say is the largest percentage membership in a State Realtors Association of any State in the Union.

I wish to state first that some members of our association may not agree with every bill we are supporting. After all, most of the Legislation we support puts extra restrictions and requirements on our own members. However, the overwhelming majority of our association feel that people who are buying and selling real estate making what is usually the largest financial transactions of their lives are entitled to the highest caliber of representation.

The Real Estate profession must operate on the fringe of the legal profession, particularly as it pertains to laws of principal and agent, fiduciary relationships, real estate conveyancing, contracting internal revenue laws and rulings and many other legal aspects of the business. We feel that all brokers should have enough knowledge in these problems so they will know when to insist that their clients seek advice from their Attorney and C.P.A. Further, all brokers should be much more familiar with structures, building quality, soil conditions, heating plants, plumbing, electrical, etc.

The real estate profession is the only profession that has no direction or control ex cept that from the principal himself. For example; An insurance agent must have an underwriter who controls to a great extent what they may do. Attorneys must work with the constant changing law and court decisions and further are controlled as

officers of the courts where they practice. By contrast the title insurance and escrow companies exercise no influence over real estate transactions except to protect their own interest. Title companies can and do accept transactions that are obviously violations of the State Real Estate Law and further refuse access to records by the real estate division without a court order. The real estate profession in the State of Nevada has made tremendous strides forward in furthering the knowledge and competence of our licensees during the last three years.

However, as might be expected, some of those that need the knowledge most are those who have not and will not voluntarily acquire this necessary education. We therefore wish to urge passage of AB-249 for the following reasons:

First - This bill demands that every real estate licensee must complete 6 hours of continuing education each year or pass an examination covering the subjects taught. Our conception of this continuing education is as follows: The Real Estate Advisory Commisssion shall provide, free of charge - of course, in all sections ot the State, probably a total of 8 to 10 days throughout each year, the 6 hour course and, in addition, correspondence courses could be offered to anyone not desiring to attend the classes to obtain the knowledge. The subjects covered would be <u>First</u>, the new laws and their application; <u>second</u>, court decisions reflecting on real estate practices and <u>third</u>, the R.E. education in the areas where most of the complaints and violations are generated against brokers. We sincerely believe that demanding such education as this bill requires would most certainly provide the consumer with the best professional real estate representation in the United States.

A.B. - 249. Graduates requirements for broker licensees from now to 1982. Two Years from now, 3 semester units in real estate law and practice and and internship as a salesman would be required as a broker.

FOUR YEARS from now, would add two - 3 semester units of college level courses in real estate appraising and financing.

SIX YEARS from now, baccalaureate degree or equivalent higher level exam than presently or 4 years full time as a salesman. At that time this bill requires regular inspection of all brokers offices.

EIGHT YEARS from now, requires 42 semester units college level in the field of real estate or business (or studies under the real estate division which could be approved private schools or equivalent exam.)

TEN YEARS from now, adds 4 years internship as salesman to become a broker.

TWELVE YEARS from now, requires a baccalaureate degree and 4 years internship.

I know you gentlemen are as familiar with the provisions of A.B. 249 as I. I hope you realize that the passage of this bill would have a tremendous stabilizing affect on the real estate profession. In 1963 there were a total of 1,418 Real Estate Licensees in Nevada. July 1st of last year there were 1,766 licensees, however, during that period there were 1,656 new licensees issued showing a turnover of 74% of active licenses. Those of us who have been in the profession during these years feel that the basic problem causing this fantastic turn-over was the lack of knowledge which we are attemtping to correct. We feel that education before is far more important than enforcement later, and the consumer would actually be the one best served.

EVALUATION OF LAND DEVELOPMENT PRACTICES IN NEVADA

EDWARD A. ZANE
PROFESSOR OF MARKETING
UNIVERSITY OF NEVADA, RENO

INTRODUCTION

In reviewing the structure of the land development industry in Nevada three broad structural patterns become evident. First, in so far as Nevada is concerned three selling situations may be found: a. Transactions made by salesmen resident in Nevada and selling land in Nevada; b. Transactions made by salesmen resident in Nevada and selling land in other states; c. Transactions made by salesmen resident in other states and selling land in Nevada. A fourth type of land sales involves sales completed entirely through the postal service.

A second broad pattern common to land sales in Nevada is the use of complimentary programs which involve free dinners or other free services and which are used to develop traffic from which prospective land purchasers may be obtained. The complimentary program promotion has taken three distinct forms: a. The advertising of the complimentary package in media available in other parts of the country; b. The provision of the complimentary package upon arrival in a Nevada community; and, c. A telephone invitation to receive the complimentary package upon request. The last named device usually involves a free dinner followed by a presentation by the sponsoring land sales company. Of course, a combination of these methods may be used by a particular land sales company.

A third characteristic found in the typical land sales situation is the tendency for the land purchase agreement to be completed without the purchaser first viewing the land involved. To overcome the buyers natural reluctance

to purchase land sight unseen, the purchase agreement typically includes a clause permitting the buyer to cancel the arrangement at some future date. To exercise this privilege the buyer usually is required to visit the site within a specified period (generally six months to a year) and, then if he is not satisfied with the purchase, formally request termination of the agreement and a refund of his payments to date. This last step also must be taken within some specified time period, usually 24 or 48 hours.

It is extremely difficult to measure the total amount of property which is sold in this manner. One can only conclude that it is considerable. Many of the companies engaged in this industry operate on a national scale and have stock which is registered and traded on the major stock exchanges. It is also extremely difficult to determine in a quantitative sense the extent of benefit or loss which the purchaser might experience in such arrangements. The relative ease by which land sales organizations may be formed, the widespread dependence on the complimentary package, the prevalence of sight-unseen purchases and the carefully programed sales presentation increase the probability that certain unscrupulous organizations will be attracted to the industry.

The report which follows is based on a survey of the records of land sale transactions maintained by the Nevada Real Estate Division and from interviews with community representatives in Las Vegas and Reno. Time pressures prevented a more intensive and extensive review of the processes and practices of the industry.

One other point is worthy of mention. There is a natural human tendency for those who are dissatisfied with a situation to complain. The person who is pleased with the arrangement seldom takes the trouble to say so -- the silent majority, so to speak. Thus any review of a file of complaints must

be understood to carry the element of bias. Never-the-less, the number of complaints found in the Real Estate Division files and the uniformity of their nature leads to the conclusion that there is some basis to these complaints. These complaints, therefore, warrant the attention of legislators and of the regulatory agencies.

MARKETING ACTIVITIES OF LAND SALES COMPANIES

The basic objective of this study was to develop data on the following general topics as they are related to the activities of land development companies: 1. Usual methods of sale; 2. Types of complaints; 3. Function of the complimentary package programs; 4. Examples chosen from actual cases; and, 5. The status of land sales regulation in other states.

