

# INTERSTATE MAIL ORDER LAND SALES

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON FRAUDS AND MISREPRESENTATIONS AFFECTING THE ELDERLY  
OF THE  
SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE  
EIGHTY-EIGHTH CONGRESS  
SECOND SESSION

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PART 3

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MAY 20, 1964

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Printed for the use of the Special Committee on Aging



U.S. GOVERNMENT PRINTING OFFICE

34-856 O

WASHINGTON : 1964

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GERALD P. NYE, *Minority Professional Staff Member*

NOTE.—Hearings on interstate mail-order land sales were held and they are identified as follows:

Part 1—Washington, D.C., May 18, 1964.

Part 2—Washington, D.C., May 19, 1964.

Part 3—Washington, D.C., May 20, 1964.

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# INTERSTATE MAIL ORDER LAND SALES

WEDNESDAY, MAY 20, 1964

U.S. SENATE,  
SUBCOMMITTEE ON FRAUDS AND MISREPRESENTATIONS  
AFFECTING THE ELDERLY OF THE SPECIAL COMMITTEE ON AGING,  
*Washington, D.C.*

The subcommittee met at 10:05 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams and Neuberger.

Also present: William E. Oriol, professional staff member; Gerald P. Nye, minority professional staff member; Patricia Slinkard, chief clerk; Mary Keeley, staff assistant; and Marion Keever, minority chief clerk.

Senator WILLIAMS. Our subcommittee deliberations will come to order.

Our first witness this morning will be Chief Inspector H. B. Montague, of the Post Office Department, a very important man in the field we have been analyzing for the last 2 days.

**STATEMENT OF HENRY B. MONTAGUE, CHIEF INSPECTOR, POST OFFICE DEPARTMENT; ACCOMPANIED BY WILLIAM CALLAHAN, DIRECTOR, DIVISION OF FRAUD AND MAILABILITY INVESTIGATIONS, BUREAU OF THE CHIEF INSPECTOR; AND ADAM G. WENCHEL, ASSOCIATE GENERAL COUNSEL**

Senator WILLIAMS. Mr. Montague, you have Mr. Callahan and Mr. Wenchel with you?

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. These gentlemen are Director and Mr. Wenchel is the—

Mr. WENCHEL. Associate General Counsel.

Senator WILLIAMS. Division of Fraud and Mailability Investigations.

Mr. WENCHEL. Mr. Callahan is Director of that Division in the Chief Inspector's Office.

Senator WILLIAMS. We welcome you back before this committee. You have been helpful before and I know you will be helpful this morning. You may proceed, Mr. Montague.

Mr. MONTAGUE. I have a statement, Senator. Is it all right if I read it?

Senator WILLIAMS. Fine.



Mr. MONTAGUE. The opportunity to again report to this committee concerning the status of our investigations of alleged fraud in mail order land sales is appreciated. These investigations are made by us under authority of 18 U.S.C. 1341 and 39 U.S.C. 4005, which impose a duty on the Postmaster General to prevent the use of the Postal Establishment in the perpetration of schemes to defraud the public.

There are many facets to these land fraud schemes. In most cases, the promoters launch a lavish advertising campaign in media throughout the Nation in which extravagant claims are made depicting nearly worthless land as suitable for homesites or retirement or investment purposes.

The principal inducement to buy is usually a seemingly low price. Buyers are seldom near enough to the property to personally inspect it without spending more for transportation than the price of the land warrants. This, coupled with the appeal to the "bargain instinct" present in most people is an integral part of the scheme.

A variation of this theme is practiced by some promoters who peddle worthless land at fairs, flower shows, and other similar public events at which the land is disposed of by a so-called free drawing in which practically everyone who registers is a "winner."

Such "winners" are then separately notified that each has won a valuable lot which may be obtained simply by paying so-called nominal closing costs which actually represent far more than the land is worth.

Based on the great number of victims these closing costs provide a vast profit for the promoters. Another gimmick frequently used in a promotion is the promise of improvements in the form of clubhouses, recreational facilities, roads, sewers, and utilities which are never furnished.

Many instances have been found where promoters have skipped without fulfilling such commitments after disposing of the land. In other cases unscrupulous promoters have advertised and accepted payments from victims for land to which they could not convey a clear title.

The following statistics dating from July 1, 1962, are indicative of the scope of the land investigative program being conducted by the postal inspection service:

Land fraud investigations authorized.....	358
Cases closed.....	165
Cases currently under investigation.....	193
Cases presented to U.S. attorneys.....	35
Cases in which indictments returned.....	22
Number of defendants indicted.....	60
Cases in which convictions obtained.....	7
Number of defendants convicted.....	13
Cases wherein indictments are outstanding.....	15

Prosecutive action in these cases is closely coordinated with the Criminal Division, Department of Justice, and U.S. attorney throughout the Nation.

In view of this committee's concern with frauds in general, many of which particularly affect the elderly, we should bring to attention that in the first 10 months of this fiscal year, through April 1964, postal inspectors made 548 arrests for mail fraud violations of all types.

This was an increase of 7.2 percent over the same period last year. Also, while it is not within our jurisdiction to cause adjustments to be

made, a total of \$5,224,340 was restored to victims as a result of mail fraud investigations.

Thank you.

Senator WILLIAMS. How did these restorations come about? It is not within your jurisdiction. Was it voluntary?

Mr. MONTAGUE. Some of them, Senator, were court ordered and others were voluntary.

Senator WILLIAMS. You say 35 cases were presented to the U.S. attorneys, the number of defendants indicted, 60?

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. Is this more than 1 individual involved in the 35 cases or how do you account for that?

Mr. MONTAGUE. In some instances there was only one. In other instances there were as many as three or four or more.

Senator WILLIAMS. I would like to know more about how your statutory authority works and what kind of cases you have been able to bring into court, prosecute, and get convictions. When you give us this statement it doesn't really get into the core of our business here. What is all this about? How did these atrocities of the land fraud cases get into court? Who are the people? How do you do it? What is your jurisdiction? Where is it inadequate? Can you give us the whole story?

Mr. MONTAGUE. The mails have to be used. They have to be an integral part of the scheme.

Senator WILLIAMS. Well, if they mail advertising to the XYZ paper, Newark, N.J., is that sufficient?

Mr. MONTAGUE. Usually it is.

Senator WILLIAMS. What do you have to prove.

Mr. MONTAGUE. We have to prove that there is an intent to defraud, that a scheme has been devised. We have to depend to a great extent on complaints from the public. When we receive such complaints, if it appears from the nature of the information given that there is a possibility of fraud, we authorize an investigation by an inspector. He takes the advertising, analyzes it, compares it with what is actually offered.

If there seems to be misrepresentations he may talk to the promoters at that point; he may not. It will depend on the circumstances.

Senator WILLIAMS. You are using the word misrepresentation.

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. As I understand it, the mail fraud statutes do not permit you to go to court and prosecute on the basis of misrepresentation?

Mr. MONTAGUE. That is correct. We have to prove that there is an intent to defraud.

Senator WILLIAMS. When one of these promoters gets up a brochure talking about the land with the blue sky and the sun shining every day, and the trout fishing, and near water, and all that, and it turns out to be a desert mesa—is this fraud?

Mr. MONTAGUE. Not necessarily, Senator. Many communities have been erected from desert land, from land such as you describe. We would have to be able to prove that there has been a scheme devised.

Senator WILLIAMS. I would like to understand what this scheme to defraud is.

Mr. MONTAGUE. The promoters have no intention of furnishing what they advertise they are going to furnish. And in order to prove that, you would have to check into—

Senator WILLIAMS. You would have to wait 100 years, wouldn't you?

Mr. MONTAGUE. No. In these cases, we haven't had to wait 100 years, that is where we have had indictments and convictions. Court action has been obtained in a matter of months. We have to be able to show that the persons who are promoting the development did not intend to furnish what they advertised they would furnish. We can do this from personal examination of the land itself, from checking with the utility companies which would be involved, through checking the disposition of the moneys which are received in response to the advertisement.

All of these matters are facets which have to be covered and taken into consideration in the investigation.

Senator WILLIAMS. You convicted 13 people since July 1, 1962.

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. In that period, they tell us billions of dollars have been invested in worthless land, worthless for the purposes sold. What is wrong with our system here of finding these people who are defrauding the public and bringing them to the bar of justice, protecting thousands and thousands of people who are throwing away billions of dollars?

Mr. MONTAGUE. They are brought to justice, Senator.

Senator WILLIAMS. At the rate of 13 scoundrels in what is almost a 2-year period. There is something wrong here. There is some missing element in our legal framework. Show Mr. Montague that fiesta brochure. We are authorities on that particular development, because Mr. Oriol of the staff has been there.

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. You see the claims, the sly innuendo?

Mr. MONTAGUE. This is quite similar to brochures which have been disseminated by other promoters in this line.

Senator WILLIAMS. That looks as if that is a very promising place to live from that brochure.

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. It happens to be almost inaccessible. Right, Bill Oriol?

Mr. ORIOL. Yes.

Senator WILLIAMS. Explain to Mr. Montague just what that is.

Mr. ORIOL. The development is on top of a mesa approximately 1,400 feet above the valley. Luckily I was in a rented compact car. I felt that the road was just about wide enough for this. And to travel that 1,400 feet—I clocked it—it was 3 miles on a road which made 20 what I call hairpin turns, because they were almost right angle turns.

I am not including curves or cattle that stopped me three times. But that is what it took to get up there. Yesterday a witness from the New Mexico attorney general's office, which enforces the New Mexico law, said that a few days ago at our request he went to this area and he said he found out where that photograph had been taken. It had been taken from about halfway up the road to the top of that

mesa and it had been taken in the opposite direction. It shows the Rio Grande which passes by in the valley there.

There, of course, is no river on top of the mesa and he said that they recently drilled about a thousand-foot well which caved in. They are now down to about 840 feet and they are not sure they are going to get water from this well.

Senator WILLIAMS. They have already spent \$10,000 or \$12,000 on this well. Here is the point, just on water. You see that brochure. Everything is lush: water, water, water, trout streams, and all the rest. Surely there are trout streams somewhere. But not up where these folks are buying that land. I have forgotten all of the fingers of fraud, but this, in my judgment, is the grossest kind of misrepresentation that should put you in a prosecuting position. And if you are not in a position to prosecute this kind of misrepresentation there is a gap in the law. How do you feel about that? Or do you have any questions about that?

Mr. MONTAGUE. On the face of it, Senator, and from what you said, this is quite similar to developments which have been under indictment and convicted. However, the facts which we discuss here do not mean that, per se this is a scheme to defraud. We have to be very careful in all of these investigations not to harm legitimate business. And in that connection, I call your attention to an article in this week's issue of a nationwide magazine which talks about "boom in the desert" and it mentions New Mexico. It tells how the population in New Mexico has grown in these last few years. And why has it grown? Because, among other things, they have been able to develop some of this desertland and make it habitable and do some of the things which are pictured in this brochure.

We have to be able to prove that this is a scheme to defraud, that this is not a legitimate development.

Senator WILLIAMS. How many men do you have across the country investigating these situations?

Mr. MONTAGUE. We have, in all, 1,028 inspectors to make all of our investigations. These investigations include inspections of post offices, thefts from the mails, robberies, holdups, obscenity, mail fraud, and all of the other responsibilities we have.

We are able to devote the time of about 100 inspectors, that is about one-tenth of our force, to this type of investigation throughout the country. That is all frauds, not just land frauds, but all categories of fraud.

Senator WILLIAMS. Let us break this into manpower, or man-days, or men that are available to go to New Mexico or Florida, down where you have the swamp merchants describing this great retirement or investment opportunity of land near Canaveral and all of the bit to be developed and all that and it is worthless. It is 4 feet under water in the swamp.

We have pictures here. This is a picture of the great investment opportunity. That can never, in our time, be reclaimed as usable land. How many men do you have who are going into where the swamp merchants are operating, the mesa merchants are operating?

Mr. MONTAGUE. As I mentioned, we are able to devote the time of about 100 of our inspectors to mail fraud of all kinds. Each of our inspectors last year worked an average of about 54 hours per week. To

handle this type of case, taking into consideration that we have all other types of fraud, medical frauds, vending machine cases, work at home schemes of all kinds, I would say that consistently we are probably not able to devote more than the time of 20 inspectors to this particular type of investigation.

Senator WILLIAMS. I would just think you would have been up here screaming loud and clear long ago, "Give us help; we want to get these merchants of fraud and find them and prosecute them."

You know, when I say billions of dollars, the estimate is about \$700 million a year. You have 13 convictions in 2 years. That is why I wasn't loosely saying billions. If you multiply that out, that is in the billion-dollar category. And you know the people who are losing the money on some of those subdivisions?

Mr. MONTAGUE. Yes, sir; we do.

Senator WILLIAMS. The people who can least afford it. We had individuals before us; patrolmen from the city of New York. As a group, they got swindled. Some post office workers—or one particular one, Mr. Sewalk from Hicksville, Long Island—he was the last person in the world who can afford to lose the \$500 that he threw away on one of these things. Why don't you come up here and let us really know what this is all about and what you need?

Mr. MONTAGUE. Senator, I was thinking about the question on manpower which you proposed be raised. Of course, this is not the committee to which we go for our appropriations. We have to be guided by what other people think we should have to operate. And we operate within our budget.

We realize this situation exists. We have put all the manpower that we could into this problem during these last couple of years.

Senator WILLIAMS. I realize that, but it seems like very inadequate manpower for a massive job.

Mr. MONTAGUE. We think that a great deal of good has been done. We feel that the indictments and the convictions which have been obtained have had a salutary effect. We think that the hearings of this committee in January 1963 and presently are helping to inform the people. This is a great need—informing them as to what is going on—a preventative measure. That is more beneficial than any other sort of action one can take.

Our records show that in the seven cases where we have had convictions the take was about \$800,000; that in the cases we have under indictment, those cases that have not yet been to trial, the take was in the neighborhood of probably \$4 million. Therefore in these 20 cases, from actual figures that the inspectors compiled as a result of their investigations, there was a take of about \$5 million.

We feel that the action taken has caused a change in this whole situation in the last couple of years, that substantial advertising has been changed to conform with the facts, that some of the promoters who perhaps would have acted differently are now keeping the promises they make.

This does not mean that the swindle has been brought to an end, because we will always have swindlers in all areas of the economy. It seems that wherever there is progress, be it medicine, be it land development, that there are people who want to ride along on the coattails of the legitimate promoters and pick up whatever easy money

there is to be had. That has been the history of fraud not only in the mails but in any other area where fraud has been perpetrated.

And this is why the land frauds: The tremendous growth in this country over the years since World War II, the development of desert land, the development of such places as Las Vegas, and Reno, and Phoenix, Ariz., and Albuquerque, N. Mex. Swindlers take advantage of legitimate operators in such situations.

We feel we have weeded a good many of them out. We have indicted many of the biggest fraudulent promotions, and we have convicted a number of them. We feel that this situation has changed because of our actions in the last few years.

Senator NEUBERGER. Do you think this sort of thing would be curtailed and practically done away with if each State had a law like the California law?

Mr. MONTAGUE. Senator, we think that adequate State regulation is the prime need. We feel that the California law is a good example and we base this on experience. We have only to refer to the savings and loan cases in Maryland. Why was it possible to perpetrate those swindles? Because Maryland didn't have sufficient State regulation. Because Maryland passed needed laws, and they now have the regulation, I don't think we will see that condition again in Maryland.

And I say the same thing with regard to these land swindles. If the States would take needed action, and if we could educate the people the way you are doing here, and then with the mail fraud statutes to back it up, I think we would go a long way toward controlling land frauds.

Senator NEUBERGER. We have people who come from those States where they have good laws and say, "We have a good law, but we don't want any kind of Federal law." They don't want this to be carried out from the national level.

And why is it that legitimate real estate people and people in the States, who are really affected adversely by frauds, don't come here and beg us for some national legislation on this? It is the most peculiar phenomena I have ever encountered.

Mr. MONTAGUE. Senator, I think this has been conducted in accordance with the free enterprise system, as has all other progress in this country, and I just wonder whether the same degree of progress could have been made, if we had had Federal regulation. I don't know. We know what has been accomplished without it. But we don't know whether that same thing could have been accomplished with it.

Senator NEUBERGER. We know a lot of people have been swindled without it, too. If it is in the name of free enterprise, maybe we should just fold up and go home and let these people carry on and let free enterprise prevail.

Mr. MONTAGUE. I don't mean to imply that, Senator, I think the work that this subcommittee has been doing is very beneficial and as I said, it has had a very good effect.

I believe the hearings which this committee conducted in January 1963 and which were publicized throughout the country by newspapers, radio, TV, and magazines helped make the people alert to these swindles.

I think the stories that have been printed in the last few days about these hearings are well worthwhile, and whatever this committee decides as a result of these hearings will be helpful.

Senator NEUBERGER. We can't just keep on meeting here month after month, and year after year to educate people. The time has come now to get legislation, it seems to me. I am a great believer in education and I admit that this has a very good effect. But the time comes when you have to clinch this thing. Free enterprise doesn't look very good to me in this business.

I can't see where the legitimate real estate people are doing enough to help us get rid of these phonies that come in and it really casts a pall over all real estate. This is outside of your field, I know you are in the postal business. But it seems to me that your work would be helped if we did have some strong Federal legislation in this area.

Mr. MONTAGUE. We feel, Senator, that these hearings have served as a catalyst toward having the States take corrective action. Many of them have already done that in these last couple of years and we feel a lot of the action is due to the testimony that has been given by a variety of people here.

Senator NEUBERGER. Senator Williams' asking you about your manpower, reminded me of the shortsightedness of the Congress in curtailing the number of personnel in the Bureau of Internal Revenue. It has been proved that each investigator can bring in many more times his own salary. I am sure this would be true with additional inspectors.

Mr. MONTAGUE. That is true, Senator. The Congress did give us 25 additional inspectors this year to have assigned to fraud work. We now have them on our rolls and we are training them and they will be available.

Senator NEUBERGER. What salary do they get?

Mr. MONTAGUE. Inspectors start at about \$7,000 a year. We could use many more.

Senator NEUBERGER. Thank you.

Senator WILLIAMS. While Senator Neuberger was presiding over the Senate yesterday, we had a classic example of what I would call fraud. I don't know if it would meet your test before the court. This was the sale of swampland. Of course, it wasn't described in the brochure as swampland. It was pretty, lush, rolling meadows, but the fact of the matter is most of the property is inaccessible, under 3 to 4 feet of water, cypress forests in a swamp.

One of the purchasers of the lot wanted to find her lot. And in order to find her lot she would have to have a survey. So she went to the civil engineers and the civil engineers told her it would cost \$20,000 to find her lot through a survey. The reason—to find her lot they had to survey the whole business. What was it, 4,000 or 5,000 acres of swampland?

If that is not fraud, I don't know what is.

Mr. MONTAGUE. It sounds as though it very well could be, Senator. But on the other hand, other developments in the State of Florida have been recovered from swampland and through development by legitimate real estate operators.

Senator WILLIAMS. This was sold as an investment opportunity. If it costs you \$20,000 for a survey for your acre and a quarter it is an acre and a quarter, because if you get over an acre it falls out of the subdivision platting regulations—how long would you have to live to make a profit on an acre and a quarter that costs you \$20,000

plus the purchase price of \$695? It would take 100 years. Now on the face of it, that, to me, is a fraud. Is it a fraud within the law?

Mr. MONTAGUE. I believe that we have presented the evidence with regard to the promotion which you mentioned to the U.S. attorney. It is being considered by the U.S. attorney's office at the present time. I think I know what development that is.

Senator WILLIAMS. Good. They are still selling those lots, though. How long do you put one of these fellows away for?

Mr. MONTAGUE. Of course, that is a matter for the courts to decide. Sometimes the sentence seems rather lenient. And, as we indicated earlier, the court sometimes does too, instruct that restitution be made. In one case where conviction was returned, that is the Comstock Land Co., the court ordered restitution which could be up to as much as \$60,000. In general, the prison sentences on the first offense are not too heavy. Just glancing at these, I see 6 months imprisonment; 4½ years suspended with 4½ years probation. Two years; 7 months and fined \$700; 1-year probation; 3 years imprisonment suspended; probation for 3 years; 2 years imprisonment; probation for 2 years, sentenced to 3 years.

Of course, these probation cases mean that the promoters are going to be careful not to commit any further offenses during the probation period. We think that the criminal statute is the proper one to apply, because promoters who create a scheme are doing the same thing as a group who might plan a holdup. It is more sophisticated, but they take the people's money just as surely as if it were a holdup. We feel the criminal statute is the one which gives the justice that is warranted in a case of this kind.

Senator WILLIAMS. Do you have anything further, Senator Neuberger?

Senator NEUBERGER. No.

Senator WILLIAMS. Have you developed any suggestions for the Congress as to ways the statutes could be improved, from your standpoint, to make your work more efficient?

Mr. MONTAGUE. Not so far as the criminal statute is concerned. We believe it is equitable, that we have to prove that there has been a scheme devised. With regard to the administrative procedures, I would ask Mr. Wenchel if he would address himself to that feature.

Mr. WENCHEL. The one feature in our administrative proceedings law, which is section 4005 of title 39, on which some attention has been focused is the requirement in that law that intent be established. There has been a considerable amount of discussion as to whether this law should not be so amended as to allow us to issue a fraud order on the basis of false advertising or false representations, even though we cannot establish that they were intentionally fraud.

This involves a great many considerations. We have been discussing this matter with the Department of Justice and other agencies, but we have not yet formulated any legislation to present to the Congress on that.

One other minor aspect. At present we have no subpoena powers to use in our fraud order proceedings. There are provisions in the various bills which are under consideration now for amending the Administrative Procedure Act which would give us that subpoena power which would be of some assistance to us in these fraud cases.



Senator WILLIAMS. For our better understanding of your present statutory authority, could you take the 13 cases where you have had convictions and prepare for us just a description of the factual base on which you obtained these convictions?

Mr. MONTAGUE. Yes, sir.

(The information referred to above follows:)

(Text continues on p. 245.)

POST OFFICE DEPARTMENT,  
CHIEF POSTAL INSPECTOR,  
Washington, D.C., May 26, 1964.

HON. HARRISON A. WILLIAMS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR: In accordance with your request, we are attaching a listing of the particulars of our land fraud cases wherein there were convictions and also where indictments are pending, for violation of the postal fraud statute (18 U.S.C. 1341).

Your interest in this matter is deeply appreciated.

Sincerely yours,

H. B. MONTAGUE, *Chief Inspector.*

#### SALE OF LAND

##### MAIL FRAUD CONVICTIONS (18 U.S.C. 1341)

Central Vermont Land Association, Inc., White River Junction, Vt. Galvin J. Van Stratum convicted February 13, 1964, and sentenced to 3 years imprisonment. He obtained an option of questionable value on 40 acres of land located in Vermont and offered lots for sale via newspaper ads, for \$28.30 each. Van Stratum had previously conducted a land scheme at Atlanta, Ga., using the name Upper Chattahoochee Land Corp. and offered for sale land located in northern Georgia. Due to prompt action by postal inspectors, Van Stratum was arrested after having realized a total of approximately \$30,000, but stated that had he been allowed to continue for just 2 more weeks, he would have taken in another \$100,000. His prison sentence for the Georgia operation was 2 years, making a total of 5 years for both convictions.

Comstock Land Co., San Francisco, Calif. Edward Henry Johnston was convicted October 8, 1963, sentenced to 6 months imprisonment, 4½ years suspended, and 4½ years probation to commence at end of imprisonment. He was also ordered by Court to make restitution to all purchasers and it is estimated this will amount to nearly \$60,000. Johnston sold desert land near Elko, Nev., to 50 victims who were led to believe they were buying part of the famous Comstock Ranch.

Harney County Land Development Corp., Burns, Oreg. Convictions handed down December 13, 1963. Richard Dale Walker received a 3-year sentence suspended, and placed on probation for 3 years; fined \$16,000, plus proportionate share of court costs of approximately \$12,000. John M. Phillips received a 2-year sentence, suspended, and placed on probation for 2 years; fined \$12,000 plus proportionate share of court costs. Jack C. Cherbo received a 2-year sentence suspended, and placed on probation for 2 years; fined \$10,000, plus proportionate share of court costs. These men charged \$395 an acre for land near Burns, Oreg., assessed at \$5.60 an acre and made false statements as to its value and condition.

Lakeview Estates, Coeur d'Alene, Idaho. Convictions handed down on September 26, 1963. Raymond E. Robertson sentenced to 7 months imprisonment and \$700 fine; F. Darold Windsor fined \$420; Carl A. King, fined \$700; John H. Griebel, fined \$700; Bertil G. Olsen, acquitted. They sold land in Idaho to be used as building lots but made fraudulent representations as to streets and water and sewage systems.

