

CHAPTER 83

SUBDIVIDED LANDS

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83.20 DEFINITIONS.

Subdivision 1. (a) "Advertising" shall include the publication or causing to be published of any information offering for sale or for the purpose of causing or inducing any other person to purchase or to acquire an interest in the title to subdivided lands, including the land sales contract to be used and any photographs or drawings or artist's representations of physical conditions or facilities on the property existing or to exist by means of any:

- (1) Newspaper or periodical;
- (2) Radio or television broadcast;
- (3) Written, printed or photographic matter; or
- (4) Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means.

(b) "Advertising" shall further include material used by subdividers to induce prospective purchasers to visit a subdivision, or travel to this state or elsewhere, including vacation certificates which require the holders of such certificates to attend or submit to a sales presentation by a subdivider or its agents.

(c) "Advertising" shall further include the entire promotional plan for the disposition of the subdivided lands including promotional displays at public or private events, and parties, dinners or other meetings at which prospective purchasers may be shown or presented with other advertising as defined in (a) and (b) above.

(d) "Advertising" shall not be deemed to include: Stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, and the like; prospectuses, property reports, offering statements, or other documents required to be delivered to a prospective purchaser by an agency of any other state or the federal government; communications addressed to and relating to the account of any persons who have previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands.

Subd. 2. "Agent" means any person who represents, or acts for or on behalf of, a subdivider in disposing of subdivided lands or lots in a subdivision, and includes a real estate salesman or broker, but does not include an attorney at law whose representation of another person consists solely of rendering legal services.

Subd. 3. "Blanket encumbrance" means a trust deed or mortgage or mechanics lien or any other lien or financial encumbrance, securing or evidencing money debt and affecting lands to be subdivided or affecting more than one lot, parcel, unit or interest of subdivided land; or an agreement affecting more than one lot, parcel unit or interest by which the subdivider holds the subdivision under an option, contract for deed, contract to purchase or trust agreement, except a lien or other encumbrance arising as a result of the imposition of a tax assessment by a public authority so long as no portion thereof is past due.

Subd. 4. "Commissioner" means the commissioner of securities and real estate of the state of Minnesota or his authorized delegate.

Subd. 5. "Disposition" includes sale, lease, option, assignment, license, award by lottery or as a prize or any offer or solicitation of an offer to do any of the foregoing concerning a subdivision or any part of a subdivision.

Subd. 6. "Notice" means a communication from the commissioner. Notice to subdividers shall be deemed complete when personally served upon or mailed to the subdivider's address currently on file with the commissioner.

Subd. 7. "Offer" includes every inducement, solicitation or attempt to encourage a person to acquire a lot, unit, parcel or interest in land.

Subd. 8. "Option" means, and is limited to, an offer to sell or to purchase respecting which a consideration of not more than 15 percent of the total purchase price is exchanged to guarantee that the offer will not be withdrawn or revoked for an agreed period of time.

Subd. 9. "Person" means an individual, corporation, government or governmental division 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.

Subd. 10. "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

Subd. 11. "Subdivision" and "subdivided land" means any land wherever located, improved or unimproved, whether adjacent or not, which is divided or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising and disposition by a single subdivider or a group of subdividers. If the land is designated or advertised as a common unit or by a common name the land shall be presumed, without regard to the

number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

Subd. 12. "Subdivider" means a person whose interest in subdivided land is offered or advertised, by himself or his agent, for disposition.

History: 1973 c 413 s 1; 1974 c 440 s 1; 1980 c 516 s 2

83.21 COMMISSIONER OF SECURITIES AND REAL ESTATE TO ADMINISTER.

Sections 83.20 to 83.42 shall be administered by the commissioner of securities and real estate of the Minnesota department of commerce.

History: 1973 c 413 s 2; 1980 c 516 s 2

83.22 CITATION.

Sections 83.20 to 83.42 may be cited as the Minnesota subdivided land sales practices act.

History: 1973 c 413 s 3

83.23 APPLICATION FOR REGISTRATION; FILING FEE.

Subdivision 1. Unless the subdivided land or the transaction is exempt by sections 83.20 to 83.42, a person may not offer or dispose in this state of any interest in subdivided lands unless the subdivided lands are registered in accordance with sections 83.20 to 83.42.

Subd. 2. A filing fee of \$250 shall accompany the application for registration plus an additional \$1 for each lot unit, parcel or interest included in the offering. The maximum filing fee shall in no event be more than \$2,500.