USUAL METHODS OF SALE

The two methods most commonly found in large scale of land contracts are extensive promotion of the project and the use of the complementary package entitling the holder to a variety of"free" shows, meals and other benefits. Promotional activities associated with land sales companies usually are on a regional or national scale. A wide variety of consumer media is used but with emphasis on media directed to consumers interested in hunting, fishing, vacation homes and other similar outdoor related activities. In addition, widespread use is made of the supplemental magazines associated with the Sunday editions of metropolitan newspapers. In this medium emphasis of the message is placed on retirement or investment advantages of the land being promoted. Invariably, this information presents the subdivision in glowing terms with emphasis on the availability of lakes, rivers, swimming, boating, golfing and the like. In many cases these facilities are available within some distance of the subdivision and/or are planned as part of the future

development of the subdivision. Common use is made of illustrations of people engaged in these activities, leading to the implication that the reader also could enjoy these activities with the purchase of the property offered for sale. The advertisements typically offer additional information upon request. Much of the material which is sent in response to the request for additional information contain further descriptions and photographs of the property. Presumably, many consumers purchase land at this point. Others may be sold property through follow-up material, direct sales representative or by an invitation to visit some central sales office with some of the expense being covered by the sales company. The complimentary package is the principal device used at this point and with Nevada resort areas serving as the focal point. This brings us to the second factor common to land sales activities -- the complimentary package.

To be eligible for the benefits of the complimentary package, the buyer must attend a sales presentation in which the land developers project is featured and at which sales representatives make vigorous efforts to sell property to those who attend. It is also common to limit eligibility to couples between the ages of 21 to 60 or 70 years. Consumers in this group represent the prime market for vacation, investment or retirement property. Complimentary packages are used wherever there is a tourist industry, but it is particularly widespread in Nevada where the variety of activities associated with the gaming industry make it an effective promotional device. While the complimentary package is not restricted to land sales activities, it has proven to be an effective traffic builder and thus has been used widely by developers seeking prospective customers wherever they may be located, in Nevada as well as in other parts of the country.

TYPES OF COMPLAINTS

A common thread that runs through the complaints received by the Real Estate Division, the Chambers of Commerce and the Better Business Bureaus involves the reports of heavy sales pressure brought to bear on the prospect for land purchases. As is the case with many direct sales organizations, the sales representatives for the land companies have been trained carefully in the most effective way to present their product and in the most effective way to overcome virtually any objection which might be raised by the customer. The common practice is to urge continually that the customer sign the agreement, to beat down every objection and,if all else fails, bring in an associate (the so-called take-over man) to add weight to the argument. This latter individual is frequently introduced as a top executive from the "home office," presumably, on the assumption that the title will impress the customer. I hesitate to condemn this hard sell practice out of hand. One might say that the consumer, in this situation, voluntarily puts himself in a position to be subjected to such pressure by accepting the complimentary package. However, I am not prepared to accept the doctrine of caveat emptor. Recent Federal legislation such as the "Truth in Lending" and the "Truth in Packaging" acts, along with increasing vigilence by the Federal Trade Commission, clearly indicate a national policy of departing from assigning complete responsibility to the consumer for his actions under sales pressure. Many of the complimentary package promoters have official sounding names which result in the consumer unwittingly getting himself involved in these land sales presentations which in an ordinary situation he would have avoided. I think that we can not avoid feeling sympathy and perhaps some responsibility for the individual who finds himself in a situation which he can not control and which results in an unwise purchase.

A second common complaint involves what appears to be at best misrepresentation and at worst possible fraud. In reviewing some of the literature supplied by several land sales companies, I was struck by the realization that the meaning of many of the statements and claims made by the developers could be grasped only if one read completely and carefully everything that was printed. Many of the promised improvements such as central water supply, golf courses and so on did not indicate when these improvements would be started or when they would be finished. Frequently, it was not clear whether there was a trust fund or some other device to assure the purchaser of adequate funds to complete the project should the original developer experience financial difficulties. Clearly a casual reading of this material can only lead to a misunderstanding as to what the specific claims are and what the developer actually is promising to do. Further doubt as to the consumer's understanding of the arrangement is raised when one considers that much of this material is presented in the hard sell environment of the sales presentation. One of my colleagues who attended a complimentary dinner in Reno found that the sales representative got very impatient when he, my colleague, attempted to read carefully the material he was given. Here again, one must decide what responsibility the individual has to protect himself against such tactics. Undoubtedly, pressure from a regulatory agency with power to license could bring about some reduction in the prevalence of hard sell tactics.

In the area of misrepresentation and perhaps bordering on fraud is the practice of using photographs which are in no way connected with the subdivision. The purpose of such illustrations is to create the impression, perhaps falsely, that such views are typical of those found in the subdivision. Another practice which misleads the consumer is the use of maps which completely distort the distance relationships among the geographic points provided in the map. This

practice poses a particular problem when applied to Nevada points because of the great distances which exist and the great possibility that the consumer will be unaware of these distances.

FUNCTION OF THE COMPLIMENTARY PACKAGE

To some extent this section may be redundant. However, I thought it necessary to summarize and to connect the comments I may have made already regarding the complimentary package and its relationship to land sales activities. In my view, the complimentary package is essential to the successful operation of any large scale marketing of property in subdivisions. I see no other way by which a heavy flow of prospects for property can be generated as efficiently and as dependably.

The complimentary package is made available to the consumer in a variety of ways. The most common techniques are to make the package available through coupons clipped from newspapers in the consumers home community, through giveaway newspapers available at airports and bus terminals in Nevada communities, from privately operated tourist information booths on highways leading into Nevada, from hotel and motel clerks and other employees and from individuals who approach tourists in the clubs and other resorts. It has been a common practice for some land sales companies to pay hotel clerks and other similar individuals for every prospect they are successful in steering to a sales presentation. Out of this practice has come the expression of "unit producer" or "body sellers," to describe what is going on. The term "unit" refers to a couple and, sometimes, to an individual

The unit producers apparently are centered in the Las Vegas area. While the practice is not unknown in Reno, few complaints have been received by the Reno Chamber of Commerce regarding this practice. Such is not the case in Las Vegas. The Las Vegas Chamber reports that unit producing has grown into a

major public relations problem in the area. According to Mr. Ken O'Connell, Executive Vice President of the Chamber, complaints have taken the following forms: 1. The visitor did not receive all of the benefits promised by the promotional material. 2. The visitor was not informed at the outset that the receipt of the benefits was contingent upon attendance at a sales presentation. 3. The visitor resented being solicited in the clubs and casinos by representatives of the giveaway programs. In virtually every case the visitor held the city, its representatives and its gaming industry responsible, and thus is created the public relations problem.

Mr. O'Connell reported few complaints related specifically to the land transaction itself. The concern by officials of the Chamber and by local governmental officials for the public relations aspect of the unit producers resulted in the passage by the Clark County Commissioners of an ordinance designed to license and control this activity. It is noteworthy that the Commissioners anticipated annual revenues from licenses and fees associated with this ordinance will be in the neighborhood of $250,000. The ordinance calls for a license fee of $100 and a fee of $1 for each unit provided for the presentation. All fees are to be paid by the land sales company.

EXAMPLES CHOSEN FROM ACTUAL CASES

To give some solid dimension to this discussion, I have chosen from the files of the Real Estate Division two cases which I feel are representative of the kinds of problems and abuses which can and have developed in the absence of effective regulation designed to protect the consumer and the legitimate businessman.

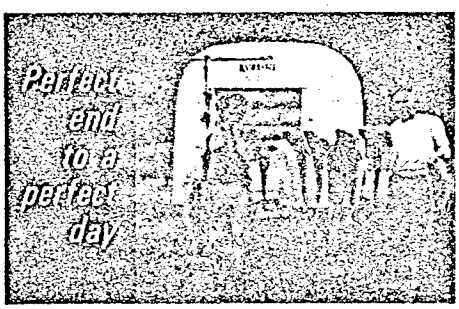
One case, Meadow Valley Ranches, Inc., occurred during and previous to 1969 and involved a subdivision near Elko, Nevada. This company appears to be in bankruptcy at the present time. The second case is more recent and

involves a subdivision in the Pahrump Valley by a company called the Laand Corporation. In this latter case the Real Estate Division has taken legal against the company for failure to comply with Nevada law which requires each subdivision to be registered with the county in which it is located. Each of these cases provide examples of the practices which I have detailed above.