National Sales & Development Corp., Heber Springs, Ark. Henry Thomas Settles and Julian Ebbert both convicted on January 24, 1964, but sentencing postponed until the fall, apparently to determine whether the promised improvements to the land are met. They operated from booths at fairs and other public events, offering so-called free lots located near Heber Springs, Ark., with only closing costs to pay. Practically all who registered became a "winner," and were

pressured to buy lots at a more expensive price; in either event, the land and costs were misrepresented. These same two men are also currently under indictment at Springfield, Mo., incident to their operation of a similar scheme known as the Cloverdale addition by Southwest Development Corp.

Scenic Land Hawaii, Chicago, Ill. Richard N. Nishikawa, a native Hawaiian operating out of Chicago, sold land in Hawaii that he did not own and which did not meet the claims he made for it. The known sales totaled about \$100,000. He was convicted April 6, 1964, and the judge suspended sentence and placed him on probation for 1 year.

#### LAND FRAUD PENDING INDICTMENTS

##### GREAT SOUTHWESTERN LAND CO., INC., ALBUQUERQUE, N. MEX.

Defendants: Robert N. Golubin, Lenn E. Allen, George E. Walker, indicted  
April 26, 1963

This promotion is typical of many land schemes carried out at fairs, home shows, and other public events that are attended by thousands of persons. A booth was rented at such public events and everyone attending was offered a free registration for a chance on a "free lot." Nearly every person that registered was a "winner" except where it was obvious to the promoters that such would be to their disadvantage, such as those at same address, similar names, etc. The so-called winners received a "Congratulations" letter, informing them that the land was available simply for the payment of "closing costs"—usually about \$49. This amount, of course, represents more than the land is actually worth and, in addition, various misrepresentations as to the usefulness of the land were made. This group had a booth at the Seattle World's Fair and reached persons from virtually every State of the Nation and 28 foreign countries. The trial of these three recently held resulted in a hung jury and retrial is now being given consideration.

##### GAMBLE RANCH, BEVERLY HILLS, CALIF.

Defendants: Arnold Clejan, Joseph Benaron, J. J. Byrnes, Samuel Reisman, Maurice Weiss, Norman Rockel, Charles Escarzaga, Robert L. Stein, Frank Gillhouse, Robert Jaffee, Stanley Weiss, indicated April 2, 1964

These men operated out of Beverly Hills, Calif., in the sale of land in Nevada wherein various false and fraudulent representations were made. The operation ceased in July 1962 after the investigation commenced, but already the promotion had contracts for a total of approximately \$6 million, of which about \$2 million had been paid and the remainder due under the various contracts. The land in this case was crossed by the first wagon train to the West and at one time comprised the largest ranch in the United States.

Aspen Acres, Wichita, Kan. Promoters are Roger L. Eaton and Donald G. Peacock. Indicted June 11, 1963. Land located in Colorado and Minnesota. They purchased cheap land for subsequent resale as building sites and disposed of it by conducting drawings at fairs and other public events and advising the numerous "winners" that they had only to pay the \$39.50 closing costs to receive lots. A further part of the plan was to sell lifetime memberships in the community center for \$20, promising various recreational facilities which were never provided. Same two men also under indictment at Denver with a third man (Darrell Hofmann) having operated a promotion there known as Bonded Land Developers.

Bonded Land Developers, Inc., Denver, Colo. Promoters are same as two mentioned above (Eaton and Peacock) plus Darrell H. Hofmann. These men operated booths at fairs and other such public events and offered everyone an opportunity to register for a "free" lot. Those who registered became "winners" and were required to pay the so-called closing costs of \$39.50. All three men were indicted May 3, 1963. The land was located in a barren section of Saguache County, Colo., and about 750 persons invested approximately \$30,000 in this land for which the promoters made various misrepresentations as to its location and usefulness. Hofmann was sentenced May 1, 1964, to 1 year and 1 day plus 3 years' probation.

Horsemen-Cattlemens Co-Op, Burbank, Calif. Promoters are Curtis W. Ivey and Clifford J. Emmich who were indicted on April 1, 1964. They advertised Oregon land for sale and promised purchasers clear titles but promoters did not own the land and owners had not consented to sales. Ivey was arrested in

October 1963 by the Oakland, Calif., Police Department and charged with grand theft incident to his activities in this operation, and his trial is pending in that case.

Lake Mead Land & Water Co., Phoenix, Ariz. Promoter is Marvin Lustiger. He was indicted October 25, 1963. He purchased unimproved rangeland in Arizona and offered it for sale, at prices starting at \$395 a lot, under various fraudulent representations, via advertising in newspapers, magazines, and other publications throughout the United States.

Big Bend Frontier, Alpine, Tex. Elvyn Eugene Boggs, promoter, was indicted May 5, 1964. He operated a booth at fairs, trade shows, etc., inducing general public to register for so-called free lots located in Brewster County, Tex., with closing costs of \$18.90. The free lot winners were encouraged to purchase additional lots at \$89.90 each but in either event, the land was not as represented.

Lake Mead Rancheros, Kingman, Ariz. Dory Auerbach, David P. Randell, and Irving Gottlieb, indicted March 14, 1963. They continue to operate from Miami, Fla., in the sale of desert land near Kingman, Ariz., holding it forth as not only an ideal investment, but suitable for living now, despite the absence of individual water supply and other utilities and the various conveniences that go to make a normal existence.

Lakeside Estates, Inverness, Fla. Promoter Robert Douglas Craft, indicted January 15, 1964. He operated from booths at State fairs, home and flower shows, etc., and encouraged visitors to take a chance on a free lot located in Alabama, although the literature was prepared to indicate the land was in Florida. Virtually all who registered became "winners" and were required to pay closing costs varying from \$59.50 to \$129.85. The lots cost the promoter \$25 and their value and usefulness, as well as their location, were misrepresented. Craft is also under indictment with three other persons operating as Rio Grande Land Co., Inc., and Ranches of the Rio Grande, Inc., from Memphis, Tenn., in the disposal of land located in New Mexico. (See separate listing.)

Land Lists, Phoenix, Ariz. Promoter Thomas T. Cohen indicted February 27, 1963, for sale of land formerly under the Great Salt Lake and not accessible by auto any closer than 10 miles. He operated at fairs and other public events using the free lot gimmick.

Ronald Dale McCaw, Santa Ana, Calif. Operating under his own name, this man was indicted April 15, 1964, for the sale of land in Imperial County, Calif., to which he did not have title. At least 33 victims invested over \$13,000. McCaw carried out his campaign by direct mailings to prospects.

Rio Grande Land Co., Inc., and Ranches of the Rio Grande, Inc., Memphis, Tenn. Robert D. Craft, Bert Latimore, Dorothy R. Pugh, and Rosalie D. Sanderlin indicted February 17, 1964. They also operated from booths at fairs and similar public events offering the so-called free lots, subject to closing costs of \$49.30, which represented more than the land was actually worth, and in addition, made various misrepresentations as to the condition and usefulness of said land, located in New Mexico.

Southwest Development Corp., Springfield, Mo. Promoters Henry Thomas Settles, Julian E. Ebbert, Cecil Aubrey Hughes, and Ned W. Vail, indicted November 7, 1963. They operated the usual so-called free lot gimmick at fairs and other public events and the "winners" were not only required to pay so-called closing costs of about \$50 but were high pressured into signing contracts for lots costing over \$700 on which promises of various improvements were made but which were never carried out. Land in Missouri. Settles and Ebbert have been convicted for sale of land near Heber Springs, Ark., under names of National Sales & Development Corp., and Heber Springs Development Corp., and are awaiting sentence.

The Last Frontier, El Paso, Tex. Promoters William M. Scott, Raybon E. Hubbard, and Gerald P. O'Leary, indicted May 5, 1964. They induced public to register for free lots while visiting fairs and other public events for land located in Presidio County, Tex. Virtually all registrants, except duplicate names, subsequently received notices of award subject to usual closing costs of \$30. Land is located in mountains with ravines and approximately 4 miles over winding, hilly, and almost impassable roads from nearest town on a U.S. highway.

Western States Mailing Lists, Inc., and Tristate Title & Escrow, Inc., Phoenix, Ariz. Jacob Walz, Robert M. Walz, Lido J. Peduzzi, and Roger Engler, all indicted May 20, 1964. They disposed of land located in Kane County, Utah, by offering free lots by registration at supermarkets and other public places, with the usual proviso of the closing costs, in this instance, \$29. A further part of the

scheme was to contact the so-called winners and sell them warranty deeds under the name of Tristate Title & Escrow, Inc. Some warranty deeds were issued from unreleased parts of subdivision constituting a fraud also on original landowners who had conveyed title in deed of trust to Tristate. Thus the scheme had the potential of triple injury—the original sale of land to buyer under the free lot gimmick, the sale of warranty deed to these persons, and the illegal issuance of warranty deed affecting the original owner.

Land Management Corp., Abilene, Tex. Promoters Mr. and Mrs. William M. Scott indicted October 1, 1963. They induced persons visiting fairs and similar events to register for the so-called free lot situated in Presidio County, Tex., in an area designated by them as "the last frontier." Practically all registrants were "winners" but were required to pay the so-called closing costs, in this case usually \$19.80 for the virtually worthless land involved, and which they claimed was valued at \$395 a lot.

Senator WILLIAMS. Beyond that, we are in the early exploratory period, and we have been through this before with you folks, using the full disclosure technique to make it easier to stop the worst of these misrepresentations, in sales not only here in land but in other areas, too.

That doesn't really deal with your situation, but the SEC, most of its purifying effect in the investment and securities industry is on the basis of it has a requirement that new issues be accurately described in the prospectus prior to sale. The same with land.

We might be able here on a national basis to require a fair description and a full description of just what is being sold. We have discussed this in the health area. Have you thought further about that?

Mr. Callahan, we have discussed this, haven't we?

Mr. CALLAHAN. Yes; from time to time we have given it consideration. Very frankly, we had discussed this matter with the people in the Department of Justice and as Chief Montague says, insofar as the criminal statute goes, we feel that the law as presently written is adequate. In connection with the SEC regulation of securities swindles, every year we investigate numerous security frauds, many of which involve millions of dollars. So this in itself is not a panacea. Very frankly I think that in view of our past conversations that this State regulation would be the thing. I gather from talking to various groups from time to time that one thing that the real estate industry probably fears in any broad Federal regulation would be an avalanche of questionnaires and other supervisory provisions which might impede their progress.

I know that in our investigations here, of course, we investigate wherever fraud has been charged and wherever we are not certain that fraud has not been perpetrated. For instance, we have had investigations on some very well established firms like the Sun City operation in Arizona which is a very fine operation. But people have charged fraud there. I think any regulatory legislation that was written would have to be in such a form that it wouldn't impede these people from going into the desert and really setting up a legitimate operation.

In other words, if it were like some of these things where they might have to wait 2 or 3 or 4 years to get a Federal permit to operate, it might very well impede the free enterprise system and I think this is what they fear.

We are certainly not opposed to it at all. At least I am speaking just personally. I am not authorized to speak for the Department,

of course. But I think it is a matter that has to be approached with great caution.

Senator NEUBERGER. Wouldn't that be the easiest thing in the world for a legitimate operation to demonstrate it? It seems to me that the burden of proof is on them to show responsibility.

Mr. MONTAGUE. Senator, I think you would encounter the same problem which we have in getting the manpower to investigate these cases. Here we are hearing only about the frauds. We haven't heard about the thousands of legitimate developments and operations which are helping to build this country. Every one of them would have to come in here as well as those that might be frauds.

Senator NEUBERGER. If you have an IBM system, that would help. I would think the fact they had to file reports it would help cut out the bad ones.

Senator WILLIAMS. We had testimony yesterday that in the land development barrel of apples, 10 percent of the apples are rotten in Florida. Now that is a pretty high percentage.

Senator NEUBERGER. But it could be like the Bureau of Internal Revenue. They can't look over every return that comes in. But the fact that they pick out some makes everyone be good.

Mr. MONTAGUE. Senator, because they are not able to look at every income tax return, you do have fraud in income tax returns, too. We had no information that would verify the 10-percent figure mentioned. I think that the figures that we gave as to the amount filched from the public in these cases are accurate, and we can stand behind them.

I don't know whether anyone can stand behind the figure of 10 percent, but we can support the figures that we gave.

Senator WILLIAMS. How many States are involved in the 13 convictions?

Mr. MONTAGUE. Nine States are in the open indictments; seven States in the cases where we have had convictions.

Senator WILLIAMS. This man that gave us that testimony yesterday his name was McWhirter. Is he here? I had gone out when you made that statement yesterday, Mr. McWhirter. Did I say it accurately?

Mr. MCWHIRTER. No; I said 90 percent were registered with us and 10 percent were not. It doesn't mean that they are committing fraud because they are not registered.

Senator WILLIAMS. I am glad you were here to correct that statement.

To clear Florida here, are any convictions from Florida?

Mr. MONTAGUE. One indictment on a case in Florida.

Senator WILLIAMS. You know another way these operators are doing business these days, some of the swamp merchants—we had some very good testimony on this yesterday, too—are using the telephone, long-distance telephone calls.

Mr. MONTAGUE. Yes, sir.

Senator WILLIAMS. You don't reach the operator who is dealing with interstate commerce through the telephone.

Mr. MONTAGUE. Yes, we could, Senator, because usually a telephone call of this kind would cause the use of the mails as it could cause the

receiver of the telephone call to send an order through the mail or something of that kind so the mails would be brought into the picture.

Senator WILLIAMS. Yes, I see your point. Because one of the staff members at my request took a newspaper ad for one of these developers in Florida. She was getting a call a day and sometimes two. She received at least six or seven calls. Mr. Paulson from Florida yesterday stated that he did that, too. He said that the pitch got better all the time.

And then a fellow called and said, "We just learned that the power company is going to run a powerline down there." This was old news indeed. The company 2 years before had said that they were going to do it but didn't say when. Then he fixed a deadline but even after the 24-hour deadline had passed he still got calls from the salesman.

Mr. MONTAGUE. We did this with burial insurance for a dollar. And we can't get this poor fellow off the list. We have had all kinds of certificates and I expect somebody to come walking in someday to try to get that insurance.

Senator WILLIAMS. Well it has been very interesting, gentlemen. We are much appreciative to you for being with us. Thank you for your help between hearings, too.

Mr. MONTAGUE. Thank you, Senator.

Senator WILLIAMS. Now it is my privilege to introduce two distinguished constituents from New Jersey—Alton W. Van Horn, commissioner of the New Jersey Real Estate Commission, and Robert R. Peacock, secretary-director, who is becoming a regular commuter to Washington. We are honored, gentlemen.

I can't get home with this filibuster so we bring you here. Anyway you want to proceed at all, the floor is yours.

**STATEMENT OF ALTON W. VAN HORN, COMMISSIONER, NEW JERSEY REAL ESTATE COMMISSION, NEWARK; ACCOMPANIED BY ROBERT R. PEACOCK, SECRETARY-DIRECTOR, LIVINGSTON, N.J.**

Mr. VAN HORN. Mr. Chairman and Senator, may I work from my prepared statement and my notes and perhaps some exhibits?

Senator WILLIAMS. Yes.

Mr. VAN HORN. Our experience with the interstate promotional sale of subdivided lands is the basis of considerable, continuing concern—not with the many developers who fairly portray their product and deliver what the promotional material promises, but with the great number who do otherwise.

From the viewpoint of the densely populated, highly urbanized "investor" State like New Jersey, a number of interrelated factors become significant.

Typically the offering is 1,000 to 2,000 or more miles from the buyer. The distance, time, and cost make prepurchase inspection impractical. Hence almost total reliance, deservedly or not, falls on the promotional material. The result is the sight-unseen purchase—something ordinarily not done even with a \$2 necktie, let alone an investment or retirement purchase running to several hundreds or thousands of dollars.

The difference between the impression created by the promotional material and the true fact is of the greatest concern.

Artists' conceptions not labeled as such and alleged or suggestedly nearby—but actually quite distant—scenes are routinely used, instead of on-site or accurately labeled photos.

What pass to the uninformed as maps are too frequently prepared with shocking disregard to scale and proportion. Recreational areas, water bodies, and places where shopping, schools, and other facilities might be available, are pictured much closer than they are.

Distances tend to be indicated as "minutes away" instead of hours (at legal speeds) or in miles over travelable roads. One illustration was where you would have had to drive 68 miles in 45 minutes which is a little beyond the driving capability of most people.

The fact that flash floods, windstorm, sandstorms, temperature extremes and other weather phenomena affect some areas is not usually revealed; nor are such things as water depth (and cost to reach it), and the absence of vital services.

Another factor is the contract often used. The small downpayment makes it easy to take. The long term postpones the day of discovery (of just what one has purchased). This is like a long-delayed fuse on a potentially explosive situation.

Quite generally is the nonacceleration clause which prevents taking of title and delivery of deed before it meshes with the developer's convenience or his ability to release his mortgage or get subdivision approval. Some would take the money and give a certificate of ownership because they can't deliver a recordable deed.

The matter of a firm declaration of exactly what improvements will be installed—and when—is omitted more often than not and seems a very painful area even for discussion.

The usual money refund and transfer guarantee are far more useful to the promoter than to the investor or the retiree. They lull one into thinking it must be safe but, on close scrutiny, the money is returnable only on inspection and often only at the property, rather than at the point of sale. The exercise of the switch privilege—in order to reduce by many miles the distance between your lot and the nearest human abode, a water source or power line—may add to or multiply your cost.

The guarantees are sometimes amusing. One even makes the generous guarantee that the "full one acre rancho" embraces 43,560 square feet, a little like guaranteeing the foot to be 12 inches.

Speaking of fine print—a new twist is the back-of-the-contract pale gray, fine print. The things the developer wants read are in bold black, before you sign. Other things are on the reverse in pale gray. It often takes strong light, real diligence and optimum visual acuity to penetrate that verbiage.

New Jersey's law plus its regulations require that anyone physically within New Jersey, selling such land, must be real estate licensed; must seek release of the promotion; must file certain data; must submit to an at-site investigation of the land and must operate under conditions and restrictions which the Real Estate Commission may impose.

A recent law change provides for a commission-produced public report to be furnished the buyer before the purchase. We have de-

veloped and use a rather lengthy and rather searching questionnaire to begin to get the facts and to determine what they intend to do, and if they are truthful or not.

New Jersey's regulatory philosophy is that a New Jersey resident should be able to buy anything, regardless of its nature or value, provided he isn't being substantially misinformed or left materially uninformed.

Of course, the public's gullibility plays a big part and we've developed a cautionary, advisory piece in cooperation with the New Jersey Division on Aging, giving some do's and some suggested don'ts, some methods of getting at what the true facts may be from official services. The attempt is to get it in the buyer's hands before the purchase, rather than after the complaint. New Jersey's regulatory process has resulted in a number of releases and a number of denials, the latter usually based on an opinion of misimpression and insufficient revelation which I'll detail later in an actual case.

Inexplicit contracts and other things may contribute; however, regardless of the reasons, denial by New Jersey or any other investor State stops only a trickle. The main current and volume of this business is carried on across State lines by mail. If the promoter is denied, he simply pulls back across State lines and continues to pound away by mail, radio, and phone—the last with a boiler-room technique.

Usually one on the mail list gets not one piece of material, but the saturation approach—a shower of pamphlets, brochures, expert opinions, statements on leverage, growth potential, "reliable statistics"—so they say, news clips (often from the developer's own newspaper) and much other material designed to influence the purchase.

The developer often leaves half-hidden outs for himself from some of his claims and implications. One interesting escape device (or way of juggling price at will) is to indicate lot prices by color coding and then say, "Not responsible for errors in color printing. We reserve the right to correctly price such categories as may be improperly color printed."

Some idea of magnitude, and the developer's atmosphere, may be had from the plea in mitigation of one who had just pleaded himself guilty of a number of violations of New Jersey law and regulations. It was, "When an organization grows from a volume of \$5 million a year to \$68 million a year over a period of 6 years, as we have, naturally it's difficult to keep everybody under control."

From the record indeed it must have been difficult to keep them under control.

The committee has indicated an interest in an actual investigation—specifically one in Sandoval County, N. Mex.—made on reapplication and where the principal issue was promotional material, some 19 pieces of which were reviewed.

The material received I have here, if it is of interest. These comments, necessarily in some detail, are from or about material in the public record in New Jersey after a late 1963 investigation. Changes may have occurred in the meantime.

This is by no means an exaggerated, extreme, or bad situation. It is unlike the swamplands and we have had them, too. It is much of a middle-of-the-road approach. Much of the promotional material is fairly done; however, the facts and material reviewed caused denial



because of the opinion that it leaves significant facts unrevealed and would tend to create in the mind of a typical and reasonable reader an impression substantially at variance with the facts observed at and in the vicinity of the premises.

Some of the unrevealed items include any indication of the true nature of some of the land that is actually being sold—the arroyos, the washes, the gullies. The beautiful photographs show the developed area and give absolutely no idea of the nature of the underdeveloped area now being marketed.

Further, the fact that the elevation reaches 6,100 feet, is nowhere made plain. That is a little like living at the summit of Mount Washington, give or take 280 feet.

This could have medical implications to some retirees and certainly has financial implications, when one realizes that it is 1,000 feet, in my understanding, above known water levels—meaning a very considerable drilling depth and cost in order to obtain a water supply.

Extremes of climate are glossed over by dealing with average maximum temperatures and the fact that the sun shines every day—which, incidentally, is negated by U.S. Weather Bureau reports and I have been there personally during snowstorms and sandstorms. So I know it happens in the area but it is nowhere indicated.

The opinion of warranted denial was grounded on the following reasons stated as comments on the material presented and obtained or furnished in the course of the investigation.

This very colorful brochure contains statements which exceed allowable “puffing” and are insupportable. The only basis which the Albuquerque office manager can cite for the claim that “choice properties are bringing 20 times what they brought short years ago” lies in the fact that certain large bulk parcels—in certain instances running into thousands of acres—were sold at very low figures per acre and subsequently there were sales of very small portions thereof at figures which were higher on a per acre basis to the degree indicated in the exhibit.

At one point the brochure refers to Rio Rancho Estates as a beautiful piece of property on the banks of the romantic Rio Grande. Investigation of Sandoval County records gives no indication of any ownership of any land fronting on the Rio Grande by Rio Rancho. This manager’s response to this is that the property is under a contract or option arrangement and that Rio Rancho can pick it up any time they desire.

Any reference to being on the banks of the Rio Grande at the present time is felt objectionable on two counts. First, that no property on the banks of the Rio Grande is in fact being offered, and second, that Rio Rancho is in no position to deliver it at the present time. As a practical matter it simply is not on the Rio Grande.

It makes reference to a free property owner’s kit with certified land map showing the exact location of your homesite. The “kit” sent to the property buyer consists of a colorful, unscaled map, a very small scale, nearly unreadable map, and a metes and bounds description of the property. It is inadequate as a basis, in our opinion, for deciding whether to make a purchase or not, and it is inadequate as a basis for decision regarding the exercise of the switch option or transfer option.

This "kit" gives no indication of whether the land sold is near such limited development as does exist or perhaps 10 miles from it.

It refers to an exchange privilege, which occurs again and again. It occurs in the purchase contract in a somewhat broader form, in that the time limit of 5 years does not apply if the purchaser is about to build—in which event the exchange can be made at any time, if read one way. Read another way, the privilege of switching at no added cost into a piped water area would appear inapplicable unless the purchase price is paid in full within 30 days from the signing of the contract.

The agreement—gray print and all—is here if anyone desires to try to construe it.

This provision on its face seems a very generous one; however, upon analysis it is felt objectionable for the reason that it offers an exchange for any other available homesite at the same size and value and at no increase, et cetera, and yet the promotional material taken as a package fails to give clear indication as to which properties are developed areas within reasonable reach of the things that people need in order to live there and where utilities are available.

Thus a prospective purchaser would have no way of knowing whether he was buying 9 or 10 miles removed from such an area or whether he was buying adjacent to such an area.

Neither is there any indication given that the price is some \$900 higher in the area where the utilities are available. This is according to the manager who quoted figures of \$995 and \$1,895, respectively.

One whole block within this brochure contains a number of objectionable features. Reference is made in the opening paragraph to the fact that centrally piped water, piped gas, power and phone lines are available to each home in residential area now under construction, but gives no indication of how remote—chronologically or geographically—this situation is with respect to certain areas of the tract which are presently being sold.

No statement is made with respect to the fact that the purchaser who buys in a remote area would, if he desired to have the use of water, have to drill his own well. It would appear to be an absolute minimum requirement with respect to the water situation that a plain statement be made to this effect and that it be accompanied by a reliable estimate of the depth to which one would have to drill and what the cost of that drilling would be.