Subd. 3. The application for registration of subdivided lands shall be filed with the commissioner as prescribed by rule. The application shall be signed and sworn to by the subdivider and shall include, but not be limited to the following documents and information:

(1) An irrevocable appointment of the commissioner to receive service of any lawful process in any civil proceeding arising under sections 83.20 to 83.42 against the subdivider, or his personal representative;

(2) A legal description of the subdivided lands offered for registration verified by affidavit of an independent professional land surveyor, a statement of the topography and a topographical map, together with a map showing the division proposed or made, the dimensions 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 any regulatory authority in any jurisdiction or by any court;

(4) The subdivider's name and address, and the form, date of organization and jurisdiction of its organization; and the name and address of each of its offices and agents in this state;

(5) The name, address and principal occupation for the past five years of every director, officer, and partner of the subdivider, every person occupying a similar status or performing similar functions, and each owner of ten percent or more of the subdivider; the extent and nature of his interest in the subdivider or the subdivided lands as of a specified date within 30 days prior to the filing of the application;

(6) A statement in a form acceptable to the commissioner of the condition of the title to the subdivided lands including all encumbrances, deed restrictions

and covenants applicable thereto with data as to recording, as of a specified date within 30 days prior to the date of application by a title opinion of a licensed attorney, not a salaried employee, partner, officer, or director of the subdivider or of its agent, or by other evidence of title acceptable to the commissioner;

(7) Copies of instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts or other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rates or rentals at which it is proposed to dispose of the lots, units, parcels or interests in the subdivisions, and a list of mandatory fees the purchaser may be required to pay for membership in groups including, but not limited to, homeowners associations, country clubs, golf courses and other community organizations;

(8) Copies of the instruments by which the interest in the subdivided lands was acquired or at the option of the commissioner, proof of marketable title to the subdivided lands;

(9) If there is a lien or encumbrance affecting the subdivision or any portion thereof, a legal description of the lien or encumbrance, a statement by the subdivider of his efforts to remove such lien or encumbrance, and a statement of the consequences and the steps, if any, taken to protect the purchaser in case of failure to discharge the lien or encumbrance;

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

(11) A statement of, and evidence showing compliance with, the zoning and other governmental laws, ordinances and regulations affecting the use of these subdivided lands and adjacent properties, together with dates of the most recent zoning changes stating the nature of such changes, and any proposed changes now pending, 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 of access to the subdivision, the availability of sewage disposal facilities and other public utilities, including but not limited to water, electricity, gas and telephone facilities in the subdivision, the proximity in miles of the subdivision to nearby municipalities, the availability and scope of community fire and police protection, and the location of primary and secondary schools; a statement of the improvements to be installed, including off site and on site community and recreational facilities, by whom they are to be installed, maintained, and paid and an estimated schedule for completion; assurance that the planned improvements will be completed by filing a bond, irrevocable letter of credit, depositing funds in an escrow, or such other provision as the commissioner may by order require, to cover all lots or parcels of a subdivision on which money is paid or advanced by a purchaser, as required by the regulations of the commissioner;

(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. Such advertising shall be considered as approved by the commissioner if no action has been taken after 30 days from the date received by the commissioner. Advertising material pictorial in nature shall be limited to a depiction of the actual on site condition of the subdivided lands or other areas that are material to the offer or sale of subdivided land pursuant to this registration;

(14) The proposed public offering statement;

(15) A financial statement of the subdivider as of the end of the subdivider's most recent fiscal year, audited by an independent certified public accountant; and, if the fiscal year end of the subdivider is in excess of 90 days prior to the date of filing the application, a financial statement, which may be

unaudited, as of a date within 90 days of the date of application. The commissioner may by rule prescribe the form and content of financial statements required under this clause and the circumstances under which consolidated financial statements may or shall be filed;

(16) A description of the land as it existed in its natural state, prior to development, and any changes that have occurred due to the subdivider's actions, current to the date of registration;

(17) A statement asserting that the subdivision is in compliance with federal, state and local environmental quality standards. If the subdivision is not in compliance, a listing of the steps to be taken, if any, to insure compliance;

(18) A statement of the permits required to be obtained from various federal, state and local agencies, stating which have been obtained, and which have been applied for. If any permit has been refused, the reasons for the refusal and the effect such refusal will have on subsequent development of the subdivision;

(19) A statement indicating whether or not the subdivider or any of its officers, directors, partners, principals or agents has been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any injunction or administrative order entered within the past ten years enjoining or restraining any promotional plan involving land dispositions. If either of the above has occurred, the name of the person involved, jurisdiction, offense and date of the offense shall be listed;

(20) A statement that 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;

(21) Any additional information which the commissioner may by rule require for the protection of purchasers.

