

HOUSE BILL REPORT

HB 1495

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to the protection of consumers in the sale of lands.

Brief Description: Changing land development regulations.

Sponsor(s): Representatives Heavey and Hargrove; by request of Department of Licensing.

Brief History:

Reported by House Committee on:
Commerce & Labor, March 1, 1991, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1495 be substituted therefor, and the substitute bill do pass.*
Signed by 10 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; and Vance.

Staff: Annette Thompson (786-7197) and Jim Kelley (786-7166).

Background: In 1974, the Land Development Act (RCW 58.19) was passed in an attempt to protect consumers from fraudulent land sales. The Department of Licensing was designated as the regulatory agent and allowable fees were set by statute. The fee schedule has not been amended since enactment.

Under the act, developers are required to file a public offering statement with the department when selling lots in a development composed of at least 10 lots. There are several exceptions to this requirement, however. For instance, the act does not apply to developments if the lots are five acres or larger; if the lots are improved with a residential, industrial, or commercial building; or if the seller is legally obligated to construct a building on the lot within two years.

A public offering statement must include, among other things, a general description of the development, significant terms of encumbrances and liens affecting the development, information concerning all improvements, and a description of hazards existing on and around the development.

A developer's failure to comply with the act causes the department to seek a cease and desist order prohibiting the developer from selling lots in the development until the requirements are satisfied. The act does not authorize civil damages.

Summary of Substitute Bill: Registration of a public offering statement with the Department of Licensing is no longer required. However, a developer is required to provide a purchaser with a public offering statement at least two days prior to the closing of a sale. A developer's failure to comply with this requirement may result in imposition of the following penalties against the developer: liability for actual damages; an injunctive order prohibiting future sales; and voidance of all sales agreements made with the purchaser(s) who did not receive the statement. In addition to an injured party filing charges against a developer, the attorney general may file an action, on behalf of the state, seeking injunctive relief.

The act applies to all lots which are part of a development of 26 or more lots and which are not included under an exception. In addition to current exceptions listed above, a developer is excepted from compliance with the act for the following reasons: the development is located in a city which was incorporated prior to January 1, 1974; the development is in a city or a county which has adopted a comprehensive land use plan; or there are less than nine lots remaining in a development which otherwise required compliance.

In addition to current requirements, the public offering statement must include material terms and conditions of any home owner's association of which the purchaser will be a member, a statement that the developer has or has not received all required approvals and permits, and a copy of the plat map and certificate. Notice of a purchaser's rights under this act must be printed in bold-face type at the top of the statement.

Other than the developer, a person who compiled the report is not liable for misrepresentations contained in the report unless he or she had actual knowledge of the misrepresentations at the time the report was compiled. The

developer is liable for misrepresentations in the report if, at the time the report was compiled, the builder knew or in the exercise of reasonable care, should have known, of the misrepresentation.

The bill sets forth provisions the developer must satisfy prior to conveyance of any lots in a development which is encumbered by a lien or mortgage.

Substitute Bill Compared to Original Bill: The substitute bill makes the following changes to the original bill. The substitute bill:

1. Limits the recommendation in the intent section that notification be given to prospective purchasers of liens or encumbrances which might attach to a development, to those that are attached to a development.
2. Adds new definitions and revises some existing definitions to conform with substantive changes in the text of the proposed substitute bill.
3. Clarifies the definition of "common promotional plan" by establishing a two-part test to determine the existence of a common promotional plan. To satisfy the test, a development must: 1) contain lots which share a common name, common amenities, and common sales personnel; and 2) be located within a five mile radius of another development owned by the same developer or an affiliate of the developer.
4. Creates additional exceptions as to who must comply with the requirements of the act. These include: condominiums which are subject to regulation under the Condominium Act (RCW 64.34); property which is sold by the government; property sold through a foreclosure action; land conveyed by an offer which can be revoked by the buyer at any time without penalty; and any property which is subject to a comprehensive land use plan as required by the Growth Management Act of 1990. Additionally, the proposed substitute bill restructures the exception pertaining to isolated transactions and authorizes the developer to sell the final eight lots, in a development subject to this act, without providing a public offering statement.
5. Restricts a purchaser to recovery of actual damages if the purchaser does not receive a public offering statement.

6. Replaces the section pertaining to the required contents of the public offering statement with language consistent with that contained in a comparable section of the Condominium Act (RCW 64.34). Additionally, the proposed substitute requires a developer to include a list of any judgments or citations against the home owner's association or the developer in conjunction with the development, a clause limiting warranties and representations to those contained in the public offering statement or signed by the developer, and a clause advising purchasers to seek the assistance of legal counsel.
7. Replaces the requirement that a developer disclose a "hazard" with the requirement that a developer disclose "physical hazards." A "hazard" is defined as a nuisance-type condition. "Physical hazard" is defined as a physical condition which poses a material risk of either material damage to the development or material endangerment to the safety of people using the development.
8. Eliminates the requirement that no portion of the public offering statement be emphasized through the use of underlining, italicizing or bold-face typing.
9. Eliminates the requirement that the public offering statement always be used in its entirety and not be used for promotional purposes.
10. Eliminates the declaration that any violation of the act is an unfair practice subject to penalties imposed under the Consumer Protection Act.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is more efficient to authorize a purchaser to recover damages in the event of a fraudulent land sale than to require the Department of Licensing to monitor every development through the recording of a public offering statement.

Testimony Against: None.

Witnesses: Marsha Long, Department of Licensing (in favor); Mark Triplett, Developers Association (in favor); and Glen Hudson, Washington Association of Realtors (in favor).