This paragraph refers also to the matter of the exchange and then goes on and assures the individual of a homesite with utilities "at all times"—without mentioning the limitations.

It is this reviewer's belief that the sum total effect would be to lead prospective purchasers to believe either that they will be in an area serviced by utilities or that they are assured of an exchange at any time whatsoever with no problem and at no increase in money.

Another part of the brochure, again, refers to Rio Grande River to which objection has earlier been noted. Reference is next made to police and fire protection. Full-time police protection is in the form of two men—a sheriff and an assistant who must serve the entire of Sandoval County. The sheriff states to this reviewer that he has a number (perhaps 50) of deputies but that none are in the Rio Rancho area, some 55,000 acres or thereabouts.

The fire protection is a little less realistic—the claim here being based on, what appears to this reviewer to be, a rather informal agreement on the part of the town of Bernalillo, stating that they have two fire engines and stating that they can respond to calls but not committing them to respond to fires.

It is unrealistic in terms of adequacy and it is unrealistic in terms of distance—the drive from Bernalillo being as much as approximately 13 miles to some portions of the tract.

Under the heading of "Taxes," reference is made to "an amazingly low current rate of about \$1 per lot per year." The assessor for this taxing district showed this reviewer a number of lot assessments and the resulting tax bills which run many times the quoted \$1 per year.

Lot	Block	Unit	State and county tax	School district tax
4.....	46	3	+\$2.70	\$3.27
5.....	6	8	+3.20	3.88
16.....	43	3	+5.98	7.25

These were checked at random and appear to make the statement in the brochure plainly erroneous.

The assessor states that the procedure is to assess at 25 percent of the purchase price and then to apply local and State rates plus school district rates. Following this by simple arithmetic suggests that in no event could a tax bill of \$1 or thereabouts per year result.

The manager stated that the \$1 estimate was based on the \$30 per lot assessment which the unsold lots carry while still in the hands of the developer.

Another brochure is believed to be broad in some of its statements, for example, where it refers to price increases up to "even 50 times or more in the past 20 years."

This promotional piece refers to the land as being well suited for homesites. Yet the prospective purchaser is not adequately made aware of the fact that utilities may be very remote indeed and that therefore, while the land itself may be physically suitable for homesites, it is not so suited in terms of availability of things necessary to the modern way of life.

The surprise here could be a shock, particularly to an eastern urbanite used to all services as a matter of course. This piece, again, makes reference to the exchange feature and at another point deals again with the 50 times increase in value and in this instance makes it since 1946.

This piece also makes reference to the fire and police protection which has already been commented on. It also refers to Rio Rancho as being bordered by several luxury communities and the Rio Grande. At best, there is only one luxury community generally close to the property in one direction, namely, Paradise Hills to the south. Much of the surrounding lands are what is known as Malpai.

The offering statement required by another State is submitted as promotional material yet the sales pitches which have gone through the mail, and been brought to the commission with the seal unbroken, did not contain this factual verified statement.

As a matter of fact, the mailings did contain certain brochures generally, but only generally, like some we've just discussed. They differed in the use of artists' sketches, tinkered pictorial maps, et cetera. This offering statement is fine, if made available, for a stock analyst and does clear up certain questions if you stay with it. However, it places too much of a reading burden and too much of a comprehension burden upon the typical prospective purchaser.

I believe the colorful brochures and catchy ideas they hold would completely overpower it, so to speak, and cause it to have little or no effect in the hands of the typical prospective buyer and reader.

The statement about lovely water underground is fine up to the point where it doesn't tell how far down and how much cost to reach it and how you pump it out in the back lots where there is no electricity.

The offering statement required by another State says that the company owns fee title, which does not jibe with Sandoval County information or with the manager's statement. It also says that the property is divided into approximately 9,200 lots which does not coincide with the county tax record indication of 28,251 lots taxed as unsold. These conflicting bits of information do not make judgment any easier.

Deeds reviewed in the Sandoval County courthouse involve transactions to individual purchasers in remote portions of the tract (that is, remote from utilities and present development). Yet not one piece of the out-and-out promotional material makes this remoteness apparent.

Viewed as a total package, the material submitted (or gathered) and the investigation clearly suggested, to me, the need for a procedure where a competent, impartially prepared, public report answering simply the questions of vital interest to the purchaser is put in the purchaser's hands before he buys. The verified offering statement may contain the facts but in my opinion it places too much of a reading and comprehension burden on the particular prospective purchaser of this sort of property. We should have something which strips the problem to its essentials rather than a flowery prospectus type of thing where the true facts may be buried in it.

The public is entitled to know what it is buying, know what the project has to offer and what it clearly lacks, and is entitled to see pictures of the rough parts that are actually being sold as well as the photogenic areas which are not for sale, or—which if they are—cost several times as much.

Senator WILLIAMS. That is a magnificent statement, Mr. Van Horn, a very comprehensive compendium of a lot of things we have heard here. It is very helpful for us. I wonder if you could amplify a little on just how the New Jersey Commission operates and how it becomes operative in any of these cases where an out-of-State seller wants to do business in selling this out-of-State land in New Jersey.

Mr. VAN HORN. Under our law, 45-16-15-1 he is required to seek release of the State. Fundamentally, he must work under a New Jersey licensee or become licensed himself. He is required to file through the channels of the New Jersey licensee a request seeking release of the subdivision, seeking the right to physically come into New Jersey to promote the land. And then he must submit the data

required by the questionnaires that I demonstrated earlier which is a rather searching thing.

He must file certain other documentary material with it and then submit to an on-site examination of the property. After the on-site examination of the property, the commission has the right—and as we see it, the mandate—to impose restrictions and conditions, where warranted, and he must submit to those restrictions and conditions in order to promote the land within the State of New Jersey.

Senator WILLIAMS. Is this true of any seller, no matter how he wants to come in, by mail, or ad, or phone?

Mr. VAN HORN. We haven't yet determined any way in which we have any legal right to require a person to do it unless he comes physically into the State of New Jersey. So the great mail flood goes just observed but untouched by us.

Senator WILLIAMS. So there is a gap? You cannot reach all of the sellers from out of State who are indeed selling in New Jersey?

Mr. VAN HORN. The gap, Senator, is much wider than the fence. It is practically all gap.

Senator WILLIAMS. Do you want to address yourself to that?

Mr. PEACOCK. Yes, sir. I would like to comment on that. I think, in our opinion, we are trying to keep up with this situation in New Jersey with the enactment of new legislation early this year which we consider full disclosure legislation which will require the commission to file a public report after we have investigated a development and have released. In New Jersey a copy of that report must be turned over to every purchaser and signed for.

We feel that we have almost complete control of the developer who is physically going into New Jersey to sell his lands. But when it comes to the mail-order type of operation, we are almost helpless here. We are of the opinion that this is where the Federal Government should step into the picture and try to develop some legislation that would restrict or control this type of advertising, if it is fraudulent, of course, but also if it is misleading and misrepresents the case.

Because a great number of people, not only in New Jersey, but in other States, are buying land through the mails on a \$10 down basis and \$20 a month, as you have probably heard in testimony many, many times. But I think this is the area where legislation is needed.

New Jersey, I don't believe, can produce this type of legislation, because we can't go beyond our borders. But I think the Federal Government can. And I think it is a question here of filling a very big loophole in this whole operation of land development throughout the country.

I believe Congress should address itself to this problem.

Senator NEUBERGER. I thought a most succinct line in your testimony, Mr. Van Horn, was that where you said:

New Jersey's regulatory philosophy is that a New Jersey resident should be able to buy anything, regardless of its nature or value, provided he isn't being substantially misinformed or left materially uninformed.

This, it seems to me, says in a nutshell everything about these promotional things. If you just left him on his own to go out and buy a lot for his retirement, he would do all right. But when you over-persuade him, or misinform him with these colorful brochures, then he is a victim.

One of the tenets of our Constitution is to promote the general welfare. We have established in the minds of our citizens that we protect them from frauds. They know that they are very likely to be sure they can eat food that is put up in cans, because our Department of Agriculture and Food and Drug Administration assures that it is safe. We are doing this on drugs. And they can buy, as the chairman said, securities with impunity.

I don't see what is to keep us from moving on into this area to provide for the public welfare, to assure them their safety in this thing. Just assume that if this goes through the mail that it is legitimate. You know I think it is like buying an automobile.

What do I know about what is under the hood of an automobile? I just know if it doesn't run and I buy on faith from some automobile company. We ought to believe that these people could buy on faith from a legitimate outfit. The Government has a right, I think, to see that they are protected.

Senator WILLIAMS. I certainly agree and you spoke the views that I have. Of course, Barnum will never be disproved in our time. A lot of this worthless land is sold not sight unseen, but in full view of the purchaser. He goes there, sees it, and still buys it. Well, that is fine. At least if he does not go he ought to have a fairly accurate description of what he is buying. It is ironic, but I know a man, a very good friend of mine, who happened to be the registrar of deeds and mortgages in Union County. Through the courthouse one day went like wildfire the great investment opportunity of buying acreage in New Hampshire. So Jim Delaney bought his acre for \$30. I went with him up to New Hampshire to try to find the property. Well we couldn't find the property, and I don't think he will ever find the property. But he is still as happy as a lark. He still owns an acre in New Hampshire.

Do you have any further ideas to help us on just how we could approach this problem, so far as a national purifying interstate land sale situation by Federal law and regulation?

Mr. VAN HORN. Senator, we believe—and I speak for everyone in New Jersey who has grappled with this problem, this has been thoroughly discussed at all affected levels of government in the State of New Jersey—that some sort of Federal registration legislation is necessary.

The differences in regulatory philosophy of the various States and regulatory practices of the various States, even those with the same laws has been redundantly told and I won't go through that. But we believe it can't be coped with at any way other than the Federal level.

We believe that a registration type law is the answer and one which would require a public report. We would like to make the suggestion that the public report be required to be in the possession of the individual before the purchaser, rather than shown to the individual.

The industry balks at this on the camel's nose in the tent theory. I am a practicing real estate broker and I know both sides of the story. I cannot see it. None of us can see it.

Nonetheless, we know that the industry balks, because they feel it will go far beyond subdivision promotions, and begin to control all interstate real estate practices. I don't believe that is so. There

are one or two small suggestions. It would appear that some of the resistance to it might be reduced if the number of lots that make the cleavage point, five lots, was increased quite a little bit because no five-lotter is going to practice in interstate commerce by mail with this many-thousand-dollar printing operation. It would appear to offer a little alleviation there. Another thought that has been considered is that in order to meet the objection to impeding the operation the developer might conceivably submit a proposed public report on a standard format, simply dealing with the salient points, the physical and climatological things, and things of that sort, and sufficiently illustrative that the man will know what it is all about, but stripped of all the flowery words they like to put in the prospectus.

He might submit a thing of that sort in tentative fashion for approval, thereby eliminating some of the delay in its preparation. Of course, it would be assumed that this would be done at the expense of the developer so that this would appear to meet some of the objection to the idea that this throws a great deal more burden on the Federal Treasury.

Regardless of the methods, I might say, something of this sort, in our experience, is very, very necessary now.

Senator WILLIAMS. You have relieved the State of some of the expense by requiring the developer to pay some of the expense of an on-site inspection?

Mr. VAN HORN. The reasonable out-of-pocket expense; yes, sir.

Senator WILLIAMS. These developers are physically coming to New Jersey and establishing resident agencies for the sale of their property, is that right?

Mr. VAN HORN. They are using resident New Jersey agents. They are not necessarily coming into the State. You have this three- or four-way reach to get at them sometimes.

Senator WILLIAMS. How long have we had the law?

Mr. VAN HORN. Longer than I have been on the real estate commission.

Senator WILLIAMS. This particular requirement?

Mr. VAN HORN. This 45-16-15-1 has been on since 1953. That I know for certain.

Senator WILLIAMS. Do you have any idea how many developers have come to the commission and requested the opportunity to sell?

Mr. VAN HORN. I am about to fail you, sir.

Senator WILLIAMS. Is it tenscore—hundreds?

Mr. PEACOCK. No; it is nowhere in that area. I would venture a guess, without checking the files. I would say it is close to 30 or 40 who have probably applied to the State under the statute.

Senator WILLIAMS. Would you judge and speculate how many developers are selling through the mails, by use of the telephone, or through advertising in various media?

Mr. PEACOCK. I think the only answer I could give to you along those lines, Senator, would be some months ago one of the New York newspapers ran an article on the New Jersey commission with respect to what it was doing in the out-of-State land development operation.

They said, "If you have any questions, if you are a New Jersey resident call or write to the commission." We were absolutely flooded with mail. And I would say that 90 percent of the letters we re-

ceived were about developments that were not released in the State of New Jersey, nor had they applied to the State of New Jersey. They were strictly dealing with New Jersey residents through the mails.

Mr. VAN HORN. They are so numerous I wouldn't venture a guess. It is just a flood, as we see it, from complaints and inquiries.

Senator NEUBERGER. You know when some old person has been taken in by one of these promotions, do they tell on themselves, or do they feel guilty about it? It seems to me there would be a real campaign among these old folks to say, "I got taken in by one of these things." But they don't do it. They don't seem to want anyone to know they were so stupid.

Mr. VAN HORN. Senator, some have come forth and very angrily indicated that they were taken in. They always preface it with "I was a sucker, but,"—then they go on about it. May I point out the long fuse, the delayed contract. The 6- to 10-year contract is the reason why we haven't seen the beginning of this thing really at the complaint stage.

Senator NEUBERGER. It is kind of like a gambler. He always tells you about how much he won and not how much he lost.

Mr. VAN HORN. If anyone is able to say that he won on this proposition.

Senator WILLIAMS. We found this psychology operative in this preneed burial service. People are very reluctant when the need comes, the family is very reluctant, to admit that they were hoaxed on this particular type of "insurance."

Well, we certainly have been helped tremendously, Mr. Van Horn and Mr. Peacock. We are grateful and I have a feeling that the pebble you have thrown into the pond will ripple out for long distances to come.

Mr. VAN HORN. Thank you very much for your interest in this matter.

(Further information supplied by Mr. Van Horn follows; also see p. 350.)



STATE OF NEW JERSEY  
Department of Banking & Insurance  
DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION  
1100 Raymond Boulevard Newark

PROMOTIONAL SALES QUESTIONNAIRE  
Combined With  
APPLICATION FOR INVESTIGATION  
And  
REQUEST FOR PUBLIC REPORT

Property known as \_\_\_\_\_  
\_\_\_\_\_

Situated in State of \_\_\_\_\_

County of \_\_\_\_\_

Filed by \_\_\_\_\_

New Jersey broker \_\_\_\_\_

New Jersey broker's license Reference No. \_\_\_\_\_

New Jersey broker's address \_\_\_\_\_  
\_\_\_\_\_

New Jersey broker's telephone no. (include Area Code) \_\_\_\_\_

Filing date \_\_\_\_\_

SEE APPLICABLE STATUTE, REGULATIONS & INSTRUCTIONS, Pages 20-24.

101 PROMOTIONAL SALES QUESTIONNAIRE & APPLICATION  
102 (Type or print legibly)

103 NAME OF DEVELOPMENT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

104 OWNER OF RECORD \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

105 ADDRESS OF OWNER \_\_\_\_\_  
\_\_\_\_\_

106 LOCATION OF DEVELOPMENT

107 (Submit as a supplemental exhibit\* an officially approved county map showing  
108 the location of the tract. This exhibit must portray the outline of the tract  
109 with reasonable scale accuracy.)

110 State of \_\_\_\_\_  
111 County of \_\_\_\_\_  
112 Town or \_\_\_\_\_ of \_\_\_\_\_

113 Distance in miles from nearest  
114 established City or Town . . . . . Road miles \_\_\_\_\_ Airline miles \_\_\_\_\_  
115 Name of above City or Town . . . . . \_\_\_\_\_  
116 Population " " " " . . . . . \_\_\_\_\_  
117 Source of population data . . . . . \_\_\_\_\_

118 ACCESS

119 Are all the lots, or parcels of land,  
120 in this tract presently accessible by  
121 automobile over existing roads? . . . \_\_\_\_\_  
122 If "No", is any portion of the sub-  
123 division accessible by automobile  
124 over existing roads? . . . : . . . . . \_\_\_\_\_  
125 If "Yes", give name of road and  
126 describe briefly its condition. \_\_\_\_\_  
127 If "No", how is access to said  
128 subdivision obtained? \_\_\_\_\_

129 PUBLIC TRANSPORTATION

130 State type, location and distance  
131 from tract and name of carrier/s . . . \_\_\_\_\_  
\_\_\_\_\_

132 \*To be submitted in the manner, form, etc., provided in instruction.

- 133 PUBLIC SCHOOLS (Nearest schools avail-  
 134 able to tract residents. In each  
 135 case furnish name of school district.)  
 136 High school - Location and distance  
 137 from farthest lot in tract . . . . . \_\_\_\_\_  
 \_\_\_\_\_  
 138 Junior high school - Location and  
 139 distance from farthest lot in tract \_\_\_\_\_  
 \_\_\_\_\_  
 140 Grammar school - Location and dis-  
 141 tance from farthest lot in tract . . \_\_\_\_\_  
 \_\_\_\_\_  
 142 SCHOOL BUS  
 143 Is it available? . . . . . \_\_\_\_\_  
 144 To grammar school? . . . . . \_\_\_\_\_  
 145 To junior high school? . . . . . \_\_\_\_\_  
 146 To high school? . . . . . \_\_\_\_\_  
 147 Is it free? . . . . . \_\_\_\_\_  
 \_\_\_\_\_  
 148 SHOPPING FACILITIES  
 149 State distance from farthest lot in  
 150 tract to nearest community shopping  
 151 center. Give location, scope and  
 152 name . . . . . \_\_\_\_\_  
 \_\_\_\_\_  
 153 HOSPITAL FACILITIES  
 154 Nearest hospital (name of) . . . . . \_\_\_\_\_  
 155 Distance from farthest lot in tract  
 156 in road miles . . . . . \_\_\_\_\_  
 157 Bed capacity . . . . . \_\_\_\_\_  
 158 Public or private . . . . . \_\_\_\_\_  
 \_\_\_\_\_  
 159 MEDICAL & DENTAL SERVICES  
 160 Distance from farthest lot in tract  
 161 to nearest doctor . . . . . \_\_\_\_\_  
 162 Distance from farthest lot in tract  
 163 to nearest dentist . . . . . \_\_\_\_\_  
 \_\_\_\_\_  
 164 FIRE PROTECTION  
 165 What provision is available for fire  
 166 protection? . . . . . \_\_\_\_\_  
 167 Distance from farthest lot in tract  
 168 to nearest fire station . . . . . \_\_\_\_\_  
 169 (If tract is not in an incorporated city but fire protection is to be made avail-  
 170 able, letter from the fire protection agency stating what protection is provided.\*)  
 \_\_\_\_\_  
 171 POLICE PROTECTION  
 172 Furnished by . . . . . \_\_\_\_\_  
 173 Distance from farthest lot in tract  
 174 to nearest sub-station . . . . . \_\_\_\_\_  
 \_\_\_\_\_

175 \*To be submitted in the manner, form, etc., provided in instruction.

176 WATER SUPPLY

177 State whether water supply company  
 178 will be municipal, public utility,  
 179 mutual, irrigation district, etc. . . . .  
 180 Name and address of company . . . . .

181 Who will pay costs of installation  
 182 of water? . . . . .

183 What costs, if any, will lot pur-  
 184 chasers have to pay for installation  
 185 of service to his house? . . . . .

186 If mutual water company is to supply  
 187 water, answer the following:  
 188 a. When was company formed? . . . . .  
 189 b. Does owner of tract already  
 190 own shares of stock sufficient  
 191 to supply each parcel in tract?  
 192 c. Are shares appurtenant to the  
 193 land? . . . . .  
 194 d. What cost, if any, will lot  
 195 purchaser have to pay for a  
 196 share of stock? . . . . .  
 197 e. When was a permit issued by  
 198 the local health department or  
 199 the State Board of Public  
 200 Health? . . . . .

201 If piped water is not presently  
 202 available to every lot in the tract,  
 203 what depth can water be found by  
 204 drilling? . . . . .  
 205 What is cost of drilling? . . . . .

206 (Submit proof of last two statements\*. If piped water exists, submit, as a  
 207 supplemental exhibit\*, a map of tract showing clearly the area/s served by  
 208 existing water mains.)

209 PUBLIC UTILITIES

210 Electricity - Is it available? . . . . .  
 211 If so, state name and address of  
 212 company to supply it . . . . .

213 Where are present facilities in  
 214 relation to tract? . . . . .  
 215 When will it be installed to indi-  
 216 vidual lots? . . . . .  
 217 What costs will lot purchaser have  
 218 to pay for extension of facilities  
 219 in order to receive service? . . . . .

220 \*To be submitted in the manner, form, etc., provided in instruction.

221 Gas - Is it available? . . . . . \_\_\_\_\_  
 222 If so, state name and address of \_\_\_\_\_  
 223 company to supply it . . . . . \_\_\_\_\_  
 \_\_\_\_\_

224 Where are present facilities in \_\_\_\_\_  
 225 relation to tract? . . . . . \_\_\_\_\_

226 When will it be installed to indi- \_\_\_\_\_  
 227 vidual lots? . . . . . \_\_\_\_\_

228 What costs will lot purchaser have \_\_\_\_\_  
 229 to pay for extension of facilities \_\_\_\_\_  
 230 in order to receive service? . . . . . \_\_\_\_\_

231 Telephone - Is it available? . . . . . \_\_\_\_\_

232 If so, state name and address of \_\_\_\_\_  
 233 company to supply it . . . . . \_\_\_\_\_  
 \_\_\_\_\_

234 Where are present facilities in \_\_\_\_\_  
 235 relation to tract? . . . . . \_\_\_\_\_

236 When will it be installed to indi- \_\_\_\_\_  
 237 vidual lots? . . . . . \_\_\_\_\_

238 What costs will purchaser have to \_\_\_\_\_  
 239 pay for extension of facilities in \_\_\_\_\_  
 240 order to receive service? . . . . . \_\_\_\_\_

241 SANITATION

242 Are public sewers now installed? . . . . . \_\_\_\_\_

243 If not, will they be installed? . . . . . \_\_\_\_\_

244 When? . . . . . \_\_\_\_\_

245 Who will pay cost of installation of \_\_\_\_\_  
 246 sewer system? . . . . . \_\_\_\_\_

247 Will lots be subject to a service \_\_\_\_\_  
 248 charge for sewerage? . . . . . \_\_\_\_\_

249 Who is to pay the cost of the sewer \_\_\_\_\_  
 250 extension to the house? . . . . . \_\_\_\_\_

251 Into what sewer system will tract \_\_\_\_\_  
 252 sewers discharge? . . . . . \_\_\_\_\_

253 Will lots be subject to assessment \_\_\_\_\_  
 254 for outfall sewerage? . . . . . \_\_\_\_\_

255 If public sewers are not to be \_\_\_\_\_  
 256 installed, are cesspools or septic \_\_\_\_\_  
 257 tanks to be used? . . . . . \_\_\_\_\_

258 Is cost of septic tank or cesspool \_\_\_\_\_  
 259 to be borne by lot purchaser? . . . . . \_\_\_\_\_

260 (If public sewers are not available, letter from local health authority stating what sewage disposal methods will be permitted must be furnished along with reports of percolation tests\*.)

261 \*To be submitted in the manner, form, etc., provided in instruction.

262 ELEVATION (In feet above sea level)

263 What is the maximum elevation within  
 264 the tract? . . . . . \_\_\_\_\_ feet  
 265 The minimum? . . . . . \_\_\_\_\_ feet  
 266 Source of these elevations? . . . . . \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

267 TOPOGRAPHY (Applicant is reminded that a

268 topographical map is required.  
 269 See Rule 25(A) - 6.)  
 270 Level, rolling, hilly or rocky? . . . \_\_\_\_\_  
 271 List all lots cut by erosions . . . \_\_\_\_\_  
 272 Has any draining, or filling, of said  
 273 lands been necessary or will it be  
 274 necessary to render them usable? . . \_\_\_\_\_  
 275 List all lots containing, or to con-  
 276 tain, filled ground . . . . . \_\_\_\_\_  
 277 Give maximum depth of fill . . . . . \_\_\_\_\_

278 (If there is, or will be, any filled ground in excess of 2 feet in the tract,  
 279 furnish letter as a supplemental exhibit\* from a qualified engineer as to suit-  
 280 ability for intended use, method of filling, compaction obtained and depth per  
 281 lot.)