Subd. 4. If additional subdivided lands of the same subdivider are subsequently to be offered for disposition, the registration thereof may be consolidated with any earlier registration offering subdivided lands for disposition under the same promotional plan, if the additional subdivided lands are adjacent to those previously registered. An application for consolidation shall be accompanied by an amendment fee of \$50. The filing fee requirements of subdivision 2 shall apply unless the maximum filing fee has been previously paid.

History: 1973 c 413 s 4; 1974 c 440 s 2-4

83.24 PUBLIC OFFERING STATEMENT.

Subdivision 1. A person may not dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser at the expense of the subdivider or his agent, and the purchaser is afforded a reasonable opportunity to examine, and is permitted to retain the public offering statement prior to the offer or disposition. The subdivider or his agent shall obtain a receipt, signed by the purchaser, acknowledging that he has received a copy of the public offering statement prior to the execution by the purchaser of a contract or agreement for the disposition of any lot or parcel in a subdivision, which receipt shall be kept in files in possession of the subdivider or his agent subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

Subd. 2. A public offering statement shall disclose fully and accurately the physical and climatic characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. A proposed public offering statement submitted to the commissioner shall be in a form prescribed by rule and shall include the following:

(1) The name, principal address and telephone number of the subdivider and of its offices and agents in this state;

(2) A general description of the subdivided lands stating the total number of lots, parcels, units or interests to be offered;

(3) A statement whether the subdivider holds any options to purchase adjacent properties, and if so, a description of such options and the location and zoning of the adjacent properties;

(4) A statement of the assistance, if any, that the subdivider or his agent will provide to the purchaser in the resale of the property and whether or not the subdivider or his agent will be in competition in the event of resale;

(5) The material terms of any encumbrances, easements, liens, and restrictions including zoning and other regulations affecting the subdivided lands and each unit or lot, a statement of the subdivider's efforts to remove such lien or encumbrance, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(6) A statement of the use for which the property is to be offered;

(7) Information concerning existing or proposed improvements, including but not limited to streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal systems 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 lot, unit, parcel or interest in subdivided lands;

(8) A financial statement of the subdivider as of the end of the subdivider's most recent fiscal year, audited by an independent certified public accountant; and, if the fiscal year end of the subdivider is in excess of 90 days prior to the date of filing the application, a financial statement, which may be unaudited, as of a date within 90 days of the date of application;

(9) Such additional information as may be required by the commissioner to assure full and fair disclosure to prospective purchasers.

Subd. 3. The public offering statement shall not be used for any promotional purpose before registration of the subdivided lands and afterwards it shall be used only in its entirety. A person may not advertise or represent that the commissioner has approved or recommended the subdivided lands or disposition thereof. A portion of the public offering statement may not be underscored, italicized or printed in larger or heavier or different color type than the remainder of the statement unless required or approved by the commissioner.

Subd. 4. The commissioner may require the subdivider or his agent to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.

History: 1973 c 413 s 5

83.25 LICENSE REQUIRED.

Subdivision 1. No person shall offer or dispose in this state of any interest in subdivided lands until:

(1) He has obtained a license under chapter 82; and

(2) He has obtained an additional license to offer or dispose of subdivided lands. This license may be obtained by submitting an application in writing to the commissioner upon forms prepared and furnished by the commissioner. Each application shall be signed and sworn to by the applicant and accompanied by a license fee of \$10. The commissioner may also require an additional examination for this license.

Subd. 2. Every license issued pursuant to this section expires on June 30 following the date of issuance. It may be renewed, transferred, suspended,

revoked or denied in the same manner as provided in chapter 82 for licenses issued pursuant to that chapter.

Subd. 3. This section does not apply to persons offering or disposing of interests in subdivided lands which are registered as securities pursuant to chapter 80A.

