
HOUSE BILL 1495

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Heavey and Hargrove; by request of Department of Licensing.

Read first time January 31, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the protection of consumers in the sale of
2 lands; amending RCW 58.19.010, 58.19.020, 58.19.030, 58.19.070,
3 58.19.120, 58.19.130, 58.19.140, 58.19.180, 58.19.190, 58.19.270,
4 58.19.300, and 58.19.940; adding new sections to chapter 58.19 RCW; and
5 repealing RCW 58.19.040, 58.19.050, 58.19.060, 58.19.080, 58.19.090,
6 58.19.100, 58.19.110, 58.19.150, 58.19.160, 58.19.170, 58.19.200,
7 58.19.210, 58.19.220, 58.19.230, 58.19.240, 58.19.250, 58.19.260,
8 58.19.290, 58.19.900, 58.19.910, and 58.19.930.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 **Sec. 1.** RCW 58.19.010 and 1973 1st ex.s. c 12 s 1 are each amended
11 to read as follows:

12 The legislature finds and declares that the sale and offering for
13 sale of land or of interests in associations which provide for the use
14 or occupancy of land touches and affects a great number of the citizens

1 of this state and that full and complete disclosure to prospective
2 purchasers of pertinent information concerning land developments,
3 including any encumbrances or liens which might attach to the land and
4 the physical characteristics of the development as well as the
5 surrounding land, is essential. The legislature further finds and
6 declares that (~~a program of state registration and of publication~~
7 ~~and~~) delivery to prospective purchasers of a complete and accurate
8 public offering statement is necessary in order to adequately protect
9 both the economic and physical welfare of the citizens of this state.
10 It is the purpose of this chapter to provide for ((a)) the reasonable
11 (~~program of state registration and~~) regulation of the sale and
12 offering for sale of any interest in significant land developments
13 within or without the state of Washington, so that the prospective
14 purchasers of such interests might be provided with full, complete, and
15 accurate information of all pertinent circumstances affecting their
16 purchase.

17 **Sec. 2.** RCW 58.19.020 and 1979 c 158 s 208 are each amended to
18 read as follows:

19 When used in this chapter, unless the context otherwise requires:

20 (1) "Blanket encumbrance" shall mean a trust deed, mortgage,
21 mechanic's lien, or any other lien or encumbrance, securing or
22 evidencing the payment of money and affecting the land to be developed
23 or affecting more than one lot or parcel of developed land, or an
24 agreement affecting more than one such lot or parcel by which the
25 developer holds said development under option, contract, sale, or trust
26 agreement. The term shall not include taxes and assessments levied by
27 a public authority.

28 (2) (~~"Director" means the director of licensing or his authorized~~
29 ~~designee.~~) "Common promotional plan" means an offering of developed

1 lands by a person in a similar plan of disposition. Elements relevant
2 to whether the developed lands are being offered as part of a common
3 promotional plan include but are not limited to: The physical
4 relationship of the properties being offered; whether the offered
5 properties are known, designated, or advertised as a common unit or by
6 a common name; the utilization of a common broker or sales personnel,
7 common sales office or facilities, or common promotional methods; the
8 utilization of cross-referrals of prospective purchasers between sales
9 operations; and common ownership interests.

10 (3) "Developer" means any owner of a development who offers it for
11 disposition, or the principal agent of an inactive owner.

12 (4) "Development" or "developed lands" means land which is divided
13 or is proposed to be divided for the purpose of disposition into
14 ~~((ten))~~ twenty-six or more lots, parcels, or units (excluding interests
15 in camping ~~((clubs))~~ resorts regulated under chapter 19.105 RCW and
16 interests in condominiums regulated under chapter 64.34 RCW) ~~((and))~~ or
17 any other land whether contiguous or not, if ~~((ten))~~ twenty-six or more
18 lots, parcels, units, or interests are offered as a part of a common
19 promotional plan of advertising and sale.

20 (5) "Disposition" includes any sale, lease, assignment, or exchange
21 of any interest in any real property which is a part of or included
22 within a development, and also includes the offering of property as a
23 prize or gift when a monetary charge or consideration for whatever
24 purpose is required in conjunction therewith, and any other transaction
25 concerning a development if undertaken for gain or profit.