282 SOIL CONDITION (Applicant is reminded that

283 a soil map is required. See Rule 25(A) - 6.)  
 284 Soil is suitable for what use? . . . \_\_\_\_\_  
 285 (Submit a report of soil analysis)

286 COVER

287 Describe the type of shrubs, trees or \_\_\_\_\_  
 288 other plants and shrubs found on the \_\_\_\_\_  
 289 lands in their natural state . . . . . \_\_\_\_\_  
 \_\_\_\_\_

290 USE POTENTIAL

291 For what use, or uses, will property be offered:  Residential;  Industrial;  
 292  Agricultural;  Recreational;  Investment and/or speculation;  
 293  Other - Describe \_\_\_\_\_  
 \_\_\_\_\_

294 If the property is to be offered for a use other than residential, submit, as a  
 295 supplement\*, evidence that will permit the Commission to make a determination as  
 296 to whether lands offered are, in fact, suitable for the use, or uses to be made.

297 (NOTE: All Public Reports issued will specify the exact use, or uses, for which  
 298 the land will be offered, and for any other use an amended report will be required.)

299 \*To be submitted in the manner, form, etc., provided in instruction.

300 DRAINAGE (Applicant is reminded that flood  
 301 and drainage report is also required\*.  
 302 See Rule 25(A) - 8.)

303 Are artificial drains, storm sewers,  
 304 dikes, dams or diversion works to be  
 305 installed? . . . . . \_\_\_\_\_

306 At whose expense are any such instal-  
 307 lations to be made? . . . . . \_\_\_\_\_

308 Is land subject to flooding? . . . . . \_\_\_\_\_

309 Under normal conditions are the lands,  
 310 or any portion thereof, washed or  
 311 covered by surface waters in any  
 312 portion of the year? . . . . . \_\_\_\_\_

313 STREETS & ROADS

314 Are streets bounding tract public  
 315 streets? . . . . . \_\_\_\_\_

316 (If not, explain on separate sheet\* how purchasers will have legal access to the  
 317 tract.)

318 Are streets within tract now dedi-  
 319 cated? . . . . . \_\_\_\_\_

320 When will they be dedicated? . . . . . \_\_\_\_\_

321 Are streets within the tract now  
 322 completely graded? . . . . . \_\_\_\_\_

323 Have they been accepted? . . . . . \_\_\_\_\_

324 Are streets within tract now sur-  
 325 faced? . . . . . \_\_\_\_\_

326 What type of surface? . . . . . \_\_\_\_\_

327 If not, will they be surfaced? . . . . . \_\_\_\_\_

328 When? . . . . . \_\_\_\_\_

329 Who will pay for surfacing? . . . . . \_\_\_\_\_

330 If streets are surfaced, who will  
 331 maintain them? . . . . . \_\_\_\_\_

332 Submit, as supplement\*, proof of any representation that maintenance will be by  
 333 any public agency. Such supplement should be a certified copy of the germane  
 334 resolution.

335 Submit, as supplemental exhibit\*, a map showing all streets within the tract and  
 336 clearly identifying those which are surfaced as of date of this filing and, in a  
 337 separate and distinct manner, those which are graded as of the date of this filing.

338 IMPROVEMENT DISTRICT

339 Is property within an existing or  
 340 proposed improvement district? . . . . . \_\_\_\_\_

341 What is the name of the district? \_\_\_\_\_

342 \*To be submitted in the manner, form, etc., provided in instruction.

- 343 Bonds have been, or are to be, issued
- 344 pursuant to what Improvement Act? \_\_\_\_\_
- 345 Have the bonds been sold? . . . . . \_\_\_\_\_
- 346 What is, or will be, the annual
- 347 assessment levied against each
- 348 parcel? . . . . . \_\_\_\_\_
- 349 What is, or will be, the term in
- 350 years? . . . . . \_\_\_\_\_
- 351 Will the amount of the assessment be
- 352 included in the sale price of each
- 353 parcel? . . . . . \_\_\_\_\_
- 354 Explain . . . . . \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

355 INCOMPLETE IMPROVEMENTS

- 356 State the anticipated completion date
- 357 of any presently incomplete improve-
- 358 ment which is promised, proposed or
- 359 otherwise referred to in any repre-
- 360 sentation or in any material
- 361 distributed to buyers . . . . . \_\_\_\_\_

362 CLIMATE

- 363 What is maximum summer temperature? \_\_\_\_\_ degrees
- 364 What is minimum summer temperature? \_\_\_\_\_ degrees
- 365 What is maximum winter temperature? \_\_\_\_\_ degrees
- 366 What is minimum winter temperature? \_\_\_\_\_ degrees
- 367 What is annual precipitation? . . . \_\_\_\_\_
- 368 Does part of this fall as snow? . . . \_\_\_\_\_
- 369 If so, how much? . . . . . \_\_\_\_\_
- 370 Is area subject to windstorms? . . . \_\_\_\_\_
- 371 Is area subject to sandstorms? . . . \_\_\_\_\_
- 372 Is area subject to any other weather
- 373 phenomena? . . . . . \_\_\_\_\_
- 374 Explain . . . . . \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

375 (Submit as supplement\* hereto U. S. Weather Bureau bulletin known as "Local  
 376 Climatological Data with Comparative Data" -- a bulletin showing normals, means,  
 377 extremes, averages, precipitation, degree days, etc.)

378 \*To be submitted in the manner, form, etc., provided in instruction.



379. SITUS STATE & AREA REGULATION & COMPLIANCE

380 Does the subdivision of these lands  
381 require approval of any (situs) State  
382 Agency? . . . . . \_\_\_\_\_

383 Any County Agency? . . . . . \_\_\_\_\_

384 Any Municipal Agency? . . . . . \_\_\_\_\_

385 Any District Agency of any kind? . . \_\_\_\_\_

386 Have required approvals been  
387 obtained? . . . . . \_\_\_\_\_

388 (If so, attach copies as supplements hereto\*.)

389 Is any building law, code, ordinance  
390 or restriction of any kind whatsoever  
391 applicable to construction on these  
392 lands? . . . . . \_\_\_\_\_

393 If so, state all such conditions and  
394 furnish copies of germane documents  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

395 If so, name agency or officer vested  
396 with jurisdiction . . . . . \_\_\_\_\_

397 Address of same . . . . . \_\_\_\_\_

398 What undertakings or obligations  
399 have the owners or developers  
400 entered into with a Governmental  
401 Agency or for the benefit of pur-  
402 chasers to assure the completion of  
403 the improvements listed elsewhere  
404 herein . . . . . \_\_\_\_\_

405. APPROVAL/S OR PUBLIC REPORT/S BY OTHER THAN SITUS STATE

406 Have any such approvals or reports  
407 been issued? . . . . . \_\_\_\_\_

408 By what States? . . . . . \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

409. TAXES/ASSESSMENTS

410 Are any lots within the tract or sub-  
411 division presently taxed as individual  
412 lots (as opposed to bulk assessment  
413 to developer)? . . . . . \_\_\_\_\_

414 How many agencies, districts or other  
415 agencies are empowered to tax lands  
416 within this tract or subdivision? \_\_\_\_\_

417 Name them . . . . . \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

418 \*To be submitted in the manner, form, etc., provided in instruction.

419 What is maximum total tax bill per  
420 year (current) on any individually  
421 taxed lot within the tract or devel-  
422 opment? . . . . . \$ \_\_\_\_\_

423 On what lot? . . . . . \_\_\_\_\_  
424 (Identified by Lot #, Block #, etc.) \_\_\_\_\_

425 What is minimum? . . . . . \$ \_\_\_\_\_

426 On what lot? (Identified) . . . . . \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

427 If no lots are individually taxed,  
428 what is your estimate of maximum  
429 total? . . . . . \$ \_\_\_\_\_

430 Minimum total? . . . . . \$ \_\_\_\_\_

431 (Submit as a supplement\* data on which you base this estimate.)

432 OTHER COSTS

433 Will purchasers be required to pay any  
434 sum other than actual purchase price  
435 in connection with their purchase, or  
436 ownership of lots in the subdivision,  
437 except taxes and assessments at  
438 approximately the levels above indi-  
439 cated? . . . . . \_\_\_\_\_

440 If "Yes", state the nature and amount  
441 of same . . . . . \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

442 PRESENT DEVELOPMENT & OCCUPANCY STATUS

443 How many lots or plots are in the  
444 entire development bearing the name  
445 first appearing hereon? . . . . . \_\_\_\_\_

446 How many have been conveyed by deed  
447 to individual lot buyers? . . . . . \_\_\_\_\_

448 How many sold on contracts presently  
449 in force? . . . . . \_\_\_\_\_

450 How many dwellings have been com-  
451 pleted? . . . . . \_\_\_\_\_

452 How many dwellings now occupied? . . . . . \_\_\_\_\_

453 How many persons now residing? . . . . . \_\_\_\_\_

454 \*To be submitted in the manner, form, etc., provided in instruction.

455 Are any lots or plots for which release  
456 and Public Report are herein sought  
457 more than 1000 yards removed from  
458 presently completed dwellings? . . . \_\_\_\_\_

459 From presently occupied dwellings? \_\_\_\_\_

460 What is the greatest distance from the  
461 farthest lot offered to an area of com-  
462 pleted and occupied dwellings? . . . \_\_\_\_\_

463 TITLE/FINANCING (Furnish copy of deed into  
464 present owner\* unless same be fully  
465 embodied in title policy required under  
466 Rule 25(A) - 13.)

467 Can owners convey merchantable title in  
468 said lands to purchasers, free and clear  
469 of all liens and defects, immediately? \_\_\_\_\_

470 If "No", why not? . . . . . \_\_\_\_\_

471 What liens or encumbrances presently  
472 exist against the lands? . . . . . \_\_\_\_\_

473 (Furnish photostatic copy of instruments creating same\*, unless same be  
474 embodied in title policy required under Rule 25(A) - 13.)

475 Are any lands being offered which are  
476 held under anything other than fee  
477 ownership (i.e., by option, uncon-  
478 summated contract, etc.)? . . . . . \_\_\_\_\_

479 If so, explain fully and attach, as \_\_\_\_\_  
480 supplements\*, copies of the applicable  
481 documents . . . . . \_\_\_\_\_

482 FINANCING

483 Describe what financing plan has been used or is to be used by you in financing  
484 the off-site improvements.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

485 \*To be submitted in the manner, form, etc., provided in instruction.

486 Describe what plan of financing has been used or is to be used by you in  
 487 constructing on-site improvements. (Please distinguish between financing  
 488 affecting more than one parcel and that affecting individual parcels.)

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489 Describe what plan of financing is to be used, and by whom, in the offering of  
 490 parcels for sale in this tract. If you contemplate arranging or providing for  
 491 secondary or other junior financing, give details.

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492 Describe fully any other plan of financing, and with whom, which may affect  
 493 title to this property which is not covered above.

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494 Are purchase moneys and deposits paid  
 495 in held in trust or escrow pending  
 496 actual delivery of title? . . . . .

---

497 If so, by whom? . . . . .

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498 Name of bank or depository . . . . .

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499 In case of default by owners or devel-  
 500 opers on obligations, what provisions  
 501 have been made to assure that pur-  
 502 chasers will receive title to lots  
 503 purchased, or in the alternative, a  
 504 full refund of all moneys paid? . . . . .

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505 (Attach copies of applicable agreements\*.)

506 Has the subdivision been approved or  
 507 disapproved by any mortgage lending  
 508 institutions or agencies for mortgage  
 509 loans on individual parcels? . . . . .

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510 If "Yes", state names of those  
 511 approving and those disapproving . . . . .

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512 \*To be submitted in the manner, form, etc., provided in instruction.

- 513 CONTRACTS/RECEIPTS, ETC. (Applicant is
- 514 reminded that all papers and documents
- 515 to be used are required to be submitted\* --
- 516 see Rule 25(A) - 4.)
  
- 517 Does deed fully recite all restrictions
- 518 and reservations of any kind and
- 519 nature? . . . . . \_\_\_\_\_
  
- 520 Or does it refer to them as being on
- 521 record? . . . . . \_\_\_\_\_
  
- 522 Does contract fully recite all
- 523 restrictions and reservations of any
- 524 kind and nature? . . . . . \_\_\_\_\_
  
- 525 Or does it refer to them as being on
- 526 record? . . . . . \_\_\_\_\_
  
- 527 Is it proposed that any instrument of
- 528 conveyance other than a deed be used? \_\_\_\_\_
  
- 529 If so, what? . . . . . \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
  
- 530 Furnish as supplement\* a copy hereof.
  
- 531 Does deposit receipt plainly state
- 532 what improvements are presently
- 533 installed immediately available to
- 534 the parcel being sold to that buyer
- 535 and included in the purchase price? \_\_\_\_\_
  
- 536 Does it plainly state what improve-
- 537 ments are to be installed in the
- 538 future by and at the expense of the
- 539 developer? . . . . . \_\_\_\_\_
  
- 540 Does it plainly state when these
- 541 improvements are to be completed? \_\_\_\_\_
  
- 542 Does it provide for time to be of the
- 543 essence for any performance of any act
- 544 or acts by either buyer or seller?
- 545 If so, explain fully . . . . . \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
  
- 546 Does the deposit receipt provide for
- 547 the retention of deposit moneys by the
- 548 broker or the seller under any set of
- 549 circumstances? . . . . . \_\_\_\_\_
  
- 550 If so, detail and explain . . . . . \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

551 \*To be submitted in the manner, form, etc., provided in instruction.

552 PROMOTIONAL MATERIAL, APPROACHES, PROCEDURES, METHODS & DEVICES

553 Applicant is reminded that certain advertising and promotional material is  
554 requested to be submitted\* -- see Rule 25(A) - 9.

555 Applicant is advised that advertising and promotional material is construed to  
556 include advertisements, circulars, brochures, printed or reproduced material of  
557 any kind whatsoever, photographs, photo slides for projection or use in a device  
558 commonly known as a viewer, motion pictures and--in the case of slides and motion  
559 pictures--any sound track or narrated comments used with these photographic devices.

560 If it is proposed to use in New Jersey any of the devices or material enumerated  
561 in the immediately preceding paragraph, same must be furnished for review and will  
562 remain part of the public record with respect to this application. Where sound  
563 tracks are to be used, a verbatim script must be furnished in typed form.

564 Will the promotion of this property in  
565 New Jersey include--by writing or oral  
566 statement--any promise, offer, repre-  
567 sentation or stipulation concerning:

- 568 Installation of a club house? . . . \_\_\_\_\_
- 569 Installation of a recreational area? \_\_\_\_\_
- 570 Money-back guarantee? . . . . . \_\_\_\_\_
- 571 Transfer privilege? . . . . . \_\_\_\_\_
- 572 Other warranty or inducement? . . . \_\_\_\_\_
- 573 A free trip to the property? . . . . \_\_\_\_\_
- 574 An allegedly reduced rate for a trip  
575 to the property? . . . . . \_\_\_\_\_
- 576 A prize of any kind? . . . . . \_\_\_\_\_
- 577 A free offering of any kind? . . . . \_\_\_\_\_
- 578 A rebate of any kind? . . . . . \_\_\_\_\_

579 If the answer to any of these questions is "Yes", explain each proposal in full  
580 detail including the financial and other arrangements made for the performance  
581 of these representations. (The applicant is advised that certain of the offers  
582 and procedures referred to may be violative of certain provisions of  
583 R. S. 45:15-17 and the Commission's Rules & Regulations.)

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584 \*To be submitted in the manner, form, etc., provided in instruction.

- 585 Is it proposed to use group meetings,  
586 dinner meetings, anniversary meetings  
587 or any kind of group presentation  
588 where prospective purchasers are to  
589 be invited? . . . . . \_\_\_\_\_
  
- 590 (If "Yes", give full details of the program, the presentation to be made and the  
591 devices and materials to be used in a supplemental\* statement.)
  
- 592 Does promotional material picture areas  
593 which are not being offered for sale  
594 and/or which are not covered by this  
595 application? . . . . . \_\_\_\_\_
  
- 596 If so, does it boldly and plainly  
597 state that these areas are not being  
598 offered for sale in New Jersey? . . . \_\_\_\_\_
  
- 599 Are pictures used to portray lands  
600 offered or conditions within the  
601 tract? . . . . . \_\_\_\_\_
  
- 602 If so, were they actually taken  
603 within the tract? . . . . . \_\_\_\_\_
  
- 604 Can the broker's or owner's repre-  
605 sentative on the tract point out the  
606 precise scene/s to this Commission's  
607 investigator? . . . . . \_\_\_\_\_
  
- 608 Are distances to various facilities,  
609 services, towns, etc., stated in  
610 actual road miles over open and  
611 travelable year-round roads? . . . . . \_\_\_\_\_
  
- 612 Are the distances given from the  
613 farthest lot or parcel? . . . . . \_\_\_\_\_
  
- 614 Does the promotional material contain  
615 references to past growth, predictions  
616 or promises of future growth, rise in  
617 value, rise in economic activity, etc? \_\_\_\_\_
  
- 618 Is the source material for such  
619 statements cited? . . . . . \_\_\_\_\_
  
- 620 (The applicant is advised that claims, statements, predictions, promises, etc.,  
621 --not supported either in the promotional material or by supplement\* hereto--  
622 may cause the Commission's Public Report to refer to unsupported and/or  
623 apparently unsupported claims, or words to that effect.)
  
- 624 Are "artists' conceptions" used? . . . \_\_\_\_\_
  
- 625 If so, are they plainly marked as  
626 such? . . . . . \_\_\_\_\_

627 \*To be submitted in the manner, form, etc., provided in instruction.

628 Are any maps used which portray dis-  
629 tances, relationships, etc., in other  
630 than true proportion or scale? . . . \_\_\_\_\_

631 Are any lands--shown by picture, map,  
632 sketch, artists' conceptions or other-  
633 wise as being within the development--  
634 held under anything other than fee  
635 ownership (i.e., by option, contract,  
636 etc.,)? . . . . . \_\_\_\_\_

637 If so, explain fully and attach, as \_\_\_\_\_  
638 supplements\*, copies of the applicable \_\_\_\_\_  
639 documents . . . . . \_\_\_\_\_

640 SALES RECORDS

641 Where are they to be kept? . . . . . \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

642 \*To be submitted in the manner, form, etc., provided in instruction.



643 APPLICATION

644 The undersigned \_\_\_\_\_  
645 (Owner/Developer)

646 hereby tenders this application and completed questionnaire together with  
647 exhibits numbered \_\_\_\_\_ to \_\_\_\_\_, inclusive, through a New Jersey licensed  
648 real estate broker, namely:

\_\_\_\_\_ (Broker)

650 for the purpose of inducing the New Jersey Real Estate Commission to investigate  
651 the development to which it pertains, to issue a Public Report thereon and to  
652 release the promotional sale of said lands in New Jersey pursuant to New Jersey  
653 R. S. 45:15-16.1 and Rule 25.

654 The parcels, plots and tracts for which this application is made  
655 are specifically identified as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

656 These parcels consist of \_\_\_\_\_ individual platted lots and embrace  
657 a total area of \_\_\_\_\_ acres.

658 These parcels do  do not  include the entire of the development  
659 known as \_\_\_\_\_

660 \_\_\_\_\_  
first herein located.

661 SIGNATURES -- OWNER/DEVELOPER & LICENSED REAL ESTATE BROKER

662 Owner/Developer

663 I hereby certify that the foregoing answers, including attached statements  
664 and exhibits, are true and correct.

665 Signed this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_.

666 \_\_\_\_\_  
Residence address:

667 \_\_\_\_\_  
(Owner/Developer)

668 If owner is a corporation,  
669 state capacity. \_\_\_\_\_  
Business address:  
\_\_\_\_\_  
\_\_\_\_\_

670 Licensed New Jersey Real Estate Broker

671 I hereby certify:

672 That I have reviewed all documents and promotional  
673 material proposed to be used by me in New Jersey in the promotional sale  
674 of this development,

675 That I have reviewed this questionnaire and application  
676 including supplemental statements, exhibits and documents,

677 That the content of this questionnaire and application as  
678 supplemented is accurate,

679 That the promotional material reasonably portrays the  
680 facts observed at and in the vicinity of the development, and

681 That I base these statements on knowledge gained by me  
682 in the following manner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

683 Signed this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_\_.

684 Residence address:

685 Licensed New Jersey Broker

686 License Reference # \_\_\_\_\_

Business address:

\_\_\_\_\_  
\_\_\_\_\_

687 AFFIDAVIT OF OWNER/DEVELOPER

688 STATE OF  
689 COUNTY OF

690 On this day personally appeared before me, the undersigned authority  
691 \_\_\_\_\_, who being by me first  
692 duly cautioned and sworn, deposes and states: that he is the person who  
693 signed the foregoing questionnaire and that the answers and information sub-  
694 mitted therein, including attached statements and exhibits number \_\_\_\_\_  
695 through \_\_\_\_\_, are true and correct, and that this affidavit is made for  
696 purpose of verifying the same under oath.

697 \_\_\_\_\_  
Affiant

698 Sworn to and subscribed before me this  
699 \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_\_.

700 Notary Public  
701 My commission expires \_\_\_\_\_

702 AFFIDAVIT OF LICENSED NEW JERSEY REAL ESTATE BROKER

703 STATE OF  
704 COUNTY OF

705 On this day personally appeared before me, the undersigned authority,  
706 \_\_\_\_\_, who being by me first  
707 duly cautioned and sworn, deposes and states: that he is the person who  
708 signed the foregoing questionnaire and that the answers and information  
709 submitted therein, including attached statements and exhibits number \_\_\_\_\_  
710 through \_\_\_\_\_, are true and correct, and that this affidavit is made for  
711 the purpose of verifying the same under oath.

712 \_\_\_\_\_ Affiant  
713 Sworn to and subscribed before me this  
714 \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_.

715 \_\_\_\_\_  
716 Notary Public  
My commission expires \_\_\_\_\_

717 STATUTE: Title 45, Chapter 15, Section 16.1 as amended

718 Promotional Sales of Property Located Outside State; Investigation

719 Any broker who proposes to engage in sales of a promotional nature in this  
720 State of property located outside of this State must submit to the commission,  
721 before doing so, full particulars regarding such property and the proposed terms  
722 of sale, accompanied by a filing fee of \$50.00, and said broker and his salesman  
723 must comply with such rules, regulations, restrictions and conditions pertaining  
724 thereto as the commission in its discretion may impose. The commission shall  
725 investigate all such matters, and all expenses incurred by the commission in  
726 investigating such property and the proposed sale thereof in this State shall be  
727 borne by the broker. No broker or salesman shall in any manner refer to the New  
728 Jersey Real Estate Commission, or to any officer or employee thereof, in selling,  
729 offering for sale, or advertising, or otherwise promoting the sale, mortgage or  
730 lease of any such property except in the manner provided for by this section.

731 The findings of the commission's investigation of any such property shall be  
731.1 contained in a public report, which the commission may have published. A clearly  
731.2 identified copy of the commission's public report on such property shall be given  
731.3 to each prospective purchaser or lessee by the broker prior to the execution of a  
731.4 contract for the sale or lease of any portion of the said property. A receipt for  
731.5 a copy of the report from the purchaser shall be taken by the broker and, if a  
731.6 contract of sale or a lease shall be entered into, the receipt shall be kept in  
731.7 the broker's files for a period of 3 years and shall be subject to inspection by  
731.8 the commission.

731.9 Any such public report of the commission shall not be used for advertising or  
731.10 sales promotional purposes unless it is used in its entirety. No portion of the  
731.11 report shall be underscored, italicized or printed in larger or heavier type than  
731.12 the balance of the report, unless the copy of the report furnished by the commission  
731.13 so indicates.

731.14 Every broker or employee who knowingly authorizes, directs or aids in the pub-  
731.15 lication, advertisement, distribution or circulation of any false statement or  
731.16 material misrepresentation or who with knowledge that any advertisement, pamphlet,  
731.17 prospectus or letter concerning such property or subdivision contains any written  
731.18 statement that is false or fraudulent, or causes the same to be issued, circulated,  
731.19 or distributed, concerning any such property or subdivision thereof offered for  
731.20 sale or lease in this State, shall be guilty of a misdemeanor, and upon conviction  
731.21 thereof shall be punished by a fine of not more than \$2,500.00 or by imprisonment  
731.22 for not less than 2 years or more than 3 years, or by both such fine and imprison-  
731.23 ment.

732 RULES & REGULATIONS: Rule 25 as amended

733 Promotional Sales of Out of State Property -- Requirements

734 The following Regulations are applicable to promotional sales of out of  
735 State property in this State in accordance with the provisions of N. J. S. A.  
736 45:15-16.1.

737 No person, firm or corporation other than a duly licensed New Jersey real  
738 estate broker may apply for an investigation of a property located outside  
739 this State as provided in N. J. S. A. 45:15-16.1.