History: 1973 c 413 s 6; 1976 c 2 s 38

83.26 EXEMPTIONS.

Subdivision 1. Unless the method of disposition is adopted for the purpose of evasion of sections 83.20 to 83.42, sections 83.20 to 83.42 do not apply to offers or dispositions of interests in land:

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

(b) To any person who acquires such land for the purpose of engaging in and who does use such land to engage in the business of constructing residential, commercial or industrial buildings thereon for the purpose of resale or constructing commercial or industrial buildings for his own use;

(c) Pursuant to an order of a court of competent jurisdiction of this state;

(d) As cemetery lots or interests;

(e) If they are leases of apartments, stores, offices, or similar space in a building;

(f) If they are mortgages or deeds of trust of real estate securing evidences of indebtedness.

(g) If the land is located within the corporate limits of a municipality as defined in section 462.352, subdivision 2, or within any subdivision located within a town or municipality located within 20 miles of the city limits of a city of the first class or within three miles of the city limits of a city of the second class, or within two miles of the city limits of a city of the third or fourth class in this state. The commissioner may, by written rule or order, suspend, wholly revoke, or further condition this exemption, or may require, prior to the first disposition of subdivided lands, such further information with respect thereto as may be necessary for the protection of purchasers consistent with the provisions hereof.

Subd. 2. The provisions of sections 83.23 and 83.24 with respect to the registration of subdivided lands and the public offering statement, shall not apply to offers or dispositions of interests in land:

(a) If fewer than ten separate lots, parcels, units or interests in subdivided lands are offered or to be offered in any period of 12 consecutive months;

(b) Involving the offering of not more than 50 separate lots, parcels, units or interests within any period of 12 consecutive months, if the subdivider or his agent shall have furnished to the commissioner, not less than 20 days prior to the consummation of any such disposition, a filing fee of \$10 and a statement of the subdivider on forms prescribed by the commissioner containing the following information:

(1) The subdivider's name and address, and the form, date of organization and jurisdiction of its organization; and the name and address of each of its offices and agents in this state;

(2) A general description of the subdivided lands stating the total number of lots, parcels, units or interests to be offered;

(3) A statement in a form acceptable to the commissioner of the condition of the title to the subdivided lands including all encumbrances, deed restrictions and covenants applicable thereto;

(4) Copies of instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts or other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rates or rentals at which it is proposed to dispose of the lots, units, parcels or interests in the subdivisions, and a list of mandatory fees the purchaser may be required to pay for membership in groups including but not limited to home owners' associations, country clubs, golf courses and other community organizations;

(5) A statement of and evidence showing compliance with zoning and other governmental laws, ordinances and regulations affecting the use of the subdivided lands and adjacent properties;

(6) A statement asserting that the subdivision is in compliance with federal, state and local environmental quality standards. If the subdivision is not in compliance, a listing of the steps to be taken, if any, to insure compliance;

(7) A statement of the permits required to be obtained from various federal, state and local agencies stating which have been obtained and which have been applied for. If any permit has been refused, the reasons for the refusal and the effect such refusal will have on subsequent development of the subdivision;

(8) A statement of the existing provisions of access to the subdivision, the availability of sewage disposal facilities and other public utilities including but not limited to water, electricity, gas and telephone facilities in the subdivision, the proximity in miles of the subdivision to nearby municipalities, the availability and scope of community fire and police protection, and the location of primary and secondary schools; a statement of the improvements to be installed, including off-site and on-site community and recreational facilities, by whom they are to be installed, maintained and paid and an estimated schedule for completion;

Provided, however, that the commissioner may by rule or order, as to the offer or disposition of any subdivided lands, withdraw or further condition this exemption, or require additional information, or increase or decrease the number of lots, parcels, units or interests in subdivided lands permitted.

Subd. 3. The commissioner may by order exempt from the provisions of sections 83.20 to 83.42 interests in subdivided lands which are registered as securities pursuant to the provisions of chapter 80.