26 (6) "Offer" includes every inducement, solicitation, or media
27 advertisement which has as a principal aim to encourage a person to
28 acquire an interest in land.

29 (7) "Hazard" means all existing or proposed unusual nuisance-type
30 conditions relating to the location of the development, noise, safety,

1 or other nuisance which affect or might affect the development or the
2 purchaser's interest therein.

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

8 (9) "Purchaser" means a person who acquires or attempts to acquire
9 or succeeds to any interest in land.

10 (10) "Residential buildings" shall mean premises that are actually
11 intended or used as permanent residences of the purchasers and that are
12 not devoted exclusively to any other purpose.

13 **Sec. 3.** RCW 58.19.030 and 1979 c 158 s 209 are each amended to
14 read as follows:

15 ~~((1))~~ Unless the method of disposition is adopted for the purpose
16 of evasion of this chapter, the provisions of this chapter shall not
17 apply to ~~((land and offers or dispositions))~~:

18 ~~((a))~~ (1) An offer or disposition of any interest in a
19 development by a purchaser of developed lands for his or her own
20 account in a single or isolated transaction, except that this exemption
21 shall not apply to developers;

22 ~~((b) If fewer than ten separate lots, parcels, units, or interests~~
23 ~~in developed lands are offered by a person in a period of twelve~~
24 ~~months;~~

25 ~~(c))~~ (2) A development if each lot offered in the development is
26 one one-hundred-twenty-eighth of a section of land or larger, or five
27 acres or ~~((more))~~ larger if the land is not capable of description as
28 a fraction of a section of land. For purposes of computing the size of
29 a lot under this subsection that borders on a street or road the lot

1 size shall be expanded to include that area which would be bounded by
2 the center line of the road or street and the side lot lines of the lot
3 running perpendicular to such center line;

4 ~~((d))~~ (3) Any lot, parcel, unit, or interest on which there is a
5 residential, commercial, or industrial building, or as to which there
6 is a legal obligation on the part of the seller to construct such a
7 building within two years from date of disposition;

8 ~~((e) To))~~ (4) Any person who acquires ((such)) lots, parcels,
9 units, or interests ((therein)) in a development for the purpose of
10 engaging in the business of constructing residential, commercial, or
11 industrial buildings or for the purpose of resale or lease or other
12 disposition of such lots to persons engaged in such business or
13 businesses;

14 ~~((f) Any lot, parcel, unit or interest if the development is~~
15 ~~located within an area incorporated prior to January 1, 1974;~~

16 ~~(g))~~ (5) A development or part of a development if it became an
17 incorporated city or a part of an incorporated city prior to January 1,
18 1974;

19 (6) Offers or dispositions pursuant to court order; ~~((or~~

20 ~~(h))~~ (7) Offers or dispositions as cemetery lots or
21 interests((-));

22 ~~((2) Unless the method of disposition is adopted for the purpose~~
23 ~~of evasion of this chapter, the provisions of this chapter shall not~~
24 ~~apply to:~~

25 ~~(a))~~ (8) Offers or dispositions of evidence of indebtedness
26 secured by a mortgage or deed of trust of real estate;

27 ~~((b))~~ (9) Offers or dispositions of securities or units of
28 interest issued by a real estate investment trust regulated under any
29 state or federal statute;

1 ~~((c))~~ A development as to which the director has waived the
2 provisions of this chapter as provided in RCW 58.19.040;

3 ~~(d))~~ (10) Offers or dispositions of securities currently
4 registered with the ~~((business and professions administration in the))~~
5 department of licensing; or

6 ~~((e))~~ (11) Offers or dispositions of any interest in oil, gas, or
7 other minerals or any royalty interest therein if the offers or
8 dispositions of such interests are regulated as securities by the
9 United States or by the business and professions administration in the
10 department of licensing.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 58.19 RCW
12 to read as follows:

13 (1) A developer shall prepare a public offering statement
14 conforming to the requirements of RCW 58.19.070 unless the development
15 or the transaction is exempt under RCW 58.19.030.