740 The Commission shall require an applicant to submit certain documents prior  
741 to inspection, which shall, together with review of the tract, form basis for  
742 the Commission's judgment whether to permit the offering of these lands or  
743 grant a hearing upon request, to determine whether or not the offering of these  
744 lands should be denied in the best interests of the general public.

745 (A) The Commission shall require that a questionnaire shall be completed  
746 under oath by the developer and that the documents, statements and data listed  
747 below shall be furnished to the Commission prior to review. Furthermore, the  
748 licensed New Jersey real estate broker representing and presenting the offering  
749 of said developer shall certify that he has reviewed all documents and promotional  
750 material proposed to be used in New Jersey; and that he certifies to the accuracy  
751 thereof and to the fact that the promotional material reasonably portrays the facts  
752 observed at and in the vicinity of the development.

- 753 Required documents, statements and data:  
 754 1. Certified Title Policy covering subdivision.  
 755 2. If there is a trust deed or mortgage on the land with conditional  
 756 release clauses, a copy thereof to be furnished.  
 757 3. A statement of the method of the handling of all deposit moneys  
 758 from purchasers until the closing of title.  
 759 4. Papers to be used in sale, such as deed, trust deed, contract,  
 760 lease, option, receipts of deposits, etc.  
 761 5. Conditions and restrictions affecting the lots, including mineral  
 762 rights or reservations of any nature whatsoever.  
 763 6. Copies of approved maps or plats showing property to be offered for  
 764 sale and maps depicting topography and soil.  
 765 7. Documentation by any appropriate governmental authority with respect  
 766 to the availability and potability of water, and with respect to  
 767 sanitary disposal of human waste.  
 768 8. Report of flood hazards and drainage from flood control engineer or  
 769 other qualified authorities.  
 770 9. Copies or proofs of advertising and promotional material which shall  
 771 cover a detailed description of lands offered, any reservation in  
 772 connection therewith, the plan under which it is to be sold, and such  
 773 other factors as the review herein provided for may indicate.  
 774 10. Price list covering specific plots to be sold, and terms and conditions  
 775 under which purchaser is to be induced to agree to buy.  
 776 11. A financial statement covering individual, copartnership or corporation  
 777 holding title, together with bank references.  
 778 12. List and addresses of all officers or individual owners of the property  
 779 being sold. This is construed to mean all parties in interest to said  
 780 promotional sale, including all others having an indirect interest  
 781 therein. A certified statement in respect to these individuals shall  
 782 be furnished and shall set forth in detail any prior arrests or con-  
 783 victions in any jurisdiction, or any license revocation or suspension.  
 784 If the answer is "None", this fact shall be indicated and similarly  
 785 certified.  
 786 13. A certified copy of any report of review, inspection, approval or  
 787 release which may be required by the State in which the lands to be  
 788 promoted are situated.
- 789 (B) The Commission designee shall render a report of his findings on a uni-  
 790 form form provided for such purpose.
- 791 (C) Where the Commission denies the request for authorization to engage in  
 792 the sale of a promotional nature in this State of property located outside of  
 793 this State, the broker may request a hearing before the Commission.
- 794 The foregoing sections of the Statute and the New Jersey Real Estate Commission's  
 795 Rules & Regulations are here inserted for the ready reference of the applicant/s  
 796 and affiant/s.
- 797 Their inclusion does not relieve the applicants and affiants from compliance with  
 798 other laws and regulations.

799 INSTRUCTIONS--PLEASE READ CAREFULLY800 GENERAL

801 All questions must be answered and all documents requested--including those  
802 provided for in Rule 25(A) 1 to 13, in certain references thereto and elsewhere  
803 herein--must be submitted.

804 FILING OF DOCUMENTS, EXHIBITS AND SUPPLEMENTAL MATERIAL: MANNER--FORM

805 Where a document or exhibit of any kind is required (or desired by the applicant)  
806 to be submitted--and where the answer to any question requires greater space  
807 than provided in this questionnaire and application--such documents, exhibits,  
808 supplements or continued answers shall be submitted permanently fastened into a  
809 firm binder not smaller than this questionnaire and not greater than  $9\frac{1}{2}$ " x  $14\frac{3}{4}$ "  
810 in size. Such permanent fastening shall be by post or similar type binding  
811 devices (loose leaf rings not acceptable) and (such fastening) shall be installed  
812 at the top or short axis of the page.

813 The exhibits and documents required by sections 1 to 13 of Rule 25(A) shall be  
814 the first to appear in the binder herein required.

815 Any document, exhibit or other material which exceeds the size of the binder in  
816 which it is submitted shall be firmly fastened to a binder strip so that no part  
817 of the exhibit's content is covered by the binding device and shall be folded in  
818 such a fashion that the entire of the exhibit may be examined without removal  
819 from the binder and so that the (folded) size roughly equals, but does not exceed,  
820 the size of the binder.

821 A special exception to the immediately foregoing folding and size requirement shall  
822 apply (only) to maps--the area of which exceeds 6 times the size of the binder  
823 submitted and which maps shall have: (1) been prepared by or for an agency of  
824 government or (2) been prepared (and signed by) a licensed engineer for the  
825 purpose of depicting plot sizes and dimensions, roads, streets, drainage, topogra-  
826 phy and other physical conditions or (3) been prepared (and identified by)  
827 recognized air mappers.

828 Maps falling within the size and origin categories immediately above stated may  
829 be submitted rolled.

830 Where any exhibit is printed on 2 sides, it shall be submitted in duplicate with  
831 each copy bound into the binder as herein provided for. One such copy shall be  
832 inserted face up and the other, reverse side up.

833 DOCUMENTS, EXHIBITS AND SUPPLEMENTAL MATERIAL: LABELLING & IDENTIFICATION

834 Each document, exhibit and supplemental sheet submitted shall bear a legend  
835 stating the number of the subsection of Rule 25(A) or the instruction or question  
836 referring to it and, if there be more than one sheet submitted in connection with  
837 any given number, such additional sheets shall bear consecutive letters of the  
838 alphabet following the number.

839 All identifying numbers and letters shall appear in the lower right corner of the  
840 sheet. Where a sheet is folded, as herein provided for, such lettering shall  
841 appear both on the fully opened face of the sheet and on the portion exposed when  
842 folded.

843 Material above permitted to be submitted unfolded and unbound (limited to certain  
844 maps as above defined) shall bear identification in the manner provided above;  
845 shall be identified on both face and reverse and shall be delivered properly  
846 protected against damage by crushing.

847 All identifying numbers and letters shall be so affixed as not to obscure any  
848 of the content of the exhibit.

849 If the portion of the exhibit--where the identification here required to be  
850 placed--shall be other than white in color, a white pressure-sensitive label shall  
851 first be affixed and the identification shall be placed on such white label.

852 FEEES-COSTS

853 A filing fee in the amount of \$50 by check or money order, payable to the  
854 State Treasurer of New Jersey, shall accompany this application and ques-  
855 tionnaire.

856 If and when this application and questionnaire shall have been examined by  
857 the Real Estate Commission and found to be complete and in proper form, the  
858 Commission shall furnish the applicant with an estimate of the cost of  
859 investigation. The applicant shall then forward the estimated amount, with  
860 the understanding that any unexpended portion of such funds advanced will be  
861 returned to the applicant and that any deficiency will be made up by the  
862 applicant when advised of such deficiency.

863 REQUIRED RECEIPT FOR PUBLIC REPORT

864 Approved Form for Receipt of Public Report. The following form shall be  
865 used by the broker as the receipt to be taken from prospective purchasers for  
866 the copy of the Public Report which must be given to prospective purchasers.

867

RECEIPT FOR PUBLIC REPORT

868 The broker is required to give you an opportunity to read  
869 the Public Report before you enter into a binding agreement to  
870 purchase.

871 Do not sign unless you have read the Report.

872 I have read the New Jersey Real Estate Commission Report on:

873 \_\_\_\_\_ (Res. No.) \_\_\_\_\_ (Tract No. or Name)

874 The date of the copy of said report which I received and read is:

875 \_\_\_\_\_ Name

876 \_\_\_\_\_ Address

877 \_\_\_\_\_ Date

878 Broker is required to retain this receipt for three years.

879 The border used above is not required on the receipt form; it merely sug-  
880 gests a size you might want to use for your form. However, the wording in  
881 your form must be exactly as that appearing within the border except that you  
882 may add your firm name at the top if you care to. Relative type size must  
883 adhere to that displayed in the sample above.

884 CHANGE REQUIRES NEW APPLICATION

885 Any change in promotional plan, promotional material, scope of development,  
886 physical facts at the premises or legal status of the project shall if  
887 material require the furnishing of a new application and such other data as  
888 the Commission may require.

889 OMISSION OF ADVICE--REMINDER DOES NOT RELIEVE

890 To facilitate completion of this questionnaire and application, there has  
891 been inserted advice regarding certain specific questions and certain  
892 reminders. Failure of this document to advise or remind with respect to  
893 any specific requirement or construction shall not relieve the applicant  
894 of the requirement of compliance.

895 PUBLIC REPORT--DELIVERY AND REPRODUCTION OF

896 The Commission, upon completion of its Public Report, will furnish one copy  
897 to each applicant named in the questionnaire and the application.  
898 The applicant will thereafter cause the Report to be reproduced in its  
899 entirety for use as prescribed in 45:15-16.1.



Senator WILLIAMS. It was scheduled that the American Realty & Petroleum Co., represented by the chairman of the board, James H. Cromwell, would be here at this point. We have a wire of regret which I would like to read into the record.

Regret that a sudden conflict of schedule makes it impossible for our company to have a representative in Washington on Wednesday, May 20. We sincerely regret this unfortunate circumstance.

And I, of course, regret this, too. If you will remember this company was described in some detail on Monday by Mr. Caro, and we just heard additional commentary. It was also reported to staff members by representatives of that company that the company wanted to testify.

We were told that the company would support Federal legislation and that the company wished to make a statement urging high ethical standards for the industry. Needless to say, we will keep the record open and again ask the company to submit the statement that it had requested permission to make.

(Statement in appendix material, p. 338.)

Rio Grande, incidentally, is the development named by American Realty & Petroleum Co. that Mr. Van Horn was describing.

Mr. John R. Hoffman, vice president of the National Better Business Bureau. We welcome you to our subcommittee, Mr. Hoffman. The BBB has been very helpful to us. We have had other spokesmen for the BBB and we welcome you.

#### STATEMENT OF JOHN R. HOFFMAN, VICE PRESIDENT, NATIONAL BETTER BUSINESS BUREAU

Mr. HOFFMAN. Thank you. Mr. Chairman, committee members, we greatly appreciate the invitation from this committee to appear before you today and are pleased to discuss the present state of real estate activities throughout the country as reflected by our records.

The files of the National Better Business Bureau extend back over 50 years, and precede the Florida land boom of the 1920's. We have files on "Muscle Shoals," "Boulder/Dam," and other real estate ventures popular in the 1920's, unknown to most of us today, as well as the Florida properties. Indeed, we have an example of advertising that appeared in 1908 seeking parties to invest \$3 a week for 10 acres of land in Texas at a total cost of \$483.

Almost 10 years ago the current boom in buying land by mail got underway and seemingly reached a crescendo more than a year ago. This bureau has received thousands of requests during this 10-year period for information on projects ranging from the Laurentian Mountains of Canada to Costa Rica, from the British Leeward Islands of the Caribbean, to Hawaii.

This boom reached such proportions and the volume of inquiry became such, a few years ago, that we prepared a general bulletin entitled "Real Estate Promotions" to aid parties in conducting their own investigation if we had no report to furnish them. A copy of this bulletin is appended to my statement.

While recognizing the need for more attention to this field we sought help in coping with the problem. A committee of the Association of Better Business Bureaus explored the situation and first approached

a trade association in the real estate field for help in dealing with the overwhelming demands made upon the better business bureaus. Our efforts in formulating a program with the trade association did not meet with success.

In October 1962, we promulgated our recommended standards for land advertising as a guide for the industry in the use of appropriate language in advertising and what should be included in the advertising. The crux of the recommended standards was full disclosure of the basic nature of the land offered.

We think that the widespread distribution of the standards has been helpful in getting more accurate advertising offered. We have worked closely with media in interpreting and commenting on advertising and giving opinions on it when invited. We believe that our standards have been helpful to media in gaging the accuracy of advertising.

The better business bureau tried to enlist the cooperation of the land developing industry in the implementation of these standards through voluntary self-regulation and, while a number of legitimate developers were cooperative, the industry program never materialized.

The advertising of many questionable and speculative propositions reached such proportions that a number of States recognized the problem and passed legislation governing subdivision offers within their borders, and sales of out-of-State land to residents, within their State.

An example of the concern shown by many States was a conference called by the attorney general of California in October 1962 to discuss the question of speculative land promotions and at that time it was stated by the attorney general of California that the problem of interstate speculative land promotions was of major concern to our Nation.

Shortly before and after this meeting a number of magazines and newspapers focused attention on the hazardous nature of certain of these offers. Several television programs spotlighted the problem, national magazines devoted many pages to discussing it, and a number of newspapers had series describing and depicting arid lands of the Southwest, swampland in Florida, and so forth.

Thus, national attention was drawn to fraudulent land offers. The National Better Business Bureau had sounded a warning early in 1962 and subsequent to that time more than a dozen States have passed legislation to minimize questionable activities within their borders. Canadian provinces also have followed suit. There were already some laws existing, exemplified by the leadership of California and Arizona.

In January 1964, Mr. K. B. Willson, president of this bureau, made a detailed statement before the U.S. Senate Special Committee on Aging, pinpointing certain frauds and misrepresentations affecting the elderly. It was pointed out that although the majority of land promotions were sound, and involved experienced and well-financed firms offering land suitable for habitation, there was a minority engaging in deceptive advertising offering submarginal land, claiming it to be suitable for retirement.

Mr. Willson observed that many aging persons hoped to retire to distant communities in States far removed from their present location and had been grossly deceived by glowing descriptions in advertising of a number of "paradises" alleged to meet their hopes and needs.

Some of these "retirement havens" were in fact uninhabitable because of unavailability of water or the prohibitive cost of securing

same, the fact that the land was on the slopes of an active volcano, marshland which was under water part of the year, et cetera.

Mr. Willson emphasized the shaky financial background of certain of the promoters, pointing out that funds collected from monthly payments were not safeguarded in any manner, but immediately used to bulldoze a few roads in the project or acquire more marginal land.

Attention was drawn also to the "free lot" gimmick used to snare the elderly at expositions and fairs. Virtually all those who signed up for information at a booth subsequently were congratulated on having won a "free lot" which it turned out would cost them anywhere from about \$40 to almost \$200, usually a small parcel being involved.

If they fell for this device, wherein undesirable land was in fact overpriced for the alleged "closing cost only," they were then often high-pressured into buying adjoining property at even more highly inflated prices. This scheme is still going on to bilk many thousands who have purchased marginal land at grossly excessive prices.

Shortly after Mr. Willson's testimony the first indictment by the Justice Department based upon investigations by the Post Office Department was announced. Subsequently, during the past year and a half there have been about a score of indictments; a number of which have now resulted in jail terms and fines, with trials of others pending.

The net effect of the extensive national publicity—the action of States in regulating promoters and developers, investigation by postal inspectors, BBB warnings, the many indictments, et cetera, coupled with the investigation of the Senate Committee on Aging—has been a marked lessening of questionable activities in this field.

A number of marginal promoters seem to have "gotten the word" and have discontinued. Obviously, the experienced and well-financed nationally known firms are continuing and we can, today, see a number of eminently satisfactory, attractive retirement communities created by the responsible elements in the real estate field.

The National Better Business Bureau has not received nearly so many inquiries or complaints during 1964 as in the past few previous years, for these reasons. We recognize that although there has been marked improvement there are still problem areas in this field, particularly with projects located outside the continental limits of the United States.

It is difficult for most U.S. residents to make a personal inspection of property which might be located in British Honduras or Brazil or Costa Rica and so the door is open for exaggerated descriptions, failure to disclose the true nature of the property, et cetera.

There has been an upsurge during the past year or two in projects located in the Caribbean area, particularly in the Bahamas. Certain of these projects are very plush indeed with the cheapest lot sometimes costing \$16,000 or \$18,000.

However, the bulk are not adjacent to Nassau but are located in one of the "out islands." In these cases we feel that the advertisers are especially well advised to include full details, since many U.S. citizens obviously are not familiar with conditions in relatively remote Caribbean Islands, whether English-speaking or not.

Particularly, many of these promotions are emphasized as desirable "investment acreage" and promises of great increases in prices are made. It might even be that certain of these offers promising sub-

stantial returns from the efforts of others border on the offer of a security.

We tell the public inquiring on "investment offers" that the purchase of undeveloped acreage is a highly speculative proposition depending for success on many factors that are difficult to estimate even when one is completely familiar with a given area. We urge a thorough personal investigation and a decision based on facts developed, after personal inspection.

We are pleased to have had the opportunity to appear before this committee and to express our views that in general the situation in connection with subdivision offers is not of the same intensity now as a year or two ago. We are hopeful that through the exercise of self-discipline, the responsible elements in the industry will bring about continued improvement and correction of the problem which has the attention of this committee.

Thank you.

Senator WILLIAMS. Thank you very much, Mr. Hoffman. Did you sponsor a meeting of the industry last year?

Mr. HOFFMAN. Yes; we had a meeting last December in Scottsdale, Ariz., near Phoenix wherein the bulk of the industry was invited to attend the meeting to implement a program of self-regulation. We proposed a 10-point program to the entire industry, an example of which I have here, which we would have implemented.

Regrettably that program has not been put into effect.

Senator WILLIAMS. You wouldn't have been able to gather or to bring to the meeting the worst of these operators, would you? They wouldn't come out, would they?

Mr. HOFFMAN. We had nearly a hundred representatives there representing both the good and the bad. Some I would characterize as highly promotional operators. Others were definitely responsible developers who had a community to show. They were, I am afraid, in the minority of that group.

Senator WILLIAMS. What were the lines of discussion in this industry group?

Mr. HOFFMAN. We presented, as I say, this 10-point program of what we proposed to do about the problem. We had many questions and an open meeting after our various presentations and answered many questions.

There seemed to be some enthusiasm among a number of the industry people there. And then there was a closed industry meeting thereafter wherein the question of raising of funds to implement a program was discussed. It was decided that an effort would be made and we were given assurances that the funds would be raised to implement the program, but this has not happened.

Senator WILLIAMS. If we wait for effective self-regulation I imagine we will be waiting a long, long time, won't we?

Mr. HOFFMAN. It is conspicuous by its absence at the present time.

Senator WILLIAMS. Do you have any observations or suggestions as to whether or not the Federal Government should bolster the State governments in the obvious desire to get the charlatans out of business?

Mr. HOFFMAN. In general, of course, better business bureaus espouse self-regulation of business. That is our usual commentary, hoping

that business will recognize its obligations. For instance, in the case of securities, I think we have all seen the effective activities of the National Association of Securities Dealers in expelling certain members, putting other members on probation, and doing a real policing job among their membership.

To the best of my knowledge, there is not even a national association of real estate developers or land sellers. There is nobody to do such policing. It would seem clear that in the absence of any program of self-regulation someone has to take certain responsibilities. The better business bureau surely cannot do it alone.

We don't have the staff nor the time and money to police the industry and to get voluntary cooperation. The better business bureaus are sometimes told to go and fly a kite, that it is none of our business whether the advertising is or is not accurate.

Senator WILLIAMS. You know the securities industry was certainly aided a great deal in establishing their own self-disciplining rules and regulations by the Securities Act of 1933, the Exchange Act of 1934, the Investment Advisers Act—all of this legislation that they are now grateful for, because it has purified to a great degree the securities market.

This all spurred them into professionalizing the industry that had gone so sour during the twenties. We even have a bill half passed to even further purify the security situation by including over-the-counter issues within the general frame of the securities exchange program.

Mr. HOFFMAN. As I indicated in my statement there might even be a question as to whether some of these "investment acreage" offers could even be construed as a security or not. I don't think a clear determination has ever been made. We have presented several cases to the Securities and Exchange Commission where they did say it was a security and they were ordered to register.

But usually that involved the raising of citrus trees in Florida, or the raising of cattle on certain acreage in Texas, or the raising of hardwoods in Brazil, and so on, which were construed as securities. But I might add that at our Phoenix meeting where I did speak with many developers the thought was voiced to me by a number of them that they felt that action on the Federal level would, in effect, simplify their problems.

Senator WILLIAMS. Who said that?

Mr. HOFFMAN. Some of the big developers at our meeting. They told me that the expense and effort of filing with 20 to 25 States such effort was almost prohibitive. I know of two or three firms that have had to hire a staff for State filing purposes. So the expense and effort of dealing with the many States, if one is engaged in selling in interstate commerce, has been deplored by some of the legitimate and responsible firms.

In such instances, might it not appear that their problems would be simplified if they had only one agency to deal with rather than 20 to 25 States? However, if Federal legislation were passed, would not the developers still have to contend with the States and their several laws?

Senator WILLIAMS. Certainly, where the developer made himself a resident within the State for the purpose of selling out-of-State property.

We certainly don't want to encroach upon States rights in any way. But there are so many of these developers that do not make themselves a resident of the State in which they are selling as Mr. Van Horn and Mr. Peacock described. These are purely the interstate sellers—mail and phone medium.

Mr. HOFFMAN. I think the hopes that were voiced to me were that they would have only a Federal situation to deal with rather than all of these individual State laws to observe.

Senator WILLIAMS. The way that works frequently where there is a duplication of jurisdiction, if there is a national requirement, States will accept the requirements of the Nation as good enough for their acceptance. That happens in other areas.

Senator NEUBERGER. Just remind me quickly, the BBB is supported by member business firms?

Mr. HOFFMAN. Right; member business firms. We of the National Better Business Bureau are supported, for instance, by major national firms, GE, Du Pont, and so on.

Senator NEUBERGER. What about real estate?

Mr. HOFFMAN. We have only a few whom we feel meet our standards.

Senator NEUBERGER. I was interested in your publication since the witness from the Post Office Department said that part of the way to overcome this problem was education. I was thinking if Golden Age clubs and people in retirement groups, before they have already bought a lot in Florida or Arizona, could have these publications, how helpful it would be.

We were flattered to know that just holding these investigations has done a lot of good, but it can't be a continuing thing.

If the better business bureau could take more than just a passive approach in various communities and get these out, it is a very good pamphlet, I think, on the subject.

Mr. HOFFMAN. Thank you. You are speaking with the author. We have distributed several hundred thousand of these and occasionally there is a mention in some national publication that it is available. But I am afraid there has been no organized effort of any kind to put it in the hands of Golden Age clubs. That is undoubtedly a good idea. And there are a number of magazines catering to the retired.

I know we gave permission to one such magazine to reprint in toto, which they did.

Senator NEUBERGER. I have an appointment with some people from the National Association of Retired Civil Employees and I will ask them if they can't do something about that.

Senator WILLIAMS. I certainly want to commend and thank Mrs. Neuberger for her contribution this morning. Thank you, too, Mr. Hoffman, you have been most helpful.

Mr. HOFFMAN. Thank you.

Senator WILLIAMS. We have two representatives from the National Association of Real Estate Boards. Mr. Lynn E. Davis from Dallas, the chairman of the realtors Washington committee, and Mr. John C. Williamson of the District, secretary-counsel of the realtors Washington committee.

**STATEMENT OF JOHN C. WILLIAMSON, SECRETARY-COUNSEL,  
REALTORS WASHINGTON COMMITTEE, NATIONAL ASSOCIATION  
OF REAL ESTATE BOARDS**

Mr. WILLIAMSON. Senator, Mr. Davis is not here but I will present the statement of the National Association of Real Estate Boards.

I would like to file a six-page statement for the record and just speak on some of the points that we have brought out in the statement. Some of the things that I have to say are inspired by some of the discussion that went on this morning.

Senator WILLIAMS. All right. It may be better to do it that way, because I have to leave to go over to the Senate very shortly.

Mr. WILLIAMSON. The National Association of Real Estate Boards has been active in the field of protecting the public from unscrupulous sellers of real estate for many years. We have pioneered the enactment of State licensing laws in all of the States, beginning back 35 or 40 years.

We were very happy that the 50th State enacted a State licensing law about 2 years ago. This problem of the selling of land and of misrepresenting facts in relation to the land runs afoul of our code of ethics which is binding on all realtors. Beginning late in 1961, we did what we could to publicize the sale of land through our clipping service to all of our 1,450 real estate boards and through our publications which go to our 77,000 realtors.

We have tried to give this as much publicity as possible and our national president in his public addresses has repeatedly warned the public against purchase of land that they have not seen. We have also taken disciplinary action against some realtors who have been involved in this, although many people who are involved in the sale of this type of land are not members of real estate boards.