History: 1973 c 413 s 7

83.27 INQUIRY AND EXAMINATION.

The commissioner may investigate any subdivision required to be registered under sections 83.20 to 83.42 for the purpose of verifying statements contained in the application for registration and public offering statement. For the purpose of such investigation, the commissioner may:

(a) Use and rely upon any relevant information or data concerning a subdivision obtained by him from the federal housing administration, the United States veterans administration, or any state or federal agency having supervisory duties over real estate subdivisions which are comparable to those of the commissioner;

(b) Require the subdivider to submit reports prepared by an independent licensed or registered engineer concerning any hazard to which, in the opinion of the commissioner, any subdivision offered for disposition is subject, or concerning any other factor which affects the utility of lots, units, parcels or interests within the subdivision and may require evidence of compliance to remove or minimize all hazards stated by competent engineering reports;

(c) Conduct an on site inspection of each subdivision. The subdivider shall defray all actual and necessary expenses incurred by the inspector in the course of the inspection;

(d) Conduct an annual on site reinspection of each subdivision for each of the three years after registration and thereafter make periodic on site inspections. The developer shall defray all actual and necessary expenses incurred by the inspector in the course of such inspection;

(e) Require the subdivider to deposit the expenses to be incurred in any inspection or reinspection, in advance, based upon an estimate by the commissioner of the expenses likely to be incurred. All such deposits shall be paid into the state treasury and credited to the commissioner's investigation fund, from which fund the commissioner shall have power to make disbursements to pay such expenses. Any unexpended portion shall be refunded. On field examinations made by the commissioner or his employee away from the office of the commissioner a per diem of \$10 for each such person may be charged in addition to the actual expenses. Where additional technical, expert, or special services are used, the actual cost of such services may be charged in addition to actual expenses;

(f) Where an on site inspection of any subdivision has been made under sections 83.20 to 83.42, an inspection of adjacent subdivided lands for which a subsequent application for registration is filed may be waived and an inspection thereof may be made at the time of the next succeeding on site inspection.

History: 1973 c 413 s 8

83.28 SALES CONTRACT; RESCISSION.

Subdivision 1. Every contract for disposition relating to subdivided land shall state clearly the legal description of the lot, unit, parcel or interest disposed of and shall contain the disclosure substantially similar to that required by the federal truth in lending act, and the rules promulgated thereunder.

Subd. 2. Any contract or agreement for the disposition of a lot, parcel, unit or interest in a subdivision not exempt under section 83.26, is voidable at the discretion of the purchaser, if the subdivision was not registered under sections 83.20 to 83.42 at the time of the offer or disposition, or if a current public offering statement was not given to the purchaser in accordance with section 83.24.

Subd. 3. A purchaser has an unconditional right to rescind any contract, agreement or other evidence of indebtedness, or revoke any offer, at any time prior to or within five days after the date the purchaser actually receives a legible copy of the binding contract, agreement or other evidence of indebtedness or offer and the public offering statement as provided in section 83.24. Pre-dating of a document does not affect the time in which the right to rescind may be exercised. The burden of proving that the document was not predated is upon the subdivider or lender.

Subd. 4. Each contract, agreement or other evidence of indebtedness shall be prominently labeled and captioned that it is a document taken in connection with a sale or other disposition of lands under sections 83.20 to 83.42.

Subd. 5. Each such contract, agreement or other evidence of indebtedness shall prominently contain upon its face the following notice printed in at least 16 point bold type, which shall be at least 4 point type larger than the body of the document, stating:

"Notice to Purchaser

You are entitled to rescind this agreement at any time if you have not received the public offering statement in advance of your signing of this agreement. In addition, you are entitled to rescind this agreement for any reason within five days from the day you actually receive a legible copy of this document signed by all parties. Such rescission must be in writing, and mailed to the

subdivider or his agent or the lender at the address stated in this document. Upon rescission, you will receive a refund of all moneys paid."

The contract, agreement or other evidence of indebtedness shall contain sufficient space upon its face in immediate proximity to the above notice for the signature of each purchaser obligated under such instrument, acknowledging that such purchaser has read the notice.

Subd. 6. Rescission occurs when the purchaser gives written notice of rescission to the subdivider or his agent or the lender at the address stated in the contract, agreement or other evidence of indebtedness. Notice of rescission, if given by mail is effective when it is deposited in a mailbox properly addressed and postage prepaid. A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract, agreement or other evidence of indebtedness.

Subd. 7. No act of a purchaser shall be effective to waive the right to rescind as provided in this section.

History: 1973 c 413 s 9

83.29 NOTICE OF FILING AND REGISTRATION.

Subdivision 1. Upon compliance with all the provisions of sections 83.20 to 83.42 applicable to the application for registration and with the requirements of the commissioner, and if the commissioner finds no grounds for denial of the application, the commissioner shall register the subdivided lands. The commissioner shall have power to place such conditions, limitations, and restrictions on any registration as may be necessary to carry out the purposes of sections 83.20 to 83.42. Registration shall be by entry in a book called Register of Subdivided Lands, which entry shall show the subdivided lands registered and for whom registered, and shall specify the conditions, limitations, and restrictions upon such registration, if any, or shall make proper reference to a formal order of the commissioner on file showing such conditions, limitations, and restrictions.