16 (2) Any agent, attorney, or other person assisting the developer in
17 preparing the public offering statement may rely upon information
18 provided by the developer without independent investigation. The
19 agent, attorney, or other person shall not be liable for any material
20 misrepresentation in or omissions of material facts from the public
21 offering statement unless the person had actual knowledge of the
22 misrepresentation or omission at the time the public offering statement
23 was prepared. The developer shall be liable for any misrepresentation
24 contained in the public offering statement or for any omission of
25 material fact therefrom if the developer had actual knowledge of the
26 misrepresentation or omission or, in the exercise of reasonable care,
27 should have known of the misrepresentation or omission.

28 (3) A developer shall provide a purchaser of a lot, parcel, unit,
29 or interest with a copy of the public offering statement and all

1 material amendments thereto before conveyance of that lot, parcel,
2 unit, or interest. Unless a purchaser is given the public offering
3 statement more than two days before execution of a contract for the
4 purchase of a lot, parcel, unit, or interest, the purchaser, before
5 conveyance, shall have the right to cancel the contract within two days
6 after first receiving the public offering statement and, if necessary
7 to have two days to review the public offering statement and cancel the
8 contract, to extend the closing date for conveyance to a date not more
9 than two days after first receiving the public offering statement. The
10 purchaser shall have no right to cancel the contract upon receipt of an
11 amendment unless the purchaser would have that right under generally
12 applicable legal principles. The two-day period shall not include
13 Saturdays, Sundays, or legal holidays.

14 (4) If a purchaser elects to cancel a contract pursuant to
15 subsection (3) of this section, the purchaser may do so by hand-
16 delivering notice thereof to the developer or the developer's agent or
17 by mailing notice thereof by prepaid United States mail to the
18 developer or the developer's agent for service of process. If
19 cancellation is by mailing notice, the date of the postmark on the mail
20 shall be the official date of cancellation. Cancellation is without
21 penalty, and all payments made by the purchaser before cancellation
22 shall be refunded within thirty days from the date of cancellation.

23 (5) If a person required to deliver a public offering statement
24 pursuant to subsection (1) of this section fails to provide a purchaser
25 to whom a lot, parcel, unit, or interest is conveyed with that public
26 offering statement and all material amendments thereto as required by
27 subsection (3) of this section, the purchaser is entitled to receive
28 from that person an amount equal to the greater of: (a) Actual
29 damages, or (b) ten percent of the sales price of the lot, parcel,
30 unit, or interest for a willful failure by the developer or five

1 percent of the sales price of the lot, parcel, unit, or interest for
2 any other failure. There shall be no liability for failure to deliver
3 any amendment unless such failure would have entitled the purchaser
4 under generally applicable legal principles to cancel the contract for
5 the purchase of the lot, parcel, unit, or interest had the undisclosed
6 information been evident to the purchaser before the closing of the
7 purchase.

8 **Sec. 5.** RCW 58.19.070 and 1973 1st ex.s. c 12 s 7 are each amended
9 to read as follows:

10 The ~~((proposed))~~ public offering statement~~((7))~~ required to be
11 ~~((submitted as part of the application for registration, shall be on a
12 form prescribed by rules and regulations adopted by the director and))~~
13 provided to purchasers shall include the following:

14 (1) The name and principal address of the developer;

15 (2) A general description of the development stating the name, the
16 location or address, and the total number of lots, parcels, units, or
17 interests in the offering;

18 (3) The significant terms of any encumbrances, easements, liens,
19 and restrictions, including zoning and other regulations affecting the
20 development and each unit or lot, and a statement of all existing taxes
21 and existing or proposed special taxes or assessments which affect the
22 development;

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

24 (5) Information concerning all existing, advertised, and
25 governmentally required improvements, including, but not limited to,
26 streets, potable water supply, levees, drainage control systems,
27 irrigation systems, sewage disposal facilities, customary utilities
28 including power, water, natural gas, and telecommunications, and
29 recreational facilities, and the estimated cost, means of financing,

1 date of completion, and responsibility for construction and maintenance
2 of existing and proposed improvements which are referred to in
3 connection with the offering or disposition of any interest in a
4 development;

5 (6) A statement of any hazard on or around the development;