But where they are, and we know that they are realtors, we require the real estate board to take disciplinary action. I would like to file for the record a number of clippings from our publication on this subject publicizing the actions that have been taken.

(The material referred to follows:)

(Text continues on p. 292.)

[Clippings from issues of Realtor's Headlines, a weekly publication of the National Association of Real Estate Boards, Oct. 1, 1962, to June 17, 1963, on the subject of land fraud sales]

[Oct. 1, 1962]

**WILCOX WARNS AGAINST "FAST DOLLAR" SALES**

Vigilance against the possible appearance of efforts by unscrupulous real estate promoters to sell vacation or second homesites on the basis of advertising claims of "fabulous" bargains was recommended last week by Arthur P. Wilcox, NAREB president.

He spoke before a convention session of the Canadian Association of Real Estate Boards in Quebec.

After stressing the need for soil and urban conservation, Mr. Wilcox observed: "There is another urgent matter of conservation in which realtors are active that continues to demand our best services. It is the 'conservation' of the good name of all in the real estate calling.

"The need springs from the fact that the continent has areas that are sought as sites for vacation or retirement homes," he said.

The NAREB president went on to report that "unhappily" some real estate promoters with "short consciences but inordinate appetites for the fast dollar" have been giving concern to realtors in their efforts to sell such sites.

"As far back as last May," he said, "I found it necessary to warn about the number of offers to sell relatively undeveloped land by mail (or advertising) to persons who rely on representations made without actually viewing the property \* \* \*."

"I, therefore, suggested the advisability of personally inspecting before purchase any property offered for sale, or of employing independent real estate counsel \* \* \*."

"It gives me great satisfaction to note that the Federal Trade Commission has reacted in a similar manner to this threat to an unsuspecting public. The FTC has announced that it is investigating the advertising of suspiciously 'fabulous' real estate bargains."

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[Jan. 14, 1963]

**NAREB WAS AMONG FIRST TO WARN—FRAUD IN SALES OF LAND BY MAIL HAS "SNOWBALLED," OFFICIAL SAYS**

"In the last 24 months, the number of cases of mail fraud involving land sales has snowballed. Over 150 promoters are being investigated, twice as many as a year ago."

This statement was made last week by Henry B. Montague, chief postal inspector, Post Office Department.

NAREB was among the first to warn against buying land by mail without prior inspection in person or by a trusted representative. As long ago as last May, NAREB President Arthur P. Wilcox, Boston, was warning the public of this practice.

Basically, the land-mail fraud schemes under investigation work something like this:

A man buys cheap, wasteland at very low prices.

He uses glowing, inaccurate adjectives to describe it in promotional advertising by mail or omits essential facts and resells it to individuals at 90 to 100 times its original value.

Mr. Montague says the chief reason for the increase in investigations is because "the public is starting to become aware of it."

Another official in the investigations division of the Post Office Department agrees with Mr. Montague, pointing out that frequent stands taken by NAREB and officials at the conference of State attorney generals in San Francisco have helped warn the public.

But this official says that there is another reason for the increase: more and more "con" men are entering the field.

Another group which has warned the public of this type of fraud is the National Association of License Law Officials.

Robert W. Semenow, Pittsburgh, is executive vice president of NALLO.

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[Jan. 28, 1963]

**FRAUD IN FEDERAL LAND FILING BRINGS INTERIOR ACTION**

Secretary of the Interior Stewart L. Udall has announced new regulations to tighten up on one form of fraud concerning the sale of land by mail: paying promoters substantial fees for filing for federally owned land that is unobtainable.

The changes allow for automatic rejection of applications for small tracts of Federal land unless the land has been open to application.

A tactic used by unscrupulous promoters of the sale of western lands by mail is to offer their services, for a considerable sum, to file for Federal land that is open for application, implying that the fee for filing will serve as a downpayment.

Secretary Udall warned against this saying: "Thousands of gullible people have thought they were putting downpayments on the lands when in fact they were only paying a promoter to do what they can do free for themselves or have the Government do for them free or for practically nothing."

A spokesman for the Interior Department said this form of chiseling was hard to stop because of the many loopholes. But, he added, the Department repeatedly has warned people of this tactic.



[Mar. 18, 1963]

## NEW LAW TO COPE WITH LAND FRAUD IS UNDER STUDY

Concerned with the growth of fraudulent practices in the mail order sale of land, the Special Senate Committee on Aging is weighing the need for legislation to give Federal agencies more latitude in trying to cope with the problem.

It has been suggested that the SEC be empowered to require those selling land in interstate commerce to disclose basic information—their assets and specific details about the location of their land with respect to community facilities, for example.

Another proposal for providing more effective controls is to give the Post Office Department more freedom in stamping out fraudulent use of the mails. At present, the Department must show criminal intent before it can deny individuals access to the mails.

[Mar. 25, 1963]

## THREE INDICTED ON FRAUD COUNTS IN MAIL SALES OF ARIZONA LAND

The first indictments involving allegedly fraudulent schemes to sell land by mail, were handed down recently by a Federal grand jury in Phoenix, Ariz.

The jury returned a 22-count indictment against Dory Auerbach, David Prosser Randall, and Irving Gottlieb, Miami, Fla., all officers of Lake Mead Rancheros, Inc., based in Miami and Hollywood, Fla.

Among other things, the indictments charged the nonrealtor firm with using fraudulent advertising to sell Arizona property by mail to at least 3,000 persons.

The ads said the land was "developed" and that water, power, and telephone lines had been installed. Such was not the case, it is charged.

Attorney General Robert F. Kennedy said the case was developed by the Post Office Department following extensive investigation. Findings were referred to the Department of Justice for action.

Results of similar investigations also have been turned over to Justice and are now being reviewed by other grand juries.

Mr. Kennedy said "evidence developed in this case should stand as a warning to all citizens to exercise great caution in buying land by mail."

NAREB was the first nationwide organization to warn the public of land-mail fraud schemes.

As long ago as last May, the NAREB president for 1962, Arthur P. Wilcox, Boston, was informing the Nation of this practice.

## NEW MEXICO FIRM CITED

The Federal Trade Commission last week charged Great Southwestern Land Co., Inc., Albuquerque, N. Mex., with using deceptive means to sell real estate in Taos County, N. Mex.

The FTC's complaint said the firm would promote sales of its subdivisions by offering a "free lot" for only "closing costs of \$49.30." This price was not for closing costs but the actual price of the lot, the FTC charged.

In addition, the FTC complaint charges that the land is not, as claimed in the firm's ads, close to "abundant forests, trout streams, crystal lakes, and ski areas."

Moreover, the agency charges, utilities are not available as represented, nor is water available at a depth of about 75 feet as advertised. In fact, it is necessary to drill down several hundred feet to get water.

[Apr. 8, 1963]

## HIT BY NINE STATES—FRAUD BY USE OF "FREE LOT" SCHEME RISES

Noting an increase in the attempts to sell land by mail using the "free lot" scheme, the State Associations Department of NAREB recently reported that only nine States have laws specifically mentioning "free lots" while six others refer to it by inference.

However, most States have laws against "false promises" and "misleading or untruthful advertising" which could be used to discipline unethical subdivision developers.

A "free lot" system usually works this way: A promoter offers, under one guise or another, a "free" lot for a small fee. The fee in reality covers the cost of the lot.

The lot itself is small and poorly located. The "winner" is induced to purchase at high cost another larger lot or additional land adjacent to his "free" lot.

States with laws that directly name "free lot" practices as illegal are Indiana, Kansas, Louisiana, Maryland, Missouri, Nebraska, New Jersey, Oklahoma, and Oregon.

Arizona, California, Iowa, New York, Ohio, and Texas condemn the method by inference.

The report is designed to serve as a guideline for State associations that intend to propose legislation directed at "free lot" schemes.

In one of two other developments involving similar schemes, the Justice Department announced the indictment by a Federal grand jury of E. H. Johnston, Beverly Hills, Calif., for selling parcels of arid desert land through the mails. He allegedly represented the parcels as being lush, green meadows.

In Phoenix, Ariz., Thomas T. Cohen was indicted by another Federal grand jury for mail fraud for selling property formerly under water of the Great Salt Lake.

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[May 6, 1963]

#### GRAND JURY INDICTS THREE ON MAIL FRAUD CHARGES IN NEW MEXICO LAND SALES

Three Albuquerque, N. Mex., real estate promoters have been indicted by a Federal grand jury on 26 charges of mail fraud in their mail-order sale of desert land in Taos County, N. Mex.

This was the third major land fraud prosecution in the past 6 weeks.

Attorney General Robert F. Kennedy said the defendants, Robert N. Golubin, Lenn E. Allen, and George W. Walker, sold approximately 35,000 lots in the past 2 years, principally through the "free lot" device.

The three defendants were officials in the New Mexico Southwestern Development Co. and the Great Southwestern Land Co., both in Albuquerque.

In another case involving alleged land fraud, the Department of Interior froze 10 applications for public lands in Arizona.

The applications are from five corporations, all of whom have Dale M. Moran, Phoenix, listed in some official capacity.

Mr. Moran was discovered by Federal agents under a tarpaulin spread by the Bureau of Land Management to protect earth samples. He was later arrested on a charge of gold salting, that is, placing small quantities of gold in the soil.

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[June 3, 1963]

#### NEW MEXICO BECOMES FIRST STATE TO ENACT LAND FRAUD LAW; PENALTIES ARE SEVERE

A land-fraud bill with teeth, originally drafted by the Legislative Committee of the Realtors Association of New Mexico, recently became the first such State measure to become law this year.

The law imposes strict regulations on subdivision advertising. Any form of the "free lot" scheme is unlawful. Complete accuracy is required on illustrations, maps, and references to any facilities, points of interest, or municipalities.

Also, artists' conceptions of the subdivision cannot be used unless they are clearly identified as such.

The law further requires that any plot of subdivided land offered for sale must first be approved by a county commission.

It tells developers they have to provide legal access to each plot and must inform buyers of all pertinent data concerning the land—utilities, water, financing, and encumbrances.

The new law declares that violations of these provisions are punishable by fines up to \$100,000, 5 years in prison, or both.

Realtor Thomas S. Nutt, Tucumcari, N. Mex., was one of the men primarily responsible for drafting the bill.

[June 17, 1963]

## OREGON LAND SALE FIRMS DENY FTC FALSE AD CHARGES

The Harney County Land Development Corp., Chicago, and the Harney County Escrow Co., Inc., have denied false advertising charges brought against them by the Federal Trade Commission.

The FTC has charged that the land sold by the firms in Lake Valley, Oreg., was not near recreational areas, in a sunny climate, and in close proximity to utilities.

Officials of the concerns said advertising describing the location and the seasonal and recreational qualities of land in Lake Valley, Oreg., was "in fact true."

Mr. WILLIAMSON. We have also been cooperating with the National Association of Licenses law officials in developing a model State law, designed to protect the public requiring full disclosure of all material information regarding land, and requiring the applicable State agency to issue a report on the property.

In many of these States our State associations of realtors have taken the initiative and have been very active in promoting such legislation. I would also like to submit for the record a copy of the model law which was approved by our association and referred to our State associations. Many of the provisions in this model law have found their way into State laws.

(The document referred to follows:)

(Text continues on p. 296.)

PATTERN ACT FOR REGULATION OF SUBDIVIDED LANDS FOR CONSIDERATION AS AMENDMENT OF OR SUPPLEMENT TO STATE REAL ESTATE LICENSE LAWS

(NAREB License Law Committee, May 1962)

## DEFINITIONS

As used herein, "subdivided lands" and "subdivision" refer to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, this act does not apply to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in any said structure.

For the purposes of this act, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money or the furnishing of services or materials and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under the option, contract to sell, or trust agreement; excepting that taxes and assessments levied by public authority shall not be considered a blanket encumbrance.

## NOTICE OF INTENTION

Prior to the time when subdivided lands are to be offered for sale or lease, the owner, his agent or subdivider shall notify the real estate department (or commission) in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information:

- (a) The name and address of the owner.
- (b) The name and address of the subdivider.
- (c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.

(d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.

(f) A true statement of the provisions for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities.

(g) Such other information as the owner, his agent or subdivider, may desire to present.

#### QUESTIONNAIRE

The real estate department (or commission) may require such additional information concerning the project as is deemed necessary, and is not inconsistent with the act. The department (or commission) may prepare a questionnaire for the owner, his agent or subdivider, to answer. A filing fee of \$----- shall accompany the answered questionnaire.

#### OPTIONAL PROVISION FILING FEE

The questionnaire concerning any subdivision proposed to be sold or leased as potential mineral, oil, or gas property shall be accompanied by a filing fee of \$-----.

#### PUBLIC REPORT

When the real estate department (or commission) makes an investigation of any subdivision, the department (or commission) shall make a public report of its findings thereon. The department (or commission) may publish the report.

#### WAIVER OF ADDITIONAL INFORMATION. NOTIFICATION OF CHANGE

It shall be unlawful to sell or lease or offer to sell or lease lots or parcels in a subdivision prior to the issuance of a public report unless the filing of additional information following the receipt of a notice of intention is expressly waived by the real estate department (or commission), or, after submission, to materially change the conditions of such offering without first notifying the real estate department (or commission) in writing of such intended change and securing the written approval of the department (or commission).

#### RECEIPT TAKEN

A copy of the public report when published by the real estate department (or commission) and an opportunity to read same shall be given to each prospective purchaser or lessee by the owner, subdivider, or agent and his receipt taken therefor prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision.

Receipts taken for any public report shall be kept in file in possession of the owner, subdivider, or agent subject to inspection by the real estate department (or commission) for a period of 3 years from the date the receipt is taken.

#### USE OF PUBLIC REPORT IN ADVERTISING

The public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized, or printed in larger or heavier type than the balance of the report unless the true copy of the report furnished by the real estate department (or commission) so emphasizes any words or phraseology.

#### PREREQUISITES FOR SELLING OR LEASING LOTS

It shall be unlawful for the owner or subdivider to sell or lease lots or parcels within a subdivision unless one of the following conditions is complied with:

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the real estate department (or commission) until: 1. The title or other interest contracted for, whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or 3. Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the department (or commission) until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond to the State of ----- is furnished to the real estate department (or commission) for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the department (or commission), which shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

The public report of the real estate department (or commission), when issued, shall indicate the method or procedure selected by the owner or subdivider to comply with the hereinbefore provisions.

#### INVESTIGATION OF SUBDIVISIONS

The real estate department (or commission) may investigate any subdivision being offered for sale or lease in this State. For the purposes of such investigation, the department (or commission) may:

- (1) Use and rely upon any relevant information or data concerning a subdivision obtained by it from the Federal Housing Administration, the U.S. Veterans' Administration or any other agency having comparable duties and functions in relation to subdivisions or property therein.
- (2) Require reports prepared by competent authorities as to any hazard to which the subdivisions may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.
- (3) Require evidence of compliance with the requirements of appropriate authorities.
- (4) Require an inspection of the subdivision to be made.

#### TRAVEL ALLOWANCE FOR INSPECTION

When an inspection is to be made of subdivided lands, wherever situated, being offered for sale or lease in this State, the real estate department (or commission) may require, in addition to the filing fee, an amount equivalent to ----- cents a mile for each mile going and returning, estimated by the department (or commission) to be traveled to the location of the project, and an amount estimated to be necessary to cover the additional expenses of such inspection, not to exceed ----- dollars a day for each day consumed in the inspection of the project.

#### SALES CONTRACT

Every sales contract relating to the purchase of real property in a subdivision shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

#### NOTIFICATION OF OPINION, SALE, OR LEASE

When five or more lots or parcels within a subdivision are optioned, leased or sold to another, or, when an interest therein is acquired by one owner, lessee or optionee, the real estate department (or commission) shall be notified by the parties to the transaction.

#### INSPECTION OF RECORDS

Records of the sale or lease of parcels within a subdivision shall be subject to inspection by the real estate department (or commission) and the department (or commission) shall be notified of any change of address affecting the location of the owner's, subdivider's, or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

#### RULES AND REGULATIONS

The real estate department (or commission) may adopt rules and regulations to implement the provisions herein.

## CIVIL LIABILITY

Any owner, agent, or subdivider who fails to pay the fees required as herein provided, for filing fee or inspection fee, shall be liable civilly in an action brought by the real estate department (or commission), for a penalty in an amount equal treble the amount of unpaid fees.

## CEASE-AND-DESIST ORDER, PERMISSION FOR HEARING

Whenever in the opinion of the real estate department (or commission) any person has or is violating, or is about to violate, any of the provisions of this act, the department (or commission) may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the department (or commission) may issue an order prohibiting the sale or lease, or either, of the property in this State. If, after such an order is made, a request for a hearing by the department (or commission) is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded.

## FELONY

Every officer, agent, or employee of any company, and every other person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circularization of any false statement or representation concerning any land, or subdivision thereof offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning any said land or subdivision 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 felony.

## MISDEMEANOR

The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the real estate department (or commission).

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale within this State without first complying with the provisions of this act.

(d) The advertising for sale or lease in this State of a parcel in an out-of-State subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-State subdivision who has not complied with the provisions of this act, to offer within this State subdivided lands.

## CIVIL PENALTY

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this State for deposit in the State treasury a civil penalty in the sum of ----- dollars, together with ----- dollars for each month or a fraction thereof during which he continues such violation.

## STATUTE OF LIMITATIONS

For the purposes of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of any such action at any time before the recording of such instruments.

NOTE.—Provisions of this pattern act, in whole or in part, are intended to be used as amendments of or supplements to existing real estate license laws, or to provide a basis for considering any other methods of dealing with the subject.

Mr. WILLIAMSON. We are aware of the gap in this area of protecting the public and the suggestion has been made that perhaps there is need for some Federal regulation. First, let me state that we have endorsed a bill, H.R. 7818, by Mr. Udall, of Arizona, which would arm the Post Office Department with a statute that would permit them to move quickly and more effectively where there has been a misrepresentation of a material fact.

The witness for the Post Office Department this morning said that the fraud statute relating to the use of the mail requires a proof of intent and by the time you can prove intent all the damage is done. This bill would permit the Post Office Department to stop the use of mails where there has been a misrepresentation of a material fact.

If there is an advertisement or a brochure that says land is near utilities and it is 2 or 3 miles or even 1 mile away or 5 miles away they could move in quickly. The Congress might also consider legislation giving the Federal Trade Commission the power of preliminary injunction in the interstate traffic in land.

As you know now there are so many appeals permitted in the administrative procedures that the damage is done by the time the Federal Trade Commission can issue a cease-and-desist order and make it stick.

Another suggestion has been to involve the Securities and Exchange Commission in requiring filing of a registration statement and the issuing of a public report. We hope that the Congress won't consider this until the States have had ample opportunity to try to correct these abuses and after the Federal Trade Commission and the Post Office Department and the Department of Justice have had an opportunity to exercise more vigilance in this area.

We particularly would like to see the Post Office Department armed with this new provision regarding the stopping of mails where there has been a misrepresentation of the material fact.

What worries us about more involved Federal regulation, like the SEC, is what it would do to the 99½ percent of the ethical subdividers of property. Putting something through the SEC is expensive and I have had some personal experience with that.

Many of our subdivisions are of 25 and 50 lots and I think it would increase the price of a home by perhaps \$1,000 per home if we had to go through the Securities and Exchange Commission.

The examiners in the SEC are great public servants and they can think of a million things that should go into a prospectus, particularly where they have the responsibility of clearing an issue.

If they were to be required to issue a public report, that would be without precedent in the SEC, because it would involve an implied endorsement of the product by the Securities and Exchange Commission.

So, we hope that the Congress won't take what we think would be a most far-reaching step that would hinder the legitimate subdivider. At least the Congress ought not to consider it until the States have had more opportunity and the Post Office Department and the Federal Trade Commission have had more opportunity. That is all I have on the subject, Senator.

Senator WILLIAMS. How much opportunity do you suggest or recommend in this regard for the States?

Mr. WILLIAMSON. I think the previous witness said that the problem was not as serious as it was 2 years ago. This has been given considerable publicity. Some of these State laws are pretty tough, Florida, New Mexico, California. There are some elements of the Ohio and the New York law that ought to go into these State laws and I think that legislatures will be working on this problem next year when most of them do meet.

Our State associations of realtors are very active in this area because we realize that unless this is cured through State action that we will be inviting Federal regulation.

Senator WILLIAMS. Mr. Van Horn stated that it is difficult with a good State law to reach the out-of-State seller who does not come into the State.

Mr. WILLIAMSON. Of course, here, we have three things. We have the criminal fraud statutes enforced by the Department of Justice and the Post Office Department and the Federal Trade Commission.

Senator WILLIAMS. And with these laws we have had described for 3 days, we know what is being perpetrated across the land.

Mr. WILLIAMSON. I think the Post Office Department could have moved more effectively had they had the power to stop the use of mails where there is a misrepresentation of a material fact. It just takes too long to prove intent to defraud and by then the damage is done. They could keep on using the mails for months.

Senator WILLIAMS. Criminal action follows the fact, you see. You can have the natural delays of the investigation, of the arrest, of the trial and during this period all of the money is going into the swamp.

Mr. WILLIAMSON. Senator, even with 30 years of experience in the Securities and Exchange Commission, you still can't prevent the unscrupulous operators from selling worthless stock. We are just afraid of what that would do to the subdivider in the light of the costs of putting an offering through the Securities and Exchange Commission. It is a very expensive area of law.

Senator WILLIAMS. I was thinking perhaps that other remedies could be given to the mail-fraud people, cease and desist, or the lesser penalty and more expeditious treatment.

Mr. WILLIAMSON. That is right. With respect to the Federal Government preempting the field, I believe there was some discussion on that. This might be very difficult. There are many State laws where a new issue is involved that required the registrant to proceed in the State without regard to previous filings with the Securities and Exchange Commission.

Every subdivider will be registering an initial offering of land. Of course, they have that now under our State laws, but this would be an additional expense that would be reflected in the increased cost for homes.

Senator WILLIAMS. Even the SEC have learned the wisdom of the short form for the small issue. You know more about the short form than I do. What is the number of that?

Mr. WILLIAMSON. Regulation A, the \$200,000-or-less offering.

Senator WILLIAMS. Thank you very much, Mr. Williamson. You have been helpful indeed.



(The statement referred to follows :)  
(Text continues on p. 300.)

STATEMENT OF JOHN C. WILLIAMSON, DIRECTOR, DEPARTMENT OF GOVERNMENTAL RELATIONS, NATIONAL ASSOCIATION OF REAL ESTATE BOARDS

Mr. Chairman and members of the subcommittee, the National Association of Real Estate Boards, consisting of almost 77,000 realtors organized in 1,477 real estate boards in every State of the Union and the District of Columbia, is grateful for this opportunity to present its views on the problem of fraudulent land sales.

The type of land sales activity which prompted these hearings not only reflects on the real estate profession as a whole, but is a violation of articles 3 and 4 of our association's code of ethics, administered by our local boards and binding on our members. Article 3 of the code provides that it is "the duty of a realtor to protect the public against fraud, misrepresentation, or unethical practices in the real estate field." The well-known "free lot" scheme is a violation of article 3 of the realtor's code of ethics. Article 4 requires the realtor to ascertain all pertinent facts concerning property with which he deals in order to avoid concealment or misrepresentation of a material fact. Our association requires that local boards discipline by expulsion members who are guilty of violating the realtor's code of ethics. Such disciplinary actions taken by the boards are referred to the State real estate licensing commission for further action.

The names of developers who are indicted for fraudulent use of the mails in connection with land sales are referred by our association to the local real estate board having jurisdiction over the area where the defendants reside, to ascertain if he is a realtor and, if so, to take appropriate action.

I want to emphasize that our boards need not wait for indictment before taking disciplinary action. Very often complaints are received by our committee on professional standards which will direct them to the appropriate local board for proceedings against the realtor. To a limited degree, therefore, our association is a self-policing organization although expulsion from the board does not put the realtor under as great a business disability as a member of the National Association of Securities Dealers, for example, where expulsion puts the offender out of the securities business for all practical purposes.

When the problem of land sale frauds came to our attention we formed an ad hoc committee to work with both the Post Office Department and the Federal Trade Commission to assist in the implementation of existing Federal statutes dealing with the problem, and to formulate amendments to these statutes if needed.

Our first concern was with the problems encountered by the Post Office Department in administering section 4005 of title 39, United States Code, which deals with the issuance of stop orders in noncriminal cases of fraud or misrepresentation. In his testimony before this subcommittee on January 16, 1963, H. B. Montague, Chief Postal Inspector, outlined the difficulties in administering section 4005 because of the judicial interpretations requiring proof of actual intent to defraud (*Reilly v. Pincus*, 338 U.S. 269). This requirement, coupled with the Department's lack of subpoena power, constitutes a serious obstacle to the issuance of stop orders in cases involving all types of fraud and misrepresentation.