In Figure 1, I have reproduced a copy of the advertising material used by the Meadow Valley Ranches, Inc. Apparently the company used this advertisement to solicit mailorder purchases of land by customers in all parts of the country. Letters in the Division file indicate the the company used publications ranging from military service magazines to outdoor magazines to men's adventure magazines. Upon receipt of a coupon (and presumably $1), the company sent out additional promotional material along with a purchase contract for the consumer to complete and return with the required down payment. Judging from the letters in the file, many individuals made purchases at this point without making further investigation. The promotional material showed pictures of outdoor scenery and activity and gave the impression that these were available on or near the subdivision. Mr. Glenn Sayles, investigator for the Real Estate Division, says little or nothing has been done to improve the land in the subdivision. Also clearly misleading is the map used in the advertisement. The scale of this map is so distorted as to make it appear that Lake Tahoe and Reno are only a short distance from the subdivision. From the plat map provided by the developer one gets the impression that roads are all surveyed and individual plots staked. Once again, an on-site investigation by Mr. Sayles shows that such is not the case. Roads that do exist are not up to county requirements and thus the county has been unwilling to assume their maintenance.

The second example which I have chosen for illustrative purposes, the Laand Corporation, represents more of the same type of practices detailed above. This

★ WHERE-TO-GO ★



AVION Travel Trailer COMFORT

After landing the lunkers, settle down in the like-home luxury of an Avion. Enjoy running water, heat, lights, modern kitchen . . . your choice of plush conveniences. With riveted aluminum construction this lightweight trailer tows easily over back trails to where fishing's best. Models 17 to 30 ft. Lifetime Guaranteed. Send for FREE Catalog and dealer's name.

AVION COACH CORP.

DEPT. C, BENTON HARBOR, MICH.

World's Greatest SALMON and FAMOUS KAMLOOPS

TROUT FISHING

IN BEAUTIFUL, REALLY PRIMITIVE WELLS GRAY PARK, BRITISH COLUMBIA, CANADA

Salmon in season, FISHING OPEN ALL YEAR. LOW DAILY RATE $30., (min. 7-days). Complete, incl. guides, modern rooms, delicious food. New lakes & streams daily.

SEE YOUR TRAVEL AGENT for Reservations

HELMCKEN FALLS LODGE

IN WELLS GRAY PARK, BRITISH COLUMBIA or write: D. Hamel, P.O. Box 96, Lakeview, Calif.

STUART ISLAND RESORT

Stuart Island, Bute Inlet, B. C. Canada.

WILDERNESS LUXURY, and the finest SALMON fishing in the world.
Lake and Stream fishing—Steelhead and Rainbow trout.
HUNTING—Grizzly bear, deer, goat, ducks and geese.
Open all year round, with the finest in accommodations.

For brochures and rates, write:

STUART ISLAND RESORT LTD.,
4369 Ocean View Blvd., Montrose, Calif.
TELEPHONE: 2492211 (DDD 213)

GREAT BEAR LAKE

On the Arctic Circle

GREATEST LAKE TROUT, GRAYLING FISHING IN NORTH AMERICA

Canada's *Northernmost* fishing lodge, completely modern on *Canada's largest lake*. NEVER COMMERCIALLY FISHED. All-expense—limited to 20.

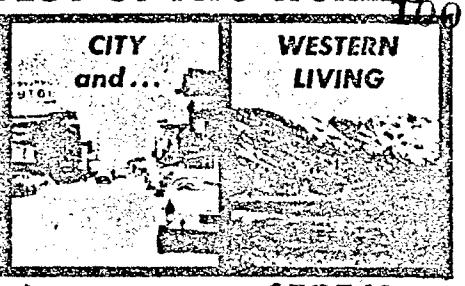
GREAT BEAR LODGE
Write or Call Bill Haerr
829 So. Phillips Ave Sioux Falls, S.D.
Phone 336-2008

NOW... Start Enjoying "THE BEST of TWO WORLDS"

2½ ACRES

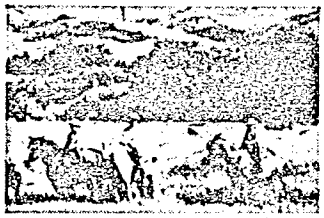
JUST 17 MILES from ELKO, NEVADA

CITY and... WESTERN LIVING



$10 DOWN / $10 PER MONTH / FULL PRICE $595.00 NO INTEREST NO CARRYING CHARGES

MEADOW VALLEY RANCHOS



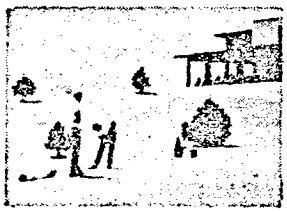
BOOMING NEVADA IS EQUALED BY ONLY A FEW PLACES IN THE WORLD. Population has surged Westward in ever increasing numbers. Westward to Nevada, where the air is fresh and clear, taxes are low or non-existent and opportunity is open to all. Yes, Nevada is booming and real estate investors are prospering. It is a proven fact that many purchasers of Nevada acreage have realized fabulous profits from small investments. Now, a NEW Nevada Real Estate Opportunity exists for you. This Ground Floor Opportunity is MEADOW VALLEY RANCHOS, located only 1½ miles from the thriving city of Elko, Nevada.

THE VERY BEST FEATURES OF TWO WORLDS

...THE WORLD OF THE WEST: Located in prosperous Elko County, the ranchos have the backdrop of the majestic Ruby Mountains. The sparkling Humboldt River is a short ½ mile away. Every Rancho fronts on a graded road that leads into coast to coast U.S. Highway 40. Amidst these spectacular surroundings MEADOW VALLEY RANCHO owners can relax and enjoy the wonderful life of the Golden West.

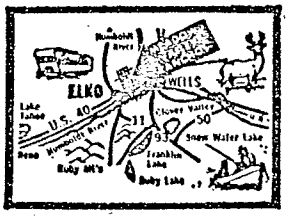
...THE WORLD OF CITY CONVENIENCES: The bustling city of Elko with its modern schools, shops, theaters, hospital and airport is only 1½ miles away. The Experienced, Successful Developers of MEADOW VALLEY RANCHOS are not offering remote land where purchasers have to hope for progress and expansion. They offer you the opportunity of a life time, a chance to participate in Nevada's continuing boom... Minutes from the conveniences of hospitable Elko, in the midst of current growth and progress, MEADOW VALLEY RANCHOS has all the necessary ingredients to skyrocket in value!

RECREATION UNLIMITED:



GOLF: A mere one mile from MEADOW VALLEY RANCHOS is the Ruby View Golf Course. No rush for starting times on this city owned and maintained golf course, but golfing as it should be enjoyed. Play a leisurely 9-18 or 36 holes surrounded by breathtaking scenery, minutes from your rancho.

HUNTING: Hunters from all corners of the globe come to Elko County to hunt the big game species Mule Deer... Quail, Chukar, and Partridge are found in abundance.