Subd. 2. If the commissioner determines upon inquiry and examination:

- (1) That any of the requirements of sections 83.20 to 83.42 or the rules promulgated pursuant to sections 83.20 to 83.42 have not been met;
- (2) That the proposed promotional plan or advertising is or tends to be fraudulent, deceptive or misleading;
- (3) That the sales of the lands would work or tend to work a fraud or deception on the purchasers thereof;
- (4) That the sales of the lands would be unfair or inequitable to the purchasers thereof;
- (5) That the subdivider has violated any of the provisions of sections 83.20 to 83.42 or any order or rule of the commissioner;
- (6) That the subdivider is not in compliance with federal, state or local environmental quality standards;

he may issue an order denying the application for registration; provided, however, that nothing in this section shall authorize the commissioner to deny an application based solely on the proposed sale price of the lands. The order shall state the reasons for denial. Every person whose application for registration has been denied shall have the right to a hearing provided a request for such hearing is filed with the commissioner within 30 days of the receipt of the order of denial. The order of denial shall inform the applicant of the right to this hearing.

Subd. 3. The state environmental quality standards referred to in subdivision 2, clause 6, for the subdivision and development of land in this state shall

be established by the environmental quality board. Thereafter, the commissioner shall be required to include such standards in the rules and regulations promulgated pursuant to section 83.38.

History: 1973 c 413 s 10; 1975 c 271 s 6

83.30 ANNUAL REPORT.

Subdivision 1. Within 120 days after the fiscal year end of the subdivider, the subdivider shall file a report in the form prescribed by rule of the commissioner. Every annual report shall be accompanied by a fee of \$100.

Subd. 2. The commissioner may permit the filing of annual reports within 30 days after the annual anniversary date of a consolidated registration in lieu of the annual anniversary date of the original registration.

Subd. 3. Failure to file the annual report shall constitute cause for cancellation of the registration. In the event of such cancellation, registration may be reinstated at a subsequent date following a filing of the report.

History: 1973 c 413 s 11; 1974 c 440 s 5; 1977 c 46 s 1

83.31 CHANGES SUBSEQUENT TO REGISTRATION.

Subdivision 1. All advertising not accompanying the original application shall be submitted to and approved by the commissioner prior to its use in this state.

Subd. 2. The subdivider or his agent shall immediately report any material changes in the information contained in an application for registration or the exhibits appended thereto.

History: 1973 c 413 s 12

83.32 INSPECTION OF RECORDS.

All records of a subdivider and his agents pertaining to the advertising or disposition of subdivided lands shall be maintained by the subdivider and his agents and be subject to inspection by the commissioner. The commissioner shall be promptly notified of any change of address affecting the location of the records of the subdivider and his agents.

History: 1973 c 413 s 13

83.33 BLANKET ENCUMBRANCE SALES AND OTHER PROHIBITED ACTS.

Subdivision 1. A person may not sell lots, units, parcels or interests within a subdivision subject to a blanket encumbrance unless he has complied with such rules as the commissioner may promulgate concerning such sales, which rules shall be specific requirements for the protection of the purchaser.

Subd. 2. The act, use or employment by any person of any fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the disposition of subdivided lands not excepted from sections 83.20 to 83.42 is a violation of sections 83.20 to 83.42, whether or not any person has in fact been misled, deceived, or damaged thereby.

Subd. 3. A person may not engage in any unfair or deceptive act or practice in the offer and disposition of subdivided lands. Disposition of subdivided lands by option on an option or by assignment of less than the total options held by the seller, is presumed to be an unfair and deceptive practice. Disposition by instrument purporting to be an option is presumed unfair and deceptive if the stated consideration for the purported option exceeds 15 percent of the purchase price of the subdivided land or if the option does not separately state the purchase price of the subdivided land.

History: 1973 c 413 s 14

83.34 INVESTIGATION AND PROCEEDINGS.

Subdivision 1. The commissioner may make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate sections 83.20 to 83.42 or any rule or order hereunder or to aid in the enforcement of sections 83.20 to 83.42 or in the prescribing of rules and forms hereunder.