On July 29, 1963, after conferences with our staff and consultation with the Department, Representative Morris K. Udall (Democrat, Arizona) introduced H.R. 7818, a bill to amend section 4005 to add to the language of the statute as an alternative to "false or fraudulent pretenses, representations or promises" a prohibition against the use of the mails for the sending of "false or misleading representations or promises." This language was designed to eliminate the requirement that actual intent to defraud be established in administrative proceedings.

In November of that year, our association formally adopted an official statement of policy calling upon the Congress to enact H.R. 7818 or legislation to accomplish the same objective. To date the House has taken no action on this bill.

The Federal Trade Commission, as the subcommittee members know, has jurisdiction over deceptive acts or practices in interstate commerce which encompass fraudulent activities with respect to land sales. While the FTC is not required to establish actual intent prior to issuance of a cease-and-desist order,

a respondent may delay issuance of that order by as long as a year if he wishes to take advantage of all of the appeal procedures available to him. Legislation is now pending in the House to give the Federal Trade Commission the power to issue a temporary cease-and-desist order in cases of irreparable harm to the public to be effective until the deceptive act question is resolved. This bill is H.R. 8830. We realize that this issue is controversial and we are not prepared at this time to make a firm recommendation on extending temporary injunction powers to that agency.

Before commenting on a third proposed Federal remedy to this problem, I would like to turn to our activities on the State level.

The association's license law committee in 1962 drafted a suggested model law for control of sales of subdivisions within State boundaries, and the model law was referred to our State associations. Since then realtors have been active at the State level in securing legislation to curb fraudulent land sale practices. In January 1963, our association formed a liaison committee with the National Association of License Law Officials to meet on a regular basis to discuss problems of mutual interest, including of course, the subject under discussion.

The model statute calls for a notice of intention to sell or lease improved or unimproved subdivided lands (five or more parcels) to be filed by the seller with the State real estate commission. The filing is to contain specific information on such items as the status of title, legal access, availability of water, utilities, and terms and conditions under which the land is to be offered for sale or lease. The State commission would then issue a public report of its findings with regard to the subdivision, and no sale or lease may take place prior to the issuance of the report. Provisions are included for protection of the buyer which require the seller to make some arrangement, by bond, escrow, or trust, to insure conveyance of merchantable title free of liens and other encumbrances.

The State commission's report could be used by the seller in advertising so long as it is used in its entirety. No provision is made in the model statute pertaining to advertising of the lands.

During the course of these hearings, the subcommittee has heard ample evidence as to the efficacy of State laws which are properly drafted and enforced in dealing with this problem.

Typical of the new State laws patterned after our model statute is that of New Mexico. The bill was drafted by the Legislative Committee of the Realtors Association of New Mexico.

The new act makes it illegal to offer to sell or lease improved or unimproved real property in a subdivision of 25 or more parcels until the subdivision plots have been approved by the appropriate county commission and until public access is available to each lot from an existing public highway. The act then contains two other significant sections, the first of which requires the seller to disclose to the purchaser or lessee six enumerated items relating to the land in the transaction, including availability of utilities and water, existence and status of blanket encumbrances, if any, and the complete financing terms.

The second section prohibits false or misleading copy and drawings in brochures and advertisements relating to the subdivision. No provision is made for prior approval of the advertising materials by any State agency, and the developer is, therefore, on his own as to compliance. Enforcement is handled by the State attorney general and the district attorneys.

We believe that State statutes of this type, coupled with increased vigilance on the part of the Federal Trade Commission, Post Office and Justice Departments will contribute materially to the elimination of, or certainly reduce to a minimum, the undesirable practices in the field of land sales. One of the chief concerns of many in the real estate industry, especially developers and builders, has been that the realtors' model law pertaining to subdivision sales would result in burdensome and costly redtape in registering a subdivision with a State or local governmental agency. We believe this problem is largely resolved by the New Mexico statute which requires that the seller meet certain specific statutory requirements in his dealings with the public and that he delay sales until he has secured approval of the plat—an act which he would have to perform in any case.

The obvious question presented by total reliance on State laws is (1) how can the States protect their citizens against in-State sellers of out-of-State lands, and (2) how can a State curb the activities of out-of-State promoters of lands within its borders.

As to the former question, the subcommittee has the excellent example of the State of New York and its policing of all subdivision advertisements placed in publications printed in the State. Ohio requires that any agent or salesman of an outside land development company register with the State securities commission prior to any contact with Ohio residents.

The one remaining gap in State enforcement appears to be the situation in which a developer owning land in New Mexico, for example, chooses to operate a sales office in Florida with the assistance of nationally distributed advertisements. What can New Mexico do to curtail this operator's activities, assuming Florida authorities do not or are not able to act? If this problem can be adequately resolved by compact, extradition laws (in the event of criminal fraud) or by Federal statutes dealing with this specific situation, then in our view, State action, assuming an active interest on the part of all of the States, is the most effective answer.

Our attention has been directed to a draft bill which would require the registration of real estate subdivisions with the Securities and Exchange Commission. This is a regulatory statute which would require full disclosure comparable to that involved in the Securities Act of 1933. In addition, the bill would also require the registration of real estate agents selling land in interstate commerce, a requirement comparable to that involving broker-dealers and salesmen of securities. A third requirement provides for the SEC to issue a public report concerning a subdivision. This would be tantamount to an endorsement of the subdivision and would involve a responsibility without precedent in the SEC's 30-year experience in regulating the securities market. To protect itself the SEC would have to inject itself into appraising, market analysis, and a host of other factors to justify its implied endorsement. This should not be the function of any regulatory agency.

Our association believes that the situation, serious as it is, does not justify the involvement of the Securities and Exchange Commission.

We believe it would be far more effective, as well as less burdensome on the sellers of real estate, for the States to be given a free hand in curing this problem, with the assistance of the Post Office Department armed with a statute which gives it the right to move quickly where there is a misrepresentation of a material fact in advertising, brochures, etc. Progress has been made and will continue to be made on the State level, as the evidence before this subcommittee will attest.

Senator WILLIAMS. For the record appendix we will include the following items. The committee will be adjourned.

(Whereupon, at 12:15 p.m., the subcommittee was adjourned.)

## APPENDIX

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AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
*Washington, D.C., May 28, 1964.*

HON. HARRISON A. WILLIAMS,  
*Chairman, Subcommittee on Frauds and Misrepresentations Affecting the Elderly,  
U.S. Senate Committee on Aging, Washington, D.C.*

DEAR MR. CHAIRMAN: In connection with the hearings conducted by your subcommittee, I submit the attached statement on behalf of the American Federation of Labor and Congress of Industrial Organizations.

We hope that remedial legislation relating to frauds and misrepresentations in the offering of real estate for sale in interstate commerce will receive favorable consideration by your subcommittee. The people most likely to be victimized by these frauds and misrepresentations, and the main target of the unscrupulous speculators perpetrating them, have been retired persons or elderly persons near retirement.

We have followed with interest the hearings of your subcommittee and feel that they have rendered a very valuable service in bringing public attention to the widespread exploitation of our elderly citizens. I refer particularly to your subcommittee hearings on health frauds and quackery and on deceptive sales practices for health insurance.

I respectfully request that the attached statement be included in the record of hearings by your subcommittee.

Sincerely yours,

ANDREW J. BIEMILLER,  
*Director, Department of Legislation.*

STATEMENT BY BORIS SHISHKIN, SECRETARY, HOUSING COMMITTEE, AMERICAN  
FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

There is evidence that, in the marketing of land subdivisions and other real estate in some States there have been widespread misrepresentations and fraudulent and dishonest practices, including local and nationwide advertising containing misleading and often fraudulent descriptions of the properties offered.

Many of these advertisements and offerings are designed to entice elderly citizens to purchase, sight unseen, real estate purporting to be suitable for retirement living. Often these sites are substandard or lack such essential utilities as water, electricity, sewage disposal, and sometimes even access roads.

Urgent need exists for legislation to protect the public against such practices and to curb, by regulations, land speculators bilking unwary consumers of their hard-earned money through such misrepresentations.

The AFL-CIO urges enactment of Federal legislation to regulate the offering of land subdivision, homesites and similar real estate for sale in interstate commerce or through the mails, by requiring registration with the Federal Securities and Exchange Commission.

The legislation we recommend would require that any offering of such properties, whether offered by the owners or their brokers or agents, or by a person in a control relationship to the owners or their brokers or agents, must first be registered through the filing of a registration statement with the Commission.

The bill should require that such registration statements contain financial and other information, including an accurate and complete description of the property so offered. The description should permit an informed analysis of the properties and an appraisal of their value by investors to whom they are offered for sale.

The bill should require that a prospectus or offering circular containing pertinent facts set forth in the registration statement be delivered to prospective purchasers of the properties and to persons receiving written offers through the mails or in interstate commerce.

Under the provisions of the proposed law, upon the filing of the registration statement and prior to its effectiveness, the properties may be offered for sale. However, written offers, or offers over the radio or television across State lines, may be made only in accordance with the rules of the Commission. Unless and until the registration statement becomes effective, the properties may not be legally sold or contracts entered into for their sale in interstate commerce.

The proposed law should provide that examination of registration statements for compliance with the disclosure requirement be conducted by a new Division of Land Sales in the Securities and Exchange Commission.

The legislation we propose is urgently needed. It would provide for fair and reasonable regulation in the public interest, convenience, and necessity, of offerings for sale, through the mails or otherwise in interstate commerce, of land subdivisions and of other real estate.

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UNITED STEELWORKERS OF AMERICA,  
*Pittsburgh, Pa., June 9, 1964.*

Senator HARRISON WILLIAMS,  
*Chairman, Subcommittee on Frauds and Misrepresentations Affecting the Elderly,  
U.S. Senate Committee on Aging, Senate Office Building, Washington, D.C.*

DEAR SENATOR WILLIAMS: We wish to urge the enactment of appropriate Federal legislation to regulate the offering of land subdivisions, homesites, and similar real estate for sale in interstate commerce or through the mails.

There is mounting evidence that there are widespread misrepresentations and fraudulent practices with reference to the merchandising of such properties that are designed to entice and dupe many of our citizens, particularly the elderly and retired, to purchase sight unseen, property sites which are substandard and lacking in essential utilities and amenities including access roads.

We support legislation that is designed along the lines of the testimony which was presented to your committee on May 26, 1964, by Boris Shishkin, secretary of the Housing Committee of the AFL-CIO.

Your cooperation in this urgent matter is appreciated.

Sincerely yours,

ROLAND M. SAWYER, *Housing Consultant.*

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#### MATERIAL PRESENTED BY NATIONAL BETTER BUSINESS BUREAU REPORT<sup>1</sup>

NATIONAL BETTER BUSINESS BUREAU, INC.,  
*New York, N.Y., January 1964.*

Re Rio Rancho Estates, Albuquerque, N. Mex., American Realty & Petroleum Corp.

Rio Rancho Estates consists of about 55,000 acres of land in New Mexico purchased in July 1961 by the parent company, American Realty & Petroleum Corp., the present owners. The tract was formerly a cattle ranch and is bound in part by the Rio Grande River, with approximately 3 miles of frontage on the river. The tract lies in Sandoval County and is approximately 4½ miles north of the present Albuquerque city line. The nearest portion of the tract to the main post office building in downtown Albuquerque is approximately 12 miles. The tract is of typical arid Southwest nature with native vegetative growth, and ranges from level to gently rolling. Elevation of the site varies from about 5,100 to 6,200 feet.

Lots of one-half acre or larger are being offered, priced at \$995 and up. Plats of lots being sold are filed in the county clerk's office in Sandoval County, N. Mex. The property is encumbered to the extent of \$2,800,000 but release clauses are said to be available for the areas being sold. Approximately 4 miles of

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<sup>1</sup> The information contained herein has been compiled from sources deemed to be reliable and, while not guaranteed, is believed to be factual and accurate. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgment.

paved roads have been completed and about 100 miles of unpaved roads. Approximately 400 additional miles of unpaved graded dirt roads are also in use. Roads have been dedicated to the county, and the county has accepted for maintenance upon completion. There are 34 houses completed, 28 occupied, with several other houses under construction. Cost of houses ranges from \$9,000 to \$35,000.

The first residential area in which these houses are located, of about 600 acres, is served by the following utilities:

Water: Centrally piped water from the Albuquerque Utilities Corp.

Power: Public Service Co. of New Mexico.

Natural gas: Southern Union Gas Co.

Telephone: The Mountain States Telephone & Telegraph Co.

The board of health has approved the installation of septic tanks for the Rio Rancho Estates area. A septic tank is normally included in the price of the home.

The company states that it is planned to extend these utility services throughout the property as development progresses.

The company offers an exchange privilege: "You may exchange your property at any time within 5 years after purchase for any other available homesite of the same size and value at no increase in price to you."

If the purchaser desires to build where no utilities exist, the cost of wells is estimated to run between \$300 to \$1,000. We are informed that Albuquerque Utilities Corp., a subsidiary, has a 225,000-gallon reservoir in its system on the property and two producing wells, one yielding 185 gallons of water per minute; the second well yields 1,000 gallons of water per minute.

In these areas of the Southwest, irrigation is required for raising commercial crops. Lawns and gardens grow with normal watering.

A personal inspection was made several months ago by a representative of the National Better Business Bureau at the invitation of Rio Rancho Estates. At that time, a community center had been completed with clubhouse, kitchen, meeting facilities, bathhouses, sundeck, and swimming pools in use. The company maintains a sales office on the site as well as its own building in Albuquerque. There are no shopping facilities in the development at this time, the nearest being 1 to 2 miles away. Additional shopping is in the adjoining communities of Corrales and Alameda as well as Albuquerque, proper. The main shopping areas of downtown Albuquerque are 11½ miles from the property.

The nearest grammar schools are 2 to 5 miles distant; the junior and senior high schools about 10 miles away. Houses of worship are 2 to 5 miles away. Schoolbus service is available at the site to above mentioned schools. The nearest public transportation is 2 miles from Rio Rancho Estates. The airport is 15 miles away.

Lots are offered beginning at \$15 monthly, installment purchases bearing interest of 5¼ percent on the unpaid balance. A 30-day refund of deposit for any reason whatsoever is offered, as well as a 6-month inspection guarantee stated as "if you are not 100 percent delighted you get all your money back by presenting your are not 100 percent delighted you get all your money back by presenting your purchase agreement at property office and requesting refund." Warranty deeds are provided upon completion of payments. Title is insured by Lawyers' Title Insurance Corp.

The present annual estimated real estate tax per unimproved lot is said by subject to be about \$1.15 per year.

Among the States where special qualification is necessary, this property has qualified in California, Ohio, Minnesota, New York, Arizona, Utah, Nebraska, Wisconsin, Florida, and New Mexico. Although it was originally qualified in the State of New Jersey, in February 1963, the New Jersey Real Estate Commission announced that it had ordered New Jersey licensees to "cease and desist" in the selling of lots located in Rio Rancho Estates. The commission rescinded permission granted to one broker in connection with New Jersey sales and its order extends to any others who are holding New Jersey licenses. Its ban is based on noncomplying advertising.

The company admits an error in that the running of an advertisement in a New Jersey publication in the fall of 1962 was an unapproved version instead of the New Jersey approved version.

The Michigan Corp. & Securities Commission has not accepted the company's application to appoint brokers in Michigan. The company states that the only substantial issue at present is a special bonding requirement.

The property is subject to reservation of mineral rights. Rio Rancho Estates conveys to purchasers of homesteads the right to receive half of any royalties it receives under any leases or other royalty arrangements. There is not known to be any development of mineral, oil, or gas rights on or in the immediate vicinity of the property.

In the past this bureau raised questions regarding propriety of certain statements in the advertising of this company, and has now received assurance that this firm will adhere to the recommended standards for land advertising promulgated by this bureau and adopted by representatives of the industry.

We have had no complaints from property purchasers that subject has not observed its contractual obligations. The Better Business Bureau of New Mexico reports a similar experience, and has found the firm to be cooperative.

Since lots here are offered both for habitation and investment, it is our policy to point out to all prospective buyers of lots anywhere as investment opportunities that such is a speculative proposition depending for success on many factors that are difficult to estimate, even when one is completely familiar with a given area. Future values will depend upon growth of the area, and demand for real estate. Personal inspection of all property prior to purchase is recommended by this bureau as desirable, wherever possible, to ascertain that it meets one's own requirements, no matter where located.

American Realty & Petroleum Corp., which owns Rio Rancho Estates and is the developer, it is a publicly owned company, listed on the American Stock Exchange. It also owns the Rainbow Lakes Estates development in Florida, and operates oil wells in Oklahoma. It was formed by the merger of the Great Sweet Grass Oils Co. of Oklahoma with 15 Florida corporations engaged in land sales and construction. The Oklahoma corporation, incorporated under the State laws in December 1955, was, until the merger, a wholly owned subsidiary of Great Sweet Grass Oils, Ltd., an Ontario corporation. The merged Oklahoma and Florida corporations took the name of American Realty & Petroleum Corp. in August 1961. Since then it has had no affiliation with the Canadian company.

Rainbow Lakes Estates is a development of about 10,000 acres located approximately 20 miles west of Ocala in central Florida inaugurated late in 1959, with about 230 houses now occupied. In addition, the company plans to develop and offer for sale some 8,000 acres it owns near Silver Springs, Fla.

The chairman of the board of American Realty & Petroleum Corp. is James H. R. Cromwell, former U.S. Ambassador to Canada, who has served as president of several financial and oil companies. Among these were Cromwell-Dodge Corp., American British Improvement Corp., and Kansas Oil & Gas Co.

The president of American Realty & Petroleum Corp. is Irving W. Blum, a CPA who has been engaged in real estate developmental work for the past 20 years, having been identified with projects in New York, Long Island, and Florida.

The vice president and treasurer of the firm is Chester Carity. Henry L. Hoffman also serves as vice president. Messrs. Carity and Hoffman have been associated in numerous sales activities and as advertising and sales consultants, etc., since about 1954. Among the companies identified with sales of various drugs and devices, pharmaceuticals, nursery products, etc., are Lakeland Nurseries; Comar Industries; Modern Aids, Inc.; Allegheny Pharmacal Co.; International Biotical Corp., and others. They own and operate an advertising agency, Carity-Hoffman Associates.

A heat applicator called Infra-Massage was and is being marketed by International Biotical Corp. from 1954 to the present. In 1962 the Post Office Department filed an administrative fraud proceeding charging that advertising claims were false and fraudulent. On April 2, 1962, the Post Office Chief Hearing Examiner recommended dismissal. On appeal to the judicial officer of the Post Office Department, on August 29, 1962, the hearing examiner's decision was affirmed. Thereafter, the Post Office applied for reconsideration, and in December 1962 the application was denied.

In February 1960 the Food and Drug Administration seized several Infra-Massage devices charging mislabeling under the Food, Drug, and Cosmetic Act. This action was appealed by the company to the courts. A decision has not yet been rendered.

Lakeland Nurseries was established in 1954 and continues active. In 1957 Lakeland Nurseries and its officers consented with the Federal Trade Commission

to an order to cease and desist from certain alleged misrepresentations regarding the splendor and size of plants.

Affidavits of agreement were negotiated with the Post Office Department in connection with "Vibra Slim" and "Slim Flex" sold by Modern Aids, Inc., where in it was stipulated that certain allegedly false claims would be abandoned. Modern Aids, Inc., also promoted the "Sunflo Flowing Air Purifier." This device was seized by the Food and Drug Administration, false and misleading labeling being charged. This action was appealed and the court ruled for the Government on certain claims.

None of these actions constituted an admission that the firms had violated any laws.

Complaints from purchasers of these products were adjusted when processed through Better Business Bureau channels.

Secretary and controller of American Realty & Petroleum Corp. is Howard W. Friedman, a CPA for several years prior to joining this corporation.

Another vice president is Charles A. Willoughby, a retired major general of the U.S. Army. He is active in the affairs of AMREP and, in addition, contributes to several publications.

In the company's annual report for 1963, the firm showed sales of \$14,206,745 with net, after tax earnings, of \$2,615,247. Stockholders equity was reported to be \$8,165,860. Present subsidiaries and divisions of AMREP are: Rainbow Lakes Estates, Rio Rancho Estates, Inc.; Silver Springs Shores, Inc.; and Albuquerque Utilities Corp.

NATIONAL BETTER BUSINESS BUREAU, INC.

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NEWSLETTER OF NATIONAL BETTER BUSINESS BUREAU, INC., NEW YORK, N.Y.,  
DECEMBER 1963

TEN-POINT PROGRAM ADOPTED ON LAND SALES

The yearlong efforts of better business bureaus and legitimate land developers to eliminate questionable marketing practices in the industry achieved an important forward step early this month in Phoenix, Ariz. A 10-point BBB program to promote accuracy in the advertising and sale of interstate land was adopted on December 6 by the Second National Conference on Interstate Land Sales. The National Better Business Bureau will implement the program in cooperation with local bureaus.

The Phoenix conference was sponsored by the Committee on Installment Contracts of the Association of Better Business Bureaus and the Liaison Committee of the Interstate Land Sales Industry. Representing the NBBB were President Kenneth B. Willson and Vice President J. R. Hoffman.

Adoption of the 10-point program, said Mr. Willson, represented a willingness on the part of the interstate land sales industry to solve its problems through self-regulation in cooperation with the better business bureaus.

A key point in the program calls for on-the-spot investigation, under NBBB supervision, of interstate land sales of national scope. Fact reports on the developments investigated will be made widely available to the public through the BBB network to assist it in dealing with reliable companies.

The program also calls for wide dissemination among advertisers, advertising agencies and media of the amended "Recommended Standards for Land Advertising" developed last year by the NBBB and the ABBB's Committee on Installment Contracts.

The advertising of interstate land offers will also be examined by NBBB and corrections will be sought where statements are in violation of the land standards developed by the NBBB or where the advertising fails to disclose the facts necessary for an understanding of the true nature of the land.

In his remarks to the conference, Mr. Willson said the success of legitimate developers has attracted a small minority of opportunities whose well-publicized promotional methods have cast a pall over the entire industry. Faithful application of the recommended land standards, said Mr. Willson, will go a long way toward establishing in the public mind that the legitimate land sales industry is aware of its responsibilities and is willing to play its share in solving its problems through self-regulation in cooperation with the better business bureaus.



**TEN-POINT PROGRAM TO ASSURE ACCURACY IN LAND ADVERTISING AND SELLING AS REVISED DECEMBER 5, 1963, BY NATIONAL BETTER BUSINESS BUREAU, INC.**

1. Investigation, on the spot, under the supervision of the National Better Business Bureau, of interstate land sales of national scope.
2. Drafting of fact reports on those enterprises, unless reports from local better business bureaus might be deemed adequate in apprising the public of those facts. Otherwise, they would be issued and authored by the National Better Business Bureau, itself.
3. Making these National Better Business Bureau reports available to better business bureaus, and to media.
4. Making these reports available on request and, entirely without cost, to every member of the public seeking them.
5. Making specific mention in reports, issued by the National Better Business Bureau, as to additional safeguards believed needed for the protection of the consumer.
6. Recommending to inquirers that they secure applicable public reports issued by State governments.
7. Wide dissemination of recommended standards to guide advertisers, advertising agencies, and media, in the use of accuracy and fairness in the advertising and selling of such offers.
8. Examining the advertising of such offers, and seeking the correction of any statements contained therein, which are deemed false or misleading, or in violation of the land standards devised by the National Better Business Bureau or which fail to disclose facts necessary for an understanding of the true nature of the land advertised.
9. When corrective efforts are unsuccessful, referring to the authorities, State and Federal, details of advertising promotions, needing such attention.
10. Educating the public through news releases, pamphlets, and other available means of communication as to the necessity for dealing with reliable companies and, where possible, of the desirability of personal inspection, before purchase.

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PREPARED FOR MEMBERS OF THE NATIONAL BETTER BUSINESS BUREAU, INC.,  
NEW YORK, N.Y., JANUARY 2, 1964

PERIODICAL NO. 1839: RECOMMENDED STANDARDS FOR LAND ADVERTISING (AS REVISED)

*Purpose*

The intent of these recommended standards is to encourage and preserve dependability in the advertising and selling of land. They apply equally to advertisements in newspapers, magazines, radio broadcasting, telecasting, direct mail, and to advertising in any form, whether in State, or out.

*Application*

If the advertising makes reference to particular improvements or features so as to state or imply that they exist, all applicable requirements of these standards relating to these particular features shall be revealed in each such advertisement regardless of whether advance payment or deposit is required. If reference is made to improvements or features which are planned and which are assured by bonding or other means acceptable to authorities, such fact shall be clearly and conspicuously disclosed; this does not negate any other applicable features of the code.