MEADOW VALLEY RANCHOS
1636 Stockmen Bldg.
Elko, Nevada

FISHING: In jewel like lakes, and mountain fed bottom streams you'll catch trophy size German Browns, Rainbow and Brook Trout . . large mouth fighting Bass. RANCHO owners can catch their dinner within easy driving distance of the property lines.

FOR ALL THE FAMILY: MEADOW VALLEY RANCHO owners enjoy the FREE use of Nevada's many state recreation areas. Swimming, Camping, Boating, Picnicking, Rock Hunting, Horseback Riding and many many more recreational opportunities are available.

PROVEN OPPORTUNITY: Yes, individuals are taking advantage of Nevada opportunity. But the countries financial experts, our leading corporations are also investing in their Nevada futures. Industrial giants build plants where Increasing Land Values and Population demand them. Anaconda Copper has completed at $32,000,000 plant. North American Aviation, Kaiser Steel and Curtis-Wright are building plants or have secured large acreage.

LOW OR NON-EXISTENT TAXES: As a result of Nevada's low realistic tax structure, Profits And Wages Are Kept; not paid out to the state. NEVADA HAS NO STATE INCOME, INHERITANCE, CORPORATION OR GIFT TAX. The low real property tax is definitely limited by the state constitution. YES, NEVADA IS ONE OF OUR LAST FRONTIERS OF TAX FREEDOM!

TOTAL COSTS: The full price of the title to your 2½ acre Rancho is only $595.00. Complete payment schedule is $10.00 down and $10.00 per month. No interest, no carrying charges. Live, Vacation or Retire on your land, or simply hold for investment security. Wise men like Andrew Carnegie said, "More money has been made in Real Estate than in all industrial investments combined." Make MEADOW VALLEY RANCHOS' PROSPEROUS FUTURE — YOUR FUTURE. DON'T MISS THE GOLDEN OPPORTUNITY!

MEADOW VALLEY RANCHOS — MAIL COUPON TODAY
1636 Stockmen Bldg., Elko, Nevada

Yes! — Reserve acreage at MEADOW VALLEY RANCHOS for me — 2½ acre parcel, $595 — payable $10 down, and $10 a month — no interest no carrying charges. Send purchase contract and map showing exact location of my holding. You will return my deposit if I request same within 30 days. I enclose deposit for each 2½ acre rancho desired.

SIZE ACRES	DOWN	PER MO.
2½	$10	$10
5	20	20
7½	30	30
10	40	40

Name:_____

Address_____

City:_____ Zone:____ State:____

Indicate No. of Ranchos____ Total enclosed $____

case is pertinent to my presentation because it is more recent, because legal action has been initiated by the Real Estate Division and because there is reason to believe that purchasers may still be paying on contracts made with this company. The Division files indicate that the Laand Corporation utilized the complimentary package method to secure prospects for their sales presentations. Material provided by the company indicates that the sub-division had been filed with the Nye County Commission which it had not been, and that roads, a water system and other promised improvements had been started which they had not. Refunds were guaranteed to those who visited the land within six after signing the contract and who filed the proper forms necessary to take advantage of this privilege. Records indicate that few purchasers were successful in their efforts to secure a refund. Evidently none have been able to secure deeds in those cases where the purchaser chose to pay the full purchase price of the property rather than use the monthly installment basis. Several extensive files are available which detail the tactics used by the company to avoid providing the deed to the purchaser. The truth of the matter is that the nature of the original agreement under which the developer secured the property prevented Laand from issuing the deed. It is unlikely that these people will ever get the deed to the property they thought they were buying. The Laand Corporation is in receivership and the original owners of the property have reposessed the land on which the subdivision was located.

A particularly tragic aspect of this case grows out of the fact that a number of purchasers are unaware of the bankruptcy and the subsequent reposession of the land by the original owners. As late as November, 1970, approximately one hundred purchasers made payments on the contracts they had undertaken. Between August, 1970, and November, 1970, including downpayments and subsequent monthly installments, these people have paid over $53,000. This amount of money gives some measure of the losses suffered by would-be purchasers of land from

this particular land developer.

It is my opinion that these two cases may be multiplied several times. In another situation the problems may not be as serious or as flagrant. However, any deviation from strict ethical and legal practices in the sale of real estate is harmful to the public, to the state of Nevada and to the legitimate land developer.

One final point should be made. The two examples used involved land developments in Nevada. The Real Estate Division has received inquiries and some complaints involving out-of-state land subdivisions. Most of these appear to involve the methods of recruiting prospects and the high pressure sales methods used. Gross abuses have been avoided largely because the states in which the principal developments are taking place (Arizona, New Mexico and Florida) have fairly effective subdivision regulatory programs. Such programs in other states does not relieve Nevada from the responsibility to protect its citizens and its visitors from possible abuses in the future.

SUBDIVISION REGULATION IN OTHER STATES

Nevada is one of eleven states which do not have presently a land sales act.[1] See Figure 2. Fifteen states regulate the activities of land sales companies without regard to the state in which the subdivision may be located. Three other states regulate only those subdivisions which lie within their boundaries. Another eleven regulate the activities of companies selling land located in other states, apparently relying on other forms of regulation to control in-state sales. To my knowledge, one state, Florida, has established regulatory board charged with the specific responsibility for land development sales activities. From all reports it has been quite successful in eliminating the major abuses which has plagued the Florida real estate industry for a number of years. You will note in the figure that nine states did not indicate in the survey whether they did or did not have a mechanism for

FIGURE 2

LAND SALE REQUIREMENTS: IN-STATE AND OUT-OF-STATE, 1970

By State

In-State and Out-of-State Regulation

Alaska
Arizona
California
Colorado
Kansas
Maryland
Minnesota
Montana
New York
Ohio
Oregon
Utah
West Virginia
Washington
Wisconsin
Total 15

No Reply

Alabama
Arkansas
Georgia
Kentucky
Missouri
New Hampshire
North Carolina
Rhode Island
Vermont
Total 9

In-State but no Out-of-State

Deleware
Iowa
Mississippi
Total 3

No Jurisdiction

Wyoming

No Reply (In-State), Yes Out-of-State

Massachusetts

Out-of-State but no In-State

Connecticut
Illinois
Indiana
Michigan
Nebraska
New Jersey
Pennsylvania
South Carolina
South Dakota
Total 0

No In-State and No Out-of State

Hawaii
Idaho
Maine
Nevada
New Mexico
North Dakota
Oklahoma
Texas
Virginia
Total 9

No Reply (In-State), Register with Securities for Out-of-State

Tennessee

Regulation Pending

Louisiana

Special Real Estate Subdivision Board

Florida

Source: 1970 Annual Report of the Interstate Cooperation Committee, The National Association of Real Estate License Law Officials

regulating land sales companies. One might assume from this that no regulation existed in these states. It is possible that the regulation of land sales companies comes under the general program of regulating and licensing real estate brokers and salesmen. At the moment, I do not have access to information sources which would clear up this ambiguity.

CONCLUSIONS AND RECOMMENDATIONS

No one really knows the extent of the problem posed by the uncontrolled activities of land sales companies. A review of the files maintained by the Real Estate Division in its Carson City and Las Vegas offices reveals the nature of the problem without revealing its extent. One can not help feeling however, that such evidence represents only the top of the iceberg which is visible. A much larger and a more wide spread problem may exist underneath and about which we can only guess. How many people harbor resentment toward Nevada as a result of some of the practices of the unit producers? How many people have purchased land in Nevada or elsewhere only to discover that the property did not meet the glowing descriptions provided by the sales representatives? How many people have lost savings because they were unable to secure refunds as expected? How many people have been unable to secure clear title to land on which they have made the total payments required?