Subd. 2. For the purpose of any investigation or proceeding under sections 83.20 to 83.42, the commissioner or any person designated by him may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, setting forth the facts and circumstances concerning the matter to be investigated; administer oaths or affirmations, and upon his own motion or upon request of any party may 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.

Subd. 3. 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 commissioner may apply to the district court for an order for contempt.

History: 1973 c 413 s 15

83.35 ENFORCEMENT; POWERS OF COMMISSIONER.

Subdivision 1. After notice and hearing, the commissioner may suspend or revoke a registration, and may issue a cease and desist order to any subdivider or other person if he finds that the subdivider or person has:

(1) Violated any provision of sections 83.20 to 83.42 or any lawful order or rule of the commissioner;

(2) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer to dispose of an interest in subdivided lands;

(3) Made any material change in the advertising, plan of disposition or development of the subdivided lands subsequent to the order of registration without obtaining prior approval from the commissioner;

(4) Offered or disposed of any subdivided lands which have not been registered with the commissioner unless the subdivided lands or dispositions thereof are exempt from registration pursuant to section 83.26;

(5) Been convicted, or if any of the subdivider's officers, directors, partners, principals or agents has been convicted, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in real estate transactions, subsequent to the time of the filing of the application for registration;

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

(7) Failed faithfully to perform any stipulation or agreement made with the commissioner as an inducement to grant any registration, to reinstate any registration or to permit any promotional plan or public offering statement;

(8) Made misrepresentations or concealed material facts in an application for registration;

(9) Permanently or temporarily been enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of land sales; or

(10) Failed to pay any filing or inspection fee required by sections 83.20 to 83.42.

Subd. 2. When initiating a proceeding under subdivision 1, the commissioner shall serve upon the subdivider or other person by personal service or by certified mail, a written notice of hearing setting the date, time and place of the hearing and a statement of the allegations upon which the cease and desist order, suspension or revocation will be based.

Subd. 3. If the commissioner determines that the public interest may be harmed by delay in issuing an order under this section, he may issue a temporary cease and desist order or a temporary order suspending the registration. Prior to issuing such an order, the commissioner shall whenever possible by telephone or otherwise give notice to the subdivider or other person of his intention to issue the order.

Subd. 4. If at any time subsequent to the issuance of the order of registration, a change occurs affecting any material fact required to be contained in the application, the subdivider shall file an amendment thereto within 30 days. Upon receipt of any amendment or other information indicating such a material change, if the commissioner determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, he may suspend the registration until such time as he is satisfied that the subdivider or his agent has made the proper changes in the public offering statement, advertising and promotional plan to provide full and fair disclosure of the material change to the public.

Subd. 5. In the event the commissioner issues an order under subdivision 3 or 4, the order shall include in its terms a provision for a hearing within 10 days of the date of the order, specifying a date, time and place for the hearing. Unless otherwise agreed, within 10 days of the close of the hearing record, the commissioner shall issue an order either vacating, modifying, or continuing the temporary order. If the temporary order is continued or modified he shall state his reasons therefor.

History: 1973 c 413 s 16

83.36 INJUNCTIONS; RECEIVERS.

If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of sections 83.20 to 83.42 or a rule or order hereunder, the commissioner, with or without prior administrative proceedings, may bring an action in district court to enjoin the acts or practices and to enforce compliance with sections 83.20 to 83.42 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 commissioner is not required to post a bond in any court proceedings.

History: 1973 c 413 s 17

83.37 PENALTIES; CIVIL REMEDIES.

Subdivision 1. Any person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circularization of any false statement or representation concerning any subdivided lands required to be registered under sections 83.20 to 83.42 and every such person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning any such lands contains any written statement that is false or fraudulent, issues, circulates, publishes, or distributes the same, or shall cause the same to be issued, circulated, published or distributed, shall be guilty of a gross misdemeanor.

Subd. 2. Any violation of sections 83.20 to 83.42 and any failure to comply with any provisions of sections 83.20 to 83.42 not enumerated in subdivision 1 shall be a misdemeanor.

Subd. 3. Any person who fails to pay the filing or inspection fees required by sections 83.20 to 83.42, and continues to dispose of or offers to dispose of subdivided lands, is liable civilly in an action brought by the attorney general on behalf of the commissioner for a penalty in an amount equal to treble the unpaid fees.