6 (7) (~~Additional information required by the director to assure~~
7 ~~full and fair disclosure to prospective purchasers~~) A statement that
8 the developer has or has not received all approvals and permits
9 required by the local health and planning departments;

10 (8) A statement setting forth all material terms and conditions of
11 any common improvement or facility in which the purchaser will have an
12 interest, including the identification of all management or governing
13 documents;

14 (9) A statement setting forth all material terms and conditions of
15 a homeowner's association that the purchaser will be a member of,
16 including the identification of all properties and improvements owned
17 by the association, and the management or governing documents thereof;

18 (10) A disclosure which shall appear at the top of the first page
19 of the public offering statement and be typed or printed in ten-point,
20 bold-faced type size that states:

21 "YOU MAY REVOKE ANY CONTRACT OR AGREEMENT WITHIN TWO DAYS AFTER
22 RECEIVING THIS PUBLIC OFFERING STATEMENT. NOTICE OF REVOCATION MUST BE
23 IN WRITING AND DELIVERED TO THE DEVELOPER OR THE DEVELOPER'S AGENT.
24 THE TWO-DAY PERIOD SHALL NOT INCLUDE SATURDAYS, SUNDAYS, OR LEGAL
25 HOLIDAYS";

26 (11) Any other information that the developer believes will be
27 helpful in describing the development to the prospective purchasers,

1 all of which may be included or not included at the option of the
2 developer;

3 (12) A copy of the survey map or county-approved and recorded final
4 plat of the development, which shall be physically separate from the
5 public offering statement, but which shall be delivered to the
6 purchaser with the public offering statement; and

7 (13) A copy of the plat certificate covering all lots offered for
8 sale and issued within twenty days of the date of sale, which shall be
9 physically separate from the public offering statement, but which shall
10 be delivered to the purchaser with the public offering statement.

11 **Sec. 6.** RCW 58.19.120 and 1973 1st ex.s. c 12 s 12 are each
12 amended to read as follows:

13 The developer shall immediately (~~report to the director~~) amend
14 the public offering statement to include any material changes ((in the
15 information contained in his application for registration)) affecting
16 the development. No change in the substance of the promotional plan or
17 plan of disposition or completion of the development may be made
18 (~~after registration without notifying the director and~~) without first
19 making an appropriate amendment of the public offering statement. A
20 public offering statement is not current unless it incorporates all
21 amendments. There shall be no liability for failure to incorporate any
22 amendment unless such failure would have entitled the purchaser under
23 generally applicable legal principles to cancel a contract or agreement
24 for purchase of the lot, parcel, or unit had the undisclosed
25 information been evident to the purchaser before the closing of the
26 purchase.

27 **Sec. 7.** RCW 58.19.130 and 1973 1st ex.s. c 12 s 13 are each
28 amended to read as follows:

1 No portion of the public offering statement form may be
2 underscored, italicized, or printed in larger or heavier or different
3 color type than the remainder of the statement (~~((unless the director so
4 requires))~~) except the revocation clause as described in RCW
5 58.19.070(10).

6 **Sec. 8.** RCW 58.19.140 and 1973 1st ex.s. c 12 s 14 are each
7 amended to read as follows:

8 The public offering statement shall not be used for any promotional
9 purposes(~~((. It may not be distributed to prospective purchasers before
10 registration of the development))~~) and may be distributed (~~((afterwards
11 only when it is))~~) or used only in its entirety. (~~((No person may
12 advertise or represent that the state of Washington or the director,
13 the department, or any employee thereof approves or recommends the
14 development or disposition thereof.))~~)

15 **Sec. 9.** RCW 58.19.180 and 1973 1st ex.s. c 12 s 18 are each
16 amended to read as follows:

17 It shall be unlawful for the developer to make a sale of lots or
18 parcels within a development which is subject to a blanket encumbrance
19 which does not contain, within its terms or by supplementary agreement,
20 a provision which shall unconditionally provide that the purchaser of
21 a lot or parcel encumbered thereby can obtain the legal title, or other
22 interest contracted for, free and clear of the lien of such blanket
23 encumbrance upon compliance with the terms and conditions of the
24 purchase agreement, unless the developer shall elect and comply with
25 one of the following alternative conditions:

26 (1) The developer shall deposit earnest moneys and all subsequent
27 payments on the obligation in (~~((an))~~) a neutral escrow depository
28 (~~((acceptable to the director: In cases where the blanket encumbrance~~

1 ~~does not provide for partial release, all or such portions of the money~~
2 ~~paid or advanced by the purchaser on any such lot or parcel within said~~
3 ~~development as the director shall determine to be sufficient to protect~~
4 ~~the interest of the purchaser; or in cases where the blanket~~
5 ~~encumbrance provides for partial releases thereof which are not~~
6 ~~unconditional, the developer shall deposit, at such time as the balance~~
7 ~~due to the developer from such purchasers is equal to the sum necessary~~
8 ~~to procure a release of such lots or parcels contracted for from the~~
9 ~~lien of such blanket encumbrance, all of the sums thereafter received~~
10 ~~from such purchasers until either)), or real estate trust account~~
11 ~~regulated under RCW 18.85.310, until such time as all payments on the~~
12 ~~obligation have been made and clear title is delivered, or any of the~~
13 ~~following occurs:~~

14 (a) A proper release is obtained from such blanket encumbrance;

15 (b) Either the developer or the purchaser defaults under the sales
16 contract and there is a forfeiture of the interest of the purchaser or
17 there is a determination as to the disposition of such moneys, as the
18 case may be; or

19 (c) The developer orders a return of such moneys to such purchaser.

20 (2) The title to the development is held in trust under an
21 agreement of trust (~~acceptable to the director~~) until the proper
22 release of such blanket encumbrance is obtained.

23 ~~((3) A bond to the state of Washington or such other~~
24 ~~proof of financial responsibility is furnished to the director for the~~
25 ~~benefit and protection of purchasers of such lots or parcels in such an~~
26 ~~amount and subject to such terms, as may be approved by the director,~~
27 ~~which shall provide for the return of moneys paid or advanced by any~~
28 ~~purchaser on account of a sale of any such lot or parcel if a proper~~
29 ~~release from such blanket encumbrance is not obtained: PROVIDED, That~~
30 ~~if it should be determined that such purchaser, by reason of default,~~

1 ~~or otherwise, is not entitled to the return of such moneys or any~~
2 ~~portion thereof, such bond or other proof of financial responsibility~~
3 ~~shall be exonerated to the extent and in the amount thereof. The~~
4 ~~amount of the bond or other proof of financial responsibility may be~~
5 ~~increased or decreased or a bond may be waived from time to time as the~~
6 ~~director shall determine.))~~

7 **Sec. 10.** RCW 58.19.190 and 1973 1st ex.s. c 12 s 19 are each
8 amended to read as follows:

9 No person shall publish in this state any advertisement concerning
10 a development subject to the ((registration)) requirements of this
11 chapter ((after the director finds that the advertisement)) which
12 contains any statements that are false, misleading, or deceptive ((and
13 so notifies the person in writing. Such notification may be given
14 summarily without notice or hearing. At any time after the issuance of
15 a notification under this section the person desiring to use the
16 advertisement may in writing request the order be rescinded. Upon
17 receipt of such a written request, the matter shall be set down for
18 hearing to commence within fourteen days after such receipt unless the
19 person making the request consents to a later date. After such
20 hearing, which shall be conducted in accordance with the provisions of
21 the Administrative Procedure Act, chapter 34.04 RCW, the director shall
22 determine whether to affirm and to continue or to rescind such order
23 and shall have all powers granted under such act)).

24 NEW SECTION. **Sec. 11.** A new section is added to chapter 58.19 RCW
25 to read as follows:

26 If a developer, or any other person subject to this chapter, fails
27 to comply with any provision of this chapter, any person or class of
28 persons adversely affected by the failure to comply may seek

1 appropriate relief through an action for damages or an injunctive court
2 order. The court, in an appropriate case, may award attorneys' fees.