We will never know the full answers to these questions, but those individuals in a position to be knowledgeable about the problem will tell you that it is extensive and that it is critical to the continued good will of the tourist industry in Nevada. Without exception the people with whom I spoke regarding the activities of land sales companies indicated the need for some sort of legislation governing this form of real estate business.

At the beginning of this study, I did not see as part of my function the recommendation of specific legislation for the land sales companies. I saw my job as an effort to put a dimension to the problem if one existed; to provide a handle, so to speak, which could be used by legislators or representatives of the Real Estate Division to formulate legislation. However, as I became involved in the study it became apparent that hard facts were going to be hard to come by and that the best that I might be able to do would be to give an outsider's viewpoint on the problem. Once I reached this position, I concluded that specific proposals for legislation would be the best vehicle for me to use to express my reaction to the information I was able to obtain.

I believe that legislation should attack the problem from two directions: Regulation of the land sales companies themselves and the regulation of the complimentary packagers who serve as unit producers for the land sales companies.

While knowledgeable people within the real estate industry or in the Real Estate Division may be in a better position to recommend specific legislation, it seems to me that such legislation should include the following:

1. Some form of licensing of complimentary packagers, i.e., the unit producers. Such regulation would apply to those packagers who are not connected with the land sales companies as well as the so-called unit producers. Where the packager is indeed a unit producer for a land sales company he should be required to put the customer on notice of such a relationship and what obligations are associated with it.

2. Some form of licensing of land sales companies. Closely related to this proposal is the question of licensing of the salesmen working for these companies. I think that the tendency of direct salesmen to move from job to job would make licensing of these people quite difficult from an administrative viewpoint. I would propose that the companies be held fully responsible for the activities of their representatives. My experience with direct sales organizations leads me to believe that these salesmen usually follow a closely controlled and programed presentation. To the extent that this is true the necessary control of the salesmen is an integral part of the operation.

3. As a pre-requisite for licensing, an on-site investigation of the sub-division wherever it is located. This procedure is followed by several states and appears to be a satisfactory way of protecting the consumer against fraud and misrepresentation without limiting unnecessarily the activities of the real estate broker.

4. A requirement that the prospective purchaser of land be given a copy and an opportunity to read the published report of the Real Estate Division's on-site investigation. Failure to make the report available to the prospective purchaser should involve the right of the individual to terminate the contract and to receive a full refund of all moneys paid. Additional sanctions should include the suspension or cancellation of the license to operate in Nevada.

5. Periodic on-site re-inspections to determine compliance with claims and promises made by the developer. This is particularly critical where improvements have been promised by the developer.

6. All expenses associated with on-site inspection by Division representatives should be met by by the developer.

7. Some form of bonding or the establishment of a trust fund to provide assurance to the purchasers that commitments made by the developer in the nature of roads and other improvements will be completed. This procedure would provide funds for these projects regardless of financial condition of the developer or his successors.

8. A requirement that a portion of every payment be put into a trust fund to provide funds for payment on land purchased by the developer under a trust deed arrangement. The purpose here is to provide the buyer some legal claim to the land which he is buying from the developer. Some provision needs to be made to assure the buyer that he will receive a deed to his land and that the receipt of this deed will be independent of the financial condition of the developer.

I present the above points with the knowledge that many, if not all, are included in proposed legislation being considered by the Legislature at the present time. As I read these bills none appears to deal with the related problem of regulating the activities of the complimentary packagers. It is true that regulation of the activities of the sales companies will greatly aid in the situation where misrepresentation, if not outright fraud, is involved. However, in the area of public relations the failure to provide some supervision of the complimentary packagers could have long run consequences for

the tourist industry in Nevada. Local legislation such as that exemplified by the recent action taken by the Clark County Commissioners may provide effective means of controlling packager activities in the local area. However, such legislation may prove ineffective in protecting our tourist industry against unscrupulous firms operating in other states but using Nevada resort spots as the focus of attention or perhaps as sucker bait. Thus I feel that some form of regulation of complimentary packagers at the state level would provide the most effective means of regulation and would serve as supplemental legislation to land sales company regulation.

Interstate Land Sales Full Disclosure Act

by JAMES A. PARK
Fraser Trebilcock Davis & Foster
Lansing, Michigan

THE INTERSTATE LAND Sales Full Disclosure Act[1] (hereinafter for brevity sometimes referred to simply as "The Act") became effective April 28, 1969. This Act requires federal registration of every subdivision development aggregating 50 lots or more unless the subdivision is exempted from the Act. Available evidence however seems to indicate that only a few subdivisions have registered and a similarly small percentage of lawyers in private practice are aware of the coverage and implications of the Act.

Failure to register can subject the developer and others to criminal penalties[2] and civil liability for damages.[3] Failure to register can also result in sales being voidable at the option of the purchasers.[4] The Act avoids most common law and state law defenses, establishes both state and federal court jurisdiction and venue and authorizes wide ranging service of process.[5]

The Act was originally designed to protect lot purchasers from fraud and misrepresentation in mail order and mass media promotional land sales. The Act is not, however, so restricted: Its coverage extends to the sale or lease of any lot in any "subdivision" where any means or instruments of transportation or communication in interstate commerce, or the mails was directly or indirectly used.[6]

Legislation introduced in Congress in the mid-1960's to regulate promotional interstate land sales received the support of both President Johnson and President Nixon. By 1966, congressional concern had achieved sufficient proportions to result in the consideration of comprehensive legislative proposals to regulate the interstate sale of land. Early proposals closely paralleled the Securities Act of 1933 and entrusted regulation of the industry to the Securities and Exchange Commission. Senate Bill 2672 of the 89th Congress died at the close of that session, and Senate Bill 275 of the 90th Congress with slight modification became Title XIV of the Housing and Urban Development Act of 1968. Other than granting regulatory authority to the Department of Housing and Urban Development instead of the Securities and Exchange Commission, Title XIV of the Housing and Urban Development Act of 1968 varies very little from the language of these earlier proposals and, thus a review of SB 2672 of the 89th Congress and SB 275 of the 90th Congress can be profitable to one encountering difficulty in interpreting provisions of the Act.[7]

Compliance

The Interstate Land Sales Full Disclosure Act was enacted August 1, 1968 and became effective April 28, 1969. It is classifiable as a "full and fair disclosure act." By this is meant that the Act requires developers to fully and fairly disclose all facts concerning lots to be sold in subdivisions covered by the Act deemed pertinent by the statute, by regulations issued thereunder and by administrative determination in particular cases. To achieve this goal the developer is required to file with the Secretary of Housing and Urban Development ("HUD"), a Statement of Record which is a detailed disclosure of numerous facts concerning the developer, title information, geographic and environmental conditions at the development, data on surrounding communities and services, accessability, utilities available and a number of other topics.[8] The facts recited in the Statement of Record must be supported by required substantiating exhibits.[9]

A more concise and readable "Property Report" is filed as a part of the Statement of Record.[10] When HUD is satisfied that the Statement of Record and the Property Report meet the requirements of "full and fair disclosure" established by the Act and HUD Regulations, the Statement of Record becomes "effective" resulting in the Property Report becoming "approved." Thereafter,

sales may be made to purchasers so long as the Statement of Record remains effective but only if each purchaser is given the approved Property Report prior to each sale.