Subd. 4. In the event of any fraud, false pretense, false promise, misrepresentation, unfair or deceptive acts, in addition to any other remedies, and whether or not the purchaser has in fact been misled, deceived or damaged thereby, the purchaser may recover the consideration paid for the lot, parcel, unit or interest in subdivided lands together with interest at the rate of six percent 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 reconveyance, less the value of the land when disposed of and less interest at the rate of six percent per year on that amount from the date of disposition.

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

(b) Every person who directly or indirectly controls a subdivider who may be liable under sections 83.20 to 83.42, 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.

(c) Every person whose name or occupation gives authority to a statement which with his consent has been used in an application for registration, public offering statement, or advertising, 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 it is proved he knew or reasonably should have known of the existence of the true facts by reason of which the liability is alleged to exist.

(d) An action shall not be commenced pursuant to this subdivision later than three years from the date the person discovers the omission, fraud, false pretense, false promise, misrepresentation, or unfair or deceptive act.

History: 1973 c 413 s 18

83.38 RULES AND REGULATIONS.

Subdivision 1. The commissioner may adopt rules and regulations to implement the provisions of sections 83.20 to 83.42. The rules may include but shall not be limited to:

(a) Provisions for advertising standards to assure full and fair disclosure;

(b) Provisions for escrow or trust agreement 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;

- (c) Provisions for operating procedures;
- (d) Provisions requiring instruments to be executed in recordable form;
- (e) Provisions relating to apportionment of taxes among purchasers;
- (f) Provisions for cooperation with the commissioner of the department of natural resources to ensure compliance with environmental quality standards.

Subd. 2. The commissioner may, upon request and upon the payment of the sum of \$20, grant a request for a written opinion concerning the availability of any exemption in section 83.26 or interpreting any provisions of sections 83.20 to 83.42.

Subd. 3. For the purpose of rules and forms, the commissioner may by rule classify subdivisions, persons and matters within his jurisdiction, and prescribe different requirements for different classes.

History: 1973 c 413 s 19; 1974 c 440 s 6

83.39 SERVICE OF PROCESS.

Subdivision 1. In addition to the methods of service provided for in any other provision of law, service may be made by delivering a copy of the process to the office of the commissioner if the plaintiff, which may be the commissioner in a proceeding instituted by him, does both of the following:

- (a) Sends a copy of the process and of the pleading or order by certified mail to the defendant or respondent at his last known address.
- (b) Files with the court an affidavit of compliance with this section at the time of the filing of the complaint or other pleading or order.

Subd. 2. If any person, including any nonresident of this state, engages in conduct prohibited by sections 83.20 to 83.42 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 the conduct authorizes the commissioner to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under sections 83.20 to 83.42 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 subdivision 1.

History: 1973 c 413 s 20

83.40 SCOPE OF SECTIONS 83.20 TO 83.42.

Subdivision 1. The provisions of sections 83.20 to 83.42 concerning offers and dispositions of subdivided lands apply when an offer or disposition is made in this state.

Subd. 2. For the purpose of sections 83.20 to 83.42, an offer or disposition is made in this state, whether or not either party is then present in this state, when:

- (a) The offer originates from this state, or
- (b) The offer is directed by the offeror to this state and received by the offeree in this state, or
- (c) The subdivided lands are located in this state.

Subd. 3. An offer or disposition is not made in this state when the publisher circulates or there is circulated in his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or a radio or television program originating outside this state is received in this state.

Subd. 4. Notwithstanding any provision of sections 83.20 to 83.42 to the contrary, sections 83.20 to 83.42 do not apply to or invalidate the lien of a mortgagee, nonaffiliated with the subdivider, when said lien attaches to land pledged as collateral in a transaction negotiated directly with the purchaser.

History: 1973 c 413 s 21

83.41 INTERSTATE RENDITION.

In the proceedings for extradition of a person charged with a crime under sections 83.20 to 83.42, 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.

History: 1973 c 413 s 22

83.42 STATUTE OF LIMITATIONS.

The statute of limitations shall not begin to run with respect to any civil or criminal cause of action arising out of the disposition of a lot or parcel in violation of sections 83.20 to 83.42 until a conveyance describing such lot or parcel is recorded with the appropriate recording authority. This section does not prohibit the maintenance of any action before the recording of such conveyance.

History: 1973 c 413 s 23