3 **Sec. 12.** RCW 58.19.270 and 1973 1st ex.s. c 12 s 27 are each
4 amended to read as follows:

5 (1) The commission by any person of an act or practice prohibited
6 by this chapter is hereby declared to be an unfair act or practice or
7 unfair method of competition in the conduct of trade or commerce for
8 the purpose of the application of the Consumer Protection Act, chapter
9 19.86 RCW, as now or hereafter amended.

10 (2) ~~((The director may refer such))~~ Evidence ~~((as may be available
11 to him))~~ concerning violations of this chapter ~~((or of any rule or
12 regulation adopted hereunder))~~ may be referred to the attorney general
13 or the prosecuting attorney of the county wherein the alleged violation
14 arose, who may, in their discretion, with or without such a reference,
15 in addition to any other action they might commence, bring an action in
16 the name of the state against any person to restrain and prevent the
17 doing of any act or practice prohibited by this chapter: PROVIDED,
18 That this chapter shall be considered in conjunction with chapters 9.04
19 and 19.86 RCW, as now or hereafter amended, and the powers and duties
20 of the attorney general and the prosecuting attorney as they may appear
21 in the aforementioned chapters, shall apply against all persons subject
22 to this chapter.

23 **Sec. 13.** RCW 58.19.300 and 1973 1st ex.s. c 12 s 30 are each
24 amended to read as follows:

25 If, ~~((after))~~ before disposition of all or any portion of a
26 development which is covered by this chapter, a condition constituting
27 a hazard is discovered on or around the development, the developer or
28 government agency discovering such condition shall notify the

1 (~~director immediately. After receiving such notice, the director~~
2 ~~shall forthwith take all steps necessary to notify the owners~~)
3 purchasers of the affected lands either by transmitting notice through
4 the appropriate county assessor's office or such other steps as might
5 reasonably give actual notice to the (~~owners~~) purchasers.

6 **Sec. 14.** RCW 58.19.940 and 1973 1st ex.s. c 12 s 35 are each
7 amended to read as follows:

8 This chapter may be cited as the Land Development Act (~~of 1973~~).

9 NEW SECTION. **Sec. 15.** The following acts or parts of acts are
10 each repealed:

- 11 (1) RCW 58.19.040 and 1973 1st ex.s. c 12 s 4;
- 12 (2) RCW 58.19.050 and 1973 1st ex.s. c 12 s 5;
- 13 (3) RCW 58.19.060 and 1973 1st ex.s. c 12 s 6;
- 14 (4) RCW 58.19.080 and 1973 1st ex.s. c 12 s 8;
- 15 (5) RCW 58.19.090 and 1973 1st ex.s. c 12 s 9;
- 16 (6) RCW 58.19.100 and 1973 1st ex.s. c 12 s 10;
- 17 (7) RCW 58.19.110 and 1973 1st ex.s. c 12 s 11;
- 18 (8) RCW 58.19.150 and 1973 1st ex.s. c 12 s 15;
- 19 (9) RCW 58.19.160 and 1973 1st ex.s. c 12 s 16;
- 20 (10) RCW 58.19.170 and 1973 1st ex.s. c 12 s 17;
- 21 (11) RCW 58.19.200 and 1973 1st ex.s. c 12 s 20;
- 22 (12) RCW 58.19.210 and 1973 1st ex.s. c 12 s 21;
- 23 (13) RCW 58.19.220 and 1973 1st ex.s. c 12 s 22;
- 24 (14) RCW 58.19.230 and 1973 1st ex.s. c 12 s 23;
- 25 (15) RCW 58.19.240 and 1973 1st ex.s. c 12 s 24;
- 26 (16) RCW 58.19.250 and 1973 1st ex.s. c 12 s 25;
- 27 (17) RCW 58.19.260 and 1973 1st ex.s. c 12 s 26;
- 28 (18) RCW 58.19.290 and 1973 1st ex.s. c 12 s 29;

1 (19) RCW 58.19.900 and 1973 1st ex.s. c 12 s 31;

2 (20) RCW 58.19.910 and 1973 1st ex.s. c 12 s 32; and

3 (21) RCW 58.19.930 and 1973 1st ex.s. c 12 s 34.

4 NEW SECTION. **Sec. 16.** If any provision of this act or its
5 application to any person or circumstances is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.