Both the philosophy and the approach of the Interstate Land Sales Full Disclosure Act closely parallel the philosophy and approach of the Securities Act of 1933. Both seek to inform the purchaser, prior to the time of purchase, of the salient facts deemed desirable to enable a reasonably prudent person to decide whether or not to purchase the offering. Both seek to accomplish this by requiring registration of a detailed statement with the agency, with a more concise report required to be given the purchaser prior to the time of sale.

The Act grants full authority for its administration to the Secretary of Housing and Urban Development and also contains broad authorization for the delegation of functions, duties and powers.[11] The Secretary has broad rule-making authority[12] which has been exercised by the promulgation of Regulations.[13] The Regulations delegate the main functions of the Secretary to the Office of Interstate Land Sales Registration, sometimes referred to as OILSR.

Section 1402 of the Act and Section 1710.1 of the Regulations provide a number of definitions, the following of which are critical to an understanding of the Act:

Developer means any person, who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a *subdivision*.

Subdivision means any land which is divided or proposed to be divided into 50 or more lots,—whether contiguous or not,—for the *purpose* of sale or lease as part of a *common promotional plan*. This definition contains a statutory presumption that land is being offered as part of a common promotional plan where subdivided land is offered for sale or lease by a single developer, or a group of developers *acting in concert*, and such land is contiguous or is known, designated or advertised as a common unit or by a common name without regard to the number of lots covered by each individual offering.

Interstate Commerce

Section 1404[14] of the Act contains the only provision limiting the coverage of the Act or activities involving interstate commerce aside from the impact of certain exemptions. Subsection 1404(a) declares it to be *unlawful* for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or the mails, to sell or lease any lot in any subdivision, unless a Statement of Record is in effect and a Property Report is furnished each purchaser prior to each purchase.

The definition of interstate commerce found in section 1402(7) of the Act is more restrictive than the definition of interstate commerce found in the Securities Act of 1933. However, the language of subsection 1404(a) specifying the interstate coverage of the Act is almost identical to that found in the parallel coverage and prohibition section of the Securities Act of 1933, 15 U.S.C. Section 77e(a)(1). The case annotations appearing after 15 U.S.C.A. 77e(a)(1) are instructive. These include federal court interpretational rulings which may be paraphrased as follows:

1. By categorically forbidding direct or indirect use of the mails Congress meant to exert its power to full constitutional extent permitted by the commerce clause and postal clause.
2. Mailing offers to sell, any sales literature, contracts (or deeds) or the like, or payments results in coverage.
3. All a purchaser need make out was that (1) there was a sale or offer of sale, (2) that a statement of record was not in effect and (3) that the sale was *enhanced* by use of interstate transportation or communication or the mails.
4. Where one who doesn't use the mails himself knows that the use of the mails would ordinarily follow or could reasonably be foreseen he is covered.
5. Use of the mails between co-defendants is enough for coverage.
6. Use of the mails, even wholly within a single state results in coverage.
7. Use of private car to drive purchasers to the site results in coverage.

Exemptions

If we have a "subdivision" and if we are in any way involved in interstate commerce, the offering or the sale of lots in the subdivision is covered by the Interstate Land Sales Full Disclosure Act unless it is exempted therefrom.

There are ten exemptions listed in Section 1403(a) of the Act which can be referred to as "statutory exemptions." Each such statutory exemption speaks in terms of exempt transactions: e.g. exempt sales or leases or offers to sell or lease. The least complicated of these include the sale of evidences of indebtedness secured by a mortgage, the sale of securities issued by Real Estate Investment Trusts, the sale or lease of real estate by a government, the sale or lease of real estate pursuant to a court order, the sale or lease of cemetery lots, and the sale or lease of real estate not pur-

suant to a common promotional plan to offer or sell 50 or more lots in a subdivision.

Also exempted from the Act is the sale or lease of lots in a subdivision in which all lots are five acres or larger in size. This exemption should prove useful to developers in those special situations where every lot in the subdivision meets the minimum size requirement.

Also of probable utility is the exemption of the sale or lease of lots upon which a residential commercial or industrial building is situated or the sale of such a lot under a contract obligating the seller to erect such a building on such a lot within two years. The sale or lease of lots to a person who acquires such lots for the purposes of engaging in the business of constructing residential, commercial or industrial buildings thereon is also exempt as is the sale to a person for resale to persons engaged in such business.

The last statutory exemption is usually referred to as the "on-site inspection" exemption. As originally enacted and as appears from the 1968 legislative history[15] this exemption was intended to provide a wide area for developers to conduct subdivision sales, exempt from coverage of the Act whenever the sales program adopted by the developer involved the on-the-site inspection of each lot by each purchaser prior to the time such purchaser entered into the agreement to purchase the lot. This would have been a reasonable approach and would have permitted the smaller developer to avoid the significant burden of compliance if he very strictly adhered to a sales program in which on-site inspection of each lot by each purchaser prior to each sale was mandatory.

Congress realized that an on-site inspection would not disclose to the average purchaser the existence of liens, encumbrances and similar defects of title and thus limited the exemption to those instances of pre-sale on-site inspection where no liens, encumbrances or adverse claims affected the lot. The original language of the exemption provision was lengthy and, as in the amended provision, legislative definition was given to the terms "liens, encumbrances and adverse claims." Such definition was by exclusion of tax and assessment liens and reservations in the nature of utility easements. It was argued that by excluding the named "liens, encumbrances and adverse claims" such as tax liens and utility easements Congress in effect included all other property reservations and restrictions which could possibly be included within the definition of any of the three terms. As a result of this argument the provision was amended in 1969.[16]

The 1969 amendment to the exemption provision contains a clearer expression of legislative intent and the implement Regulation of April 14, 1970 set forth in 72 C.F.R. at page 6065 provides detailed instructions for compliance. Complaince with the requirements for the "on-site inspection" exemption is, however, so complex and involved with red tape that few developers can be expected to successfully take advantage of it since full registration under the Act should be much faster and easier and should involve less expense.

In addition to the ten exemptions expressed in the statute, section 1403(b) of the Act authorizes the Secretary to exempt certain lots in a subdivision, or an entire subdivision from any or all of the provisions of the Act, if he determines that enforcement of the Act with respect to such lots or with respect to the entire subdivision is "not necessary in the public interest and for protection of purchasers, because of the small amount involved or the limited character of the public offering."

The distinction drawn by the statute between the statutory exemptions which speak in terms of sale and lease transactions and the authority granted to the Secretary to exempt, which grant is not in terms of transactions, but rather the lots and subdivisions themselves have parallels in the Securities Act of 1933, where the distinction is made between securities which are exempt from that act on the one hand, and transactions which are exempt from that act on the other.

Another difference which should be observed between the ten specific statutory exemptions and the authority to exempt which is granted the Secretary, is that the authority granted the Secretary to exempt lots and subdivisions also authorizes him to limit that exemption to less than full exclusion from the Act.

Section 1710.10 of the Regulations contains three "administrative exemptions" in addition to the ten legislative exemptions specified in the statute which are reiterated in the Regulations.

One administrative exemption exempts the sale or lease of lots which exceed 10,000 square feet in area and which are priced at less than $100.00 including all closing costs.

Another administrative exemption exempts the lease of lots for a term of five years or less but only in those instances where no obligation of renewal is imposed upon the lessee in the lease agreement.

The most significant administrative exemption exempts the sale or lease of lots "where the offering is entirely or almost entirely intrastate." This exemption is probably relied upon more than all other exemptions including the statutory exemptions. The intrastate exemption spelled out in Section 1710.10(1) of the regulations is nowhere specifically referred to in the Act. The report of the Joint Senate-House Conference Committee which

accompanied the Act in 1968 does indicate agreement by the Congressional Conferees that the Act authorized the Secretary to exempt sales technically covered by the Act, but intrastate or almost entirely intrastate in nature citing as an example "where a few out-of-state purchasers buy lots only being offered for sale within the state of the land's location or in nearby communities." The regulation providing this exemption closely follows the language of the Conference Committee Report.

The language of Section 1403(b) of the Act authorizing the Secretary to exempt lots and subdivisions upon a finding by him that enforcement of the Act is not necessarily in the public interest, and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering has a close parallel in Section 17c(b) of the Securities Act of 1933 which utilizes almost exactly the same language in conferring authority on the Securities and Exchange Commission to exempt securities from that Act. The Securities Act of 1933 also, however, contains a specific intrastate exemption in Section 17c(a)(11), which gives rise to the nice legal question of why Congress felt it unnecessary to expressly provide intrastate exemption in the Interstate Land Sales Full Disclosure Act when the Securities Act which contains the same "limited nature" clause also contains an express intrastate exemption.

Administration of the Act

The office of Interstate Land Sales Registration administers the Act. Its primary function is, of course, to secure compliance with the Act and the rules and regulations of the Secretary. Such compliance may be secured by court injunction or the recommendation of criminal action. A particularly lethal tool of OILSR is the authority to educate the public as to the rights of purchasers and to publicize violations of the Act or Regulations by developers which could result in individual purchaser avoidance of lot purchases and individual suits for damages against the violating developer.

A second major function of OILSR is to assure that compliance with the Act and Regulation is at least adequate. This involves the basic determination of whether or not the contents of the Statement of Record, with the exhibits and other data supplied therewith, constitute a full and fair disclosure of all aspects of the subdivision deemed relevant and material by the Act and Regulations. A further determination must then be made as to whether or not the Property Report to be supplied each lot purchaser before each lot sale fairly and fully disclose those particulars most relevant to the purchaser in a concise understandable manner, and whether such Property Report is supported by the Statement of Record in its greater depth and detail. OILSR enforces its determinations as to original and continuing adequacy and accuracy of these disclosures either by refusing to make Statements of Record "effective" in the first instance, or by suspending such "effectiveness" when the disclosure is found to be or becomes inaccurate or inadequate at a date following its original effective date.

The third major function of OILSR is the rendition of advice as to the interpretation and applicability of the Act and Regulations. OILSR performs the advisory function both formally and informally. The bulk of formal advice given is in the form of Exemption Advisory Opinions which are rendered pursuant to authority contained in Section 1403(b) of the Act empowering the Secretary to exempt subdivisions or lots in subdivisions from any of the provisions of the Act pursuant to regulations issued by him. Section 1710.15 of the Regulations states that a developer may obtain an advisory opinion as to whether an offer is exempt from the Act and Regulations, and sets forth the procedure to be followed in applying for such opinions.

Exemption Advisory Opinions, being based upon certain specific facts and legal principles advanced by the applicant will invariably be found to contain language limiting the effect of the opinion to the accuracy and completeness of the facts and law thus represented, and to the non-occurrence of any change in either the facts or the law as recited in the application. Care must be taken and caution exercised to make certain that the disclosure of relevant facts is fully complete and objective. The exemption advisory opinion should not be relied upon following any significant change in a fact upon which it is based.

The exemption advisory opinion is certainly an unusual document. If it merely "advises" the applicant of the opinion of OILSR and HUD that a given subdivision offering is exempt from the Act, then it should receive that deference usually accorded administrative interpretations of the statute administered. If, on the other hand, such opinion is viewed as the grant of a direct administrative exemption under section 1403(b) of the Act, absent fraud or misrepresentation in the application it would appear that such grant of exemption should be final and binding not only upon HUD, but upon all purchasers and Courts wherein the administratively granted exemption is pleaded as a defense in bar of purchaser complaints for relief under the Act.

OILSR relies upon a constantly increasing experience and expertise to develop internal guidelines for its activities and determinations, achieving greater definition of standards set forth in the

Act and Regulations. This appears to be particularly true respecting the intrastate exemption where criteria as to percentage of prior lot sales by the developer to out-of-state purchasers, the methods of advertising utilized, the circulation or other range of advertising media and the general sales program of the developer are considered to be important factors in determining whether an offering is entirely or almost entirely intrastate.

OILSR can also be expected to issue opinions as to its interpretation of various provisions of the Act as relied upon by it in its administration of the Act. Of particular utility would be an early interpretational opinion or ruling regarding the applicability of the common law doctrine of merger to the right of rescission granted by section 1404(b) of the Act to be discussed below. The question for the Secretary is: Does the purchaser's federal right to avoid the contract of sale survive after the seller gives a deed in satisfaction of such contract?

The Secretary is directed by the Act to cooperate with state agencies charged with regulating the sale of lots and subdivisions which may also be subject to the Act.[17] HUD is specifically authorized to accept state filings in satisfaction of federal filing requirements where it finds that the acceptance of such state filings would be in the public interest or for the protection of purchasers.

Liabilities and Penalties

The Act creates "federal rights" for purchasers which, may be enforced in both state and federal courts. All of these newly created "federal rights" are in addition to all other remedies permitted by state and federal law. In addition, a number of tactical legal defenses which are frequently useful to great advantage by defendants have had much of their effectiveness removed by the federal act. Usual requirements in the fields of jurisdiction, venue and service of process are loosened considerably. Jurisdiction is given to every federal district court in the land to try any action brought by a purchaser against the developer or agent under the Act. Such jurisdiction is concurrent with jurisdiction to enforce such "federal rights" apparently also given to state courts. The act provides that proper venue is in any district where the defendant may be found, or is an inhabitant, or transacts *any* business, or where any offer or sale took place in which the defendant participated. Process may be served anywhere in the United States or elsewhere that the defendant can be found or may be an inhabitant.

One category of federal rights created for purchasers by the Act is the right to rescind the purchase of any lot unless the purchaser received a Property Report prepared in accordance with the Act prior to the time he made his purchase. The Act does not specify any time limitation within which the purchaser may elect to make such rescission. This right of rescission, or right to declare the contract "voidable" is granted in subsection 1404(b) of the Act. You should note that subsection 1404(b) of the Act is not conditioned upon any use of the mails or the interstate commerce implications upon which the prohibitions contained in subsection 1404(a) are based.

Subsection 1404(b) also provides another form of federal right granted to purchasers classifiable as the "right of revocation." The right of revocation is distinct from and in addition to the right of rescission also contained in subsection 1404(b). The juxtaposition of the right of rescission and right of revocation in the same subparagraph, and the stilted language in which the right of revocation is written, may result in a considerable amount of interpretational difficulty both for developers attempting to comply with this subsection and also for courts attempting to interpret it at the behest of purchaser-claimants.

This right of revocation entitles the purchaser to revoke any contract within 48 hours after he has signed it, if he did not receive a Property Report at least 48 hours before he signed it. This is sometimes referred to as a "48 hour cooling off period." This subsection requires that the *contract* advise the purchaser of his right to the 48 hour cooling off period if he did not receive the Property Report at least 48 hours prior to signing the contract and further provides that the purchaser can waive the 48 hour cooling off period if he does so in writing. Many contracts first contain the required advice to the purchaser informing him of his right to the 48 hour cooling off period followed shortly thereafter by a written waiver of such right.

Where no Property Report is given to the purchaser prior to the time that he signs the contract, the purchaser is entitled to pursue the federal right of "rescission" and also has an alternative right to damages. The purchaser should have the same rights to either rescission or damages in those instances where the contract he signed did not contain the statutorily required advice to him, informing him of his right to revocation within the 48 hour cooling off period.

The third category of federal rights created by the Act is the right of a purchaser to sue the developer or agent for damages[18] which may be brought as an alternative wherever rescission or revocation is authorized. The Act provides specific time limitations within which suits for damages must be instituted by purchasers and the Act also provides a specific measure of damages with respect to each such suit.

A suit for damages is authorized in every instance where the Property Report furnished to the purchaser contains an untrue statement or omits to state a material fact. It makes no difference whether the purchaser knew of the untruth or omission, nor does it make any difference whether the purchaser relied on the untruth or non-existence of the omission. An untrue statement or omission of a material fact in a Property Report is a *per se* actionable offense. All the purchaser has to do is establish the untruth or the omission of the material fact and that he bought the lot and the developer and agent are liable.

The suit for damages is also authorized where the Statement of Record contains an untrue fact or omits to state a material fact at the time that Statement of Record became effective if such untruth or omission continued to exist at the time the purchaser made his purchase, unless it can be proved that at the time of purchase the purchaser knew of such untruth or omission. This is irrespective of whether or not the purchaser made any inquiry whatsoever as to the contents of that Statement of Record. It will clearly be the duty of the defendant developer or agent to prove that the purchaser knew of the untruth or omission.

In every instance the suit for damages must be brought within one year after discovering the untruth or omission, or in no event more than, in some cases two and in others *three* years after the date of sale.

All actions for damages are "federal rights" governed by federal substantive law in both state and federal courts. Thus, in the event of an action for fraud, precedent under the Securities Act of 1933 would be more relevant than that supplied by the state law of either the state of residence of the aggrieved purchaser or the state where the subdivision is actually located. Thus we must look for federal precedent to determine the validity and applicability of such defenses as statute of frauds, merger, waiver, estoppel, clean hands and the rest. All of the "federal rights" of rescission, revocation and suits for damages are in addition to all remedies permitted by state law including state land sales regulation statutes.

The measure of damages in suits under the Act is the amount paid by the purchaser for the lot plus the reasonable cost of all improvements thereto; less the lesser of (1) the value of the lot and improvements at the time suit was brought or, (2) the price obtainable for the lot by the purchaser in a bona fide market transaction either before suit was brought or before rendition of judgment. There is a limitation on the maximum recovery which may not exceed the sum of the purchase price of the lot plus the reasonable cost of improvements thereto plus reasonable court costs. The suit for damage remedy contemplates that the purchaser will retain title to the lot in addition to collecting the damages permitted.

Conversely, in the event the purchaser elects rescission or revocation, he should be required to return to the developer the lot in exchange for which the purchaser should receive back all amounts paid by him to that developer, which should include not only the purchase price but the interest factor as well.

The specific liabilities of "developers" and "agents" is increased by the extensive breadth of the definitions of each. These liabilities further extend to any lender lending on any installment land contract who must insist on a reliable legal opinion of compliance with, or exemption from the Act lest his security be absolutely and completely voidable. Any corporate developer whose stock is publicly held or to whom certified financial statements are critical, may find itself shocked at legitimate contingent liability footnotes to its financial statements if strict compliance with the Act has not been an enforced habit.

Compliance with the Act by preparing and filing the Statement of Record, awaiting the effective date thereof and then delivering approved Property Reports to each purchaser before each sale and by utilizing sales documents containing the required language requires considerable effort and can involve significant expense. Developers and sales people can be expected to balk at supplying all the detailed information and documentation required for the Statement of Record and they will not appreciate having sales activities suspended while updating Statements of Record by amendment to reflect changes occurring since the time of original filing.

Compliance with the federal act is however more reasonably attainable than subjective satisfaction of state authorities in most states which exercise concurrent jurisdiction over the sale of out-of-state land to in-state residents. The full and fair disclosure approach of the federal act is also more palatable to many than the "big brother" approach of many states which in effect tell their residents what is and what is not good for them.

Footnotes

[1]Title XIV, Public Law 90-448 entitled "Housing and Urban Development Act of 1968," enacted August 1, 1968, 82 Stat. 590, sections 1401-1421; Title XIV being entitled the "Interstate Land Sales Full Disclosure Act," effective 270 days after enactment (thus effective April 28, 1969), such Title being 15 U.S.C. §§ 1701-1720; 15 U.S.C. §§ 1701-1720 (1970 Pocket Part); as amended by section 411 of Public Law 91-152 entitled "Housing and Urban Development Act of 1969" enacted December 24, 1969, 83 Stat. 379, amending section 1403(a)(10) of the Housing and Urban Development Act of 1968" being also

15 U.S.C.A. § 1702(a)(10), 1969 U.S. Code Congressional and Administrative News, pages 2477 *et seq.* at page 2500.

[2]P.L. 90-448, § 1418, 15 U.S.C. § 1717.

[3]P.L. 90-448, § 1410, 15 U.S.C. § 1709.

[4]P.L. 90-448, § 1404(b), 15 U.S.C. § 1703(b).

[5]P.L. 90-448, § 1420, 15 U.S.C. § 1719.

[6]P.L. 90-448, § 1404, 15 U.S.C. § 1703.

[7]*Proposed Federal Regulation of Subdivision Sales*, Henry Stern, 43 LOS ANGELES BAR BULLETIN, p. 285, May, 1968; *Regulating the Subdivided Land Market*, Note, 81 HARVARD LAW REVIEW, p. 1528, May, 1968; S. 275-*The Interstate Land Sales Full Disclosure Act*, Note, 21 RUTGERS LAW REVIEW p. 714, Summer 1967.

[8]*See* specific and detailed requirements of Section 1710.105 of the Regulations, note 12 *infra*.

[9]P.L. 90-448, § 1406; 15 U.S.C. § 1707.

[10]*See* specific and detailed instructions for preparation set forth in section 1710.110 of the Regulations, note 12, *infra*.

[11]P.L. 90-448, § 1416, 15 U.S.C. § 1715.

[12]P.L. 90-448, § 1419, 15 U.S.C. § 1718.

[13]Part 1710, "Land Registration," of Chapter V, "Office of Interstate Land Sales Registration, Department of Housing and Urban Development" of Title 24, "Housing and Housing Credit," Code of Federal Regulations, 24 C.F.R., Ch. V, Part 1710: published in the Federal Register, Vol. 34, No. 61 on Saturday, March 29, 1969, as amended April 14, 1970, 72 F.R. pp. 6065-6066.

[14]15 U.S.C. 1705: U.S.C. and U.S.C.A. citations are one digit higher than corresponding section enumeration in Title XIV and will no longer be set forth herein in addition to Title XIV section references.

[15]*See* 1968 Code Congressional and Administrative News, pages 2873 and following; particularly at pages 3066-3067.

[16]*See* note 1, *supra*. *See also* legislative history set forth in 1969 U.S. Code Congressional and Administrative News at page 2780 and following.

[17]P.L. 90-448, § 1409; 15 U.S.C. § 1710.

[18]P.L. 90-448, § 1410; 15 U.S.C. § 1709.