In addition, such other provisions of these standards shall apply whenever required by law or whenever failure to disclose material facts shall have the tendency or capacity to mislead or deceive the public.

*General*

The basic nature of the land offered shall be identified accurately, and any unusual feature shall be affirmatively disclosed in order that prospective purchasers may have a true understanding of what is being offered. Prospective purchasers shall have full information about the offering in writing, prior to purchase. Toward this end, the following specific guides are promulgated.

1. All claims made for land shall be accurate and provable.
2. Advertising shall not misrepresent the facts or create misleading impressions.

3. Advertising shall not obscure or conceal material facts.
4. Advertising subject to local or State jurisdiction shall comply with any regulations governing such advertising. Advertising which is disseminated in interstate commerce shall comply with all Federal regulations.
5. Advertising shall state the location of the property in relation to its distance in miles from a sizable community.
6. Advertising shall disclose any restrictions or reservations of record which subject the property to any unusual conditions affecting its use or occupancy.
7. Advertising shall disclose percentage of oil, gas, or mineral rights not included and whether there is right of entry for exploitation purposes.
8. Predictions of price or value increases of lots, over which the advertiser does not have control, shall not be made. Statements that lot prices will be increased by the advertiser shall be specific as to amount and date of the announced increase; the date shall be in the near future, and the increased price shall be maintained for a reasonable length of time.
9. Lots or land offered for speculative purposes shall be so represented. They shall not be represented as offering quick, immediate, or specific profits.
10. Advertising shall make no derogatory or unfair reference to competitive developments or properties.
11. Title to purchasers shall be insurable by a licensed title company.
12. If property exchange privileges are advertised, any qualifications shall be stated clearly.
13. Deeds, title insurance, and other items which are included in a transaction shall not be described as "free."
14. The asterisk, or any other reference symbol, shall not be used as a means of contradicting or substantially changing any statement.
15. If any consideration is required to secure a lot for any reason, it shall not be stated or implied that such lot is "free" or is given as an "award," or "prize."
16. Lots shall not be advertised for "closing costs only" or by other deceptive devices, when this is the usual and customary method of selling, or when an additional lot or lots must be purchased at a higher price.
17. Advertisers shall not use names or trade styles which imply that they are bona fide research organizations, public bureaus, nonprofit groups, etc., when such is not the case.

*"Developments," "subdivision," "community," and similar terms*

Such terms are defined as referring to, and shall only refer to, land actually being developed for residential occupancy.

1. Advertising of lots for "homesites" shall refer only to recorded subdivisions, with streets or roads installed, or assured by bonding, or other means acceptable to authorities.
2. Advertising shall not claim or imply the existence of any improvements unless they have been completed or are under consideration. If improvements do not currently exist but are assured by bonding or other means acceptable to authorities, any reference thereto shall disclose in conjunction therewith that such improvements are planned and are assured by bonding or other means acceptable to authorities.
3. If streets, roads, sewers, or drainage referred to in advertising have not been accepted for maintenance by a public entity, such fact shall be disclosed.
4. If the purchaser must bear any assessments for promised improvements, advertising shall disclose this fact clearly.
5. Reference to "predevelopment prices" shall occur only after subdivision plat has been recorded and after positive assurance is available of completion of proposed improvements.
6. Advertising of lots and homesites shall make no reference to the availability of financing for home construction unless actually available.

*Offerings of undeveloped properties and acreage*

1. Unimproved land shall be clearly described as such and shall not be referred to as "developments," or "homesites." Unimproved land shall, in addition, be referred to only in terms such as "tracts," "parcels," "acreage," etc.
2. Advertising of land for any particular use shall be suitable for such use. If more than nominal expense shall be incurred in preparing the land for the advertised use, such fact shall be disclosed.
3. If individual lots or tracts are not identifiable, such shall be disclosed.

*Drainage*

1. Advertising shall disclose prominently when the property or any portion of the property is normally under water for extended periods of time during the year unless adequate drainage is assured by bonding or other means acceptable to authorities and clear and conspicuous disclosure of such planned drainage is made in advertising.

2. Advertising shall disclose prominently when drainage of the property would necessitate a public undertaking, and whether there are present plans for such drainage.

*Access*

1. "Streets" may be defined as such only when paved with hard surface according to county or city specifications or are assured by bonding or other means acceptable to authorities and clear and conspicuous disclosure of such planned streets is made in advertising.

2. "Roads" shall be affirmatively described as to their nature, i.e., macadam, gravel, dirt, etc.

3. To be described as "improved" roads shall be paved according to county or city specifications.

4. Roads described as "unimproved" shall be suitable for use by automobiles.

5. If a property contains no roads, that fact shall be disclosed unless roads are assured by bonding, or other means acceptable to authorities and clear and conspicuous disclosure of such planned roads is made in advertising.

6. Right-of-way easements shall not be described in such fashion as to indicate roads, or present access.

7. The use of terms such as "ranch roads," "suburban roads," "marl roads," etc., which are not generally understood by the public, shall not be used unless adequately defined.

8. If access to the property by ordinary auto is not possible at delivery this fact shall be clearly disclosed in advertising, including the distance to usable road, unless an access road is assured by bonding, or other means acceptable to authorities and clear and conspicuous disclosure of such planned access is made in advertising.

*Illustrations*

1. Illustrations of the property shall portray accurately the property in its present state.

2. The sole use of illustrations of points of interest some distance away shall be avoided. If used in conjunction with illustrations of the property, the distances in miles shall be stated.

3. Artists' conceptions of the property and/or facilities shall be clearly and conspicuously described as such, and shall not have the capacity to mislead or deceive readers.

4. If maps are used to show proximity to other communities, such maps shall be drawn to scale, and scale included.

*Distances*

1. All distances to any facilities or features outside the property which are referred to in the advertising shall be stated accurately in actual road miles.

2. The distance of the development or land offered for sale to the nearest city, town or village shall be disclosed in actual road miles. In addition, sufficient information shall be furnished prior to sale disclosing the precise location of the specific property offered.

3. If roads do not extend to the property, this fact, and the distance to roads shall be stated clearly unless roads are assured by bonding or other means acceptable to authorities, and clear and conspicuous disclosure of such planned roads is made in advertising.

*Water supply*

1. Phrases such as "abundant water," "plenty of water," etc., shall not be used unless water is readily available in adequate supply at nominal cost.

2. In connection with "homesite" offerings, if it is necessary for purchasers to drill their own wells, that fact shall be disclosed clearly, together with the average cost thereof.

3. Advertising which refers to a "water system" or "water supply" shall disclose any unusual costs or rates which must be borne by the purchaser.

4. Advertising of farm or grove tracts shall disclose clearly if irrigation is required.

*Utilities*

1. If power or telephone lines are not available to the subdivision advertised, this fact shall be disclosed clearly.
2. Power or telephone service shall not be described as "available" unless lines are installed and ready for use at the subdivision advertised.
3. If purchasers will be required to pay costs or assessments in excess of the normal public utility charges, these facts shall be disclosed.
4. Advertising shall disclose the type of sewage disposal and whether up to the standards of local health authorities.
5. Lots shall be offered in sizes which meet the minimum requirements of States or communities for both private water supply and private sewage disposal systems.

*Prices*

1. All statements regarding the prices of properties shall be accurate and complete and shall state clearly the sales prices and financing terms, if any.

## REAL ESTATE PROMOTIONS

Real estate promotions are a cause of continual inquiry to the National Better Business Bureau. Since it is not always practical to provide complete factual reports on all individual offers, this bulletin is published in the hope that it will assist the public in investigating real estate promotions and thereby help to protect it from schemes in this field.

National Better Business Bureau, Inc., New York, N.Y.

Persons considering the purchase of real estate lots, either in their local area or in response to advertisements offering such lots in distant States, should be sure that they have developed certain basic information in order to purchase wisely and thereby protect their interests.

The overwhelming majority of the real estate profession is trustworthy, and it is glad to help prospective buyers to obtain facts they should have before making a decision. However, unscrupulous promoters are able to operate on the fringe of the industry largely because many inexperienced people do not know how to investigate real estate offerings.

Some real estate lot promotions involve regular homesites. Others involve the sale of lots in "vacation areas," where summer homes or cabins can allegedly be constructed. Still others involve lots in States where persons wish to have a "second home" or to settle after they have retired.

Regardless of the purpose for which the lot is being purchased, and regardless of whether it is 3 miles away or 3,000 miles away, it is advisable to carry out certain procedures and develop certain information before making any commitment.

## PERSONAL EXAMINATION ESSENTIAL

Generally speaking, purchasers should examine personally any property they plan to buy, even if this involves travel, inconvenience, and expense. Buying property sight unseen opens the door for exaggerated descriptions, misrepresentations, and deceptive concealment of essential facts on the part of promoters, and is a major cause of dissatisfaction.

## FACTS TO DETERMINE WHEN PURCHASING A LOT

*(1) The promoter*

Who is behind the offer and the promotion? What have the experience and performance records of these persons been? Know with whom you are dealing. If you don't know, consult the local better business bureau or chamber of commerce or real estate board in the area. Will you be dealing with a licensed real estate broker? (Licensing is required in 46 of the 49 States.) Will you be dealing with a Realtor?<sup>1</sup>

<sup>1</sup> The trademark "Realtor" indicates a broker who has been accepted into membership in his local real estate board and the National Association of Real Estate Boards and is pledged to its established code of business ethics.

*(2) Advertising of developments*

If there are advertised or pictured improvements, such as paved roads, marinas, parks, beaches, golf courses, clubhouses, etc., have they been completed, and are they currently available for use? Or are they simply planned if the development is successful? Is there assurance that planned advertised improvements will be completed?

Is the status of improvements indicated clearly?

Do pictures in advertising show actual portions of the development?

Are distances from facilities noted accurately, or are they described as "nearby," "at your doorstep," etc.?

If prices of lots are featured in advertising, is one lot of sufficient area for a house? Are you required to buy more than one lot? (See also zoning requirements (13) below.)

*(3) Location*

Exactly where is the property located? Is access assured? How far from highway? From town? From factories and industrial areas? From an airport and other transportation facilities? From shopping centers or diversified neighborhood stores? From other lots and homes? From civic and community facilities such as schools, churches, hospitals, police and fire protection, garbage and rubbish removal, lighted streets, recreational facilities, etc.? How far from employment?

Is the map upon which the lot is designated a recorded (approved) plat? If so, where has it been filed?

Is the property located in an area made undesirable by odors, noises, or smoke? If beach rights and water privileges are included, are they included in the filed map, and does the promoter have the right to grant such rights and privileges? Is it located in an area in which you will be troubled by insect pests? Would it be undesirable because of floods or subsidence? Is there any fire protection? Is there likelihood of encroachment by commercial, industrial, or highway development? What are the future plans for the area?

*(4) Value of land in area*

What is the current selling price of unimproved land in the immediate area of your lot? Is the price of the lots in which you are interested in keeping with the price of other available land in the immediate vicinity? Are homes in the area well maintained? Is the character of the neighborhood satisfactory? Are the surroundings desirable?

*(5) Status of property*

Who owns the land? Is it free and clear? If mortgaged, insist on knowing the exact terms from the holder. Are there any easements, liens, judgments, assessments, unpaid taxes, etc.? The title should be searched before any transaction is completed. The work of examining titles is generally done by lawyers or title companies. The purchase of property without certification by a lawyer or the obtaining of title insurance from a title company involves many risks that should be avoided.

*(6) Improvements*

What improvements have been installed to date? Paved streets? Sidewalks? Street lights? Public utilities? Sanitary sewers? (See item 7, below.) Storm sewers? (See item 8 below.) Are there water mains or must individual wells be dug? How much will a well cost? Are the tax assessments and the utility rates satisfactory? (See item 11, below.) If improvements have been installed, are they paid for? If not, what portion of the burden are property holders expected to share? If they have not been installed, what plans have been made for such installation, and what are the arrangements concerning the cost? Has a bond been filed with State or county authorities to insure completion of improvements? Who will be responsible for maintenance of improvements, utilities, etc.? Is this set forth in writing?

*(7) Sewage*

Are there sanitary sewers or must septic tanks be put in? If septic tanks are necessary, are they authorized by local zoning statutes? Is the level of the land and type of soil suitable for septic tanks?

Is local health department approval required for septic tanks? Has such approval been granted?

**(8) Drainage**

Is the land dry or must it be drained? Is drainage feasible and possible? Have storm sewers been installed? Does the situation and location of the plot permit effective drainage after storms? Is the water table sufficiently deep so that basement and foundations are above it?

**(9) Soil**

What is the topsoil analysis? Is it satisfactory for lawn and garden? Subsoil? Does the property contain fill? If so, is there likelihood of sinkage?

**(10) Topography**

What is the topography of the land? Will it need grading, excavating, or filling? Retaining walls? What will the costs be? Is there a rock problem?

**(11) Taxes**

What is the present assessment rate? What is the assessed value of the property? Will the assessed value increase when the property is improved? When civic and community improvements have been completed? What is the increase that may be expected? Have special assessments been levied? If included in the purchase price, have they been paid? Are others in prospect?

**(12) Financing**

If you are asked to pay so much down and so much per month over a period of years, insist upon knowing the full details of such an arrangement. If a downpayment is required, you may wish to discuss with your attorney the advisability of placing such payments in escrow. Are the terms of the contract subject to your ability to obtain a satisfactory mortgage from a lender of your choosing? Is there a prepayment clause? Are its provisions satisfactory?

It is not only important that the purchaser know whether he can obtain a mortgage, but whether there is an existing mortgage on the property. If so, must the buyer assume this mortgage, or will the seller satisfy the mortgage and discharge its lien? What are the alternatives? How much are the closing costs? Can they be included in the mortgage? If there is no mortgage, what are the carrying charges, if any, on the unpaid balance, on a time-payment plan? It is advisable to retain an attorney for arranging and closing the full transaction.

**(13) Zoning**

What are the local zoning restrictions, and what protection do they offer? Will you have to buy more than one lot in order to comply with such zoning requirements? Will you have to buy more land in order to build the house you want, and still conform to local zoning regulations regarding the amount of frontage and the sidelines of the property? Are there any restrictive or protective covenants? What are their terms? Does your contemplated construction violate them?

**"FREE ALLOTMENT" OFFERS**

During the past several years many persons have received letters offering "a free allotment" in an area being developed. This "allotment" may be claimed by appealing on the site on or before a specified day in the immediate future, and arranging to receive "full information on the lot set aside, consideration required and privileges granted." It turns out that, in the promoters' smooth-talk lexicon, "free allotment" means that they are granting you the right to buy one of their lots without charging you for this privilege. And "consideration" means the price that you must pay for the lot. The purpose of this misleading phraseology is to lure you to the development site in order to sell you some land. You're not getting anything for nothing.

**LOTS AS INVESTMENTS**

Sometimes lots are offered to the public as "investment opportunities." It is claimed that land values are rapidly increasing in the area, and that lots purchased now will increase greatly in value.

Prospective buyers of such lots should remember that the purchase of undeveloped acreage is a highly speculative proposition, depending for success on many factors that are difficult to estimate, even when one is completely familiar with a given area. It is wise to conduct a thorough personal investigation, and to base your decision on the facts you have developed, rather than to rely on any rosy claims of promoters. Do not let your good judgment be overcome by "get-rich-quick" promises. And if the promoter says, "You must act quickly," it is usually good policy to move more slowly than ever.

## GENERAL

Remember, property should be examined personally, before commitment. Read all agreements before you sign, and make sure that all points are covered in writing to your satisfaction. If a contract is drawn, that document should contain all the agreements between the purchaser and the seller. The counsel and advice of a competent attorney is recommended in the purchase of real estate.

*Before you invest—investigate*

**TRANSCRIPT OF REPORT RELATIVE TO REGULATING SALES OF REAL PROPERTY LOCATED OUTSIDE THE COMMONWEALTH OF MASSACHUSETTS**

Submitted by the Legislative Research Council, January 21, 1964

**ORDER AUTHORIZING STUDY**

(House No. 3356 of 1963)

*Ordered,* That the Legislative Research Council be directed to investigate and study the subject matter of current house document numbered 2363, relative to regulating certain sales of real property located outside of the commonwealth, and to file the results of its statistical research and factfinding with the clerk of the Senate from time to time but not later than the last Wednesday of January, nineteen hundred and sixty-four.

Adopted:

By the House, June 21, 1963.

By the Senate, in concurrence, June 25, 1963.

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## LETTER OF TRANSMITTAL TO THE SENATE AND HOUSE OF REPRESENTATIVES

*To the Honorable Senate and House of Representatives.*

GENTLEMEN: The Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau, on House Order No. 3356 of 1963, directing the study of the subject matter of House No. 2363 of 1963, relative to regulating certain sales of real property located outside of the commonwealth.

The Legislative Research Bureau is limited by statute to statistical research and fact finding. This report therefore contains factual material only, without recommendation or legislative proposals. It does not necessarily reflect the opinions of the undersigned members of the council.

Respectfully submitted.

MEMBERS OF THE LEGISLATIVE RESEARCH COUNCIL,  
 Senator JOHN E. POWERS of Suffolk, *Chairman*.  
 Representative JOHN T. TYNAN of Boston, *Vice Chairman*.  
 Senator NEWLAND H. HOLMES of Norfolk and Plymouth.  
 Representative STEPHEN T. CHMURA of Holyoke.  
 Representative JAMES F. CONDON of Boston.  
 Representative SIDNEY Q. CURTISS of Sheffield.  
 Representative WALLACE B. CRAWFORD of Pittsfield.  
 Representative HAROLD L. DOWER of Athol.

## LETTER OF TRANSMITTAL TO THE LEGISLATIVE RESEARCH COUNCIL

*To the Members of the Legislative Research Council.*

GENTLEMEN: House Order No. 3356 of 1963 directed the Legislative Research Council to make an investigation and study of the subject matter of House No. 2363 of 1963, relative to regulating certain sales of real property located outside the commonwealth.

The Legislative Research Bureau submits such a report herewith. Its scope and content are determined by statutory provisions which limit bureau output to factual reports without recommendations.

The preparation of this report was the primary responsibility of Mr. Anthony A. Centracchio.

Respectfully submitted.

HERMAN C. LOEFFLER,  
*Director, Legislative Research Bureau.*

## REGULATING SALES OF REAL PROPERTY LOCATED OUTSIDE THE COMMONWEALTH

## SUMMARY OF REPORT

By directive of the general court this report discusses the regulation of certain sales of real property located outside of the Commonwealth.

*Scope and nature of problem*

Since World War II, the sales of out-of-State land subdivisions have increased rapidly and now total an estimated \$700 million annually throughout the country. This great increase raises important problems which concern both State and Federal officials along with the members of reputable real estate groups.

To the fore in all of the States are Arizona with some 630 separate desert land developments mushrooming during the last 18 months, and Florida where the sales of about 400 homesite developers skyrocketed to more than \$250 million in 1962 and will probably climb even higher during 1963.

These developments start with big acreages of vacant land, usually situated in a far-off State or county which a promoter or subdivider acquires and breaks up into lots for sale to many small purchasers. The necessary mass sales are then generated through nationwide advertising campaigns utilizing every possible means of communication—television, radio, newspapers, magazines, and direct mailings.

Last year, for example, such a big New Mexico sales campaign was launched at many State fairs, including two in Massachusetts, which attracted purchasers by offering every person in attendance the chance at no cost to win a "free" lot. Very soon these "purchasers" were notified they had to buy another lot at a high price before they could install necessary sanitary facilities under New Mexico law. In these cases neither did the buyer view the land, nor did he know any-



thing about encumbrances, yet the campaign produced over \$1 million in connection with 11,293 "free" lots and 1,027 lots sold at the full price.

Locally a plan to use grocery supermarkets for such sales campaigns was recently prevented. Lower discounted land prices were to be given to market customers making certain amounts of food purchases during stated periods.

Invariably land purchase contracts are offered on the installment basis with very little initial payments required. The purchasers are promised improvements which do not materialize—of roads, schools, churches, utilities, shopping centers, transportation, and the like. Attractive multicolored brochures falsely make it look as though the land is already fully developed.

Undoubtedly many of the promoters of out-of-State land sales are honest, but most experts agree that these land purchasers need protection. Unfortunately opinions differ as to the best procedures to adopt for that purpose.

#### *Purchase contracts*

These land subdivision purchasers utilize a conditional sales contract form which is a key consideration. This form contains much fine print neglected by the buyer. For example a breach of a single contract provision authorizes the seller to seize all payments as liquidated damages and make the outstanding balance due and payable. Meanwhile the subdivider holds the title until the full price has been paid, usually years hence. Obviously the solvency and honesty of the subdivider during this long period are of great moment to the purchaser.

Often the subdivider does not have title to the land he is selling. He may only possess an option to purchase which he hopes to exercise with money received from lot sales. Unfortunately such receipts may prove too small and lead to his bankruptcy. When the subdivider is dishonest he will divert the buyers' installment payments to his advantage instead of using them to pay off part of the blanket mortgage or to install promised improvements.

Theoretically the legal civil remedies in cases of breach of contract and of rescission may appear adequate to protect purchasers. In practice, however, heavy legal and other expenses necessary to conduct litigation in a distant State or country may cause a buyer to abandon his rights, especially where his investment to date is comparatively small.

#### *Conveyances of land*

Persons buying or selling land locally usually have legal counsel but purchasers of out-of-State lots view such protection as an unnecessary or prohibitive expense. Most buyers act without necessary legal safeguards to assure delivery of title when they complete their contracts.

In view of the foregoing, should State or Federal Governments interfere? How far can protective measures go and not be declared an unconstitutional interference with individual rights to enter into contracts?

#### *Constitutional and other legal aspects*

When all of the parties are from the same State no jurisdictional problem arises since each State has power over intrastate matters. If the parties, however are from different States, problems of jurisdiction frequently do arise. Interstate matters are normally under Federal jurisdiction but the police power of a State makes possible certain procedures of value. Mail order solicitation from out-of-State areas permits the home State in which purchasers are being sought to maintain jurisdiction over land-purchase litigation.

#### STATE PROCEDURES ELSEWHERE

Twenty States provide protection for buyers against certain improper sales practices, faulty advertising, and the purchase of land sight unseen.

#### *Registration, public reports, and advertising controls*

Many States require subdividers to file a notice of intention before they may make public sales offerings. This notice reveals basic information about land transactions.

Some States require the payments made by purchasers to be placed in trust pending delivery of title. Contract clauses are sometimes required which automatically releases any land sold from a possible blanket encumbrance of the bigger tract of which it is a part.

False and misleading advertising is outlawed by all jurisdictions but it is difficult to control advertising which is misleading due to omissions. In a number of States, all advertising must be first submitted for State examination and approval before it may be used.

*Developments in situs and investor States*

State procedures relate to (a) "situs" States containing the land being sold, (b) "investor" States containing prospective purchasers and, (c) a combination of both types.

*Florida.*—This important "situs" State contains most of the land subdivisions in this part of the United States. In 1956 fraudulent practices of subdividers shook public confidence and the action then taken proved inadequate. After considerable resultant agitation an important State committee this year proposed a Florida Installment Land Sales Board to license subdividers and salesmen and establish publicly pertinent subdivision facts before sales occur.

While the effect of the new statute on this basis must still be developed, it is important that the board has authority to establish rules and regulations which "assure that purchasers will receive title contracted for and all improvements promised."

*New York.*—This densely populated State provides the largest number of out-of-State land purchasers making it the biggest investor State in the Nation. Its stringent public disclosure procedures require prospective purchasers to be furnished with an offering statement. Sales without prior approval of the offering statement are declared to be a felony, which makes possible the extradition of offenders.

*California.*—The dual presence of (a) large areas of underdeveloped land, and (b) many purchasers, make this a combination situs and investor State. Its initial law of the early 1930's repeatedly amended since then established the most rigid of all State procedures. Subdividers are required to give a copy of the public report fully describing the proposed subdivision to every prospective purchaser. Moreover that purchaser must sign a receipt acknowledging that he has received and read the report. By recent enactment, California has also incorporated standards tightening procedures dealing with financial securities for out-of-State subdivision registrations, thereby partially applying the blue laws of California.

*Reciprocal State agreements*

Statutes authorizing reciprocal agreements between States can be of great assistance in taking legal action with respect to a person or activity located beyond State boundaries.

## FEDERAL PROCEDURES

Out-of-State land sales have many interstate aspects and are subject to important Federal procedures. Thus the Federal Trade Commission was created to eliminate false or misleading advertising. False advertising material has not been too difficult to control, but many difficulties arise in taking action with respect to misleading advertising particularly when presented as testimonials in opinion form.

*Securities and Exchange Commission*

This important and effective Commission deals with sales of land which involve an "investment contract." In these instances, every prospective buyer must be furnished with a prospectus containing detailed pertinent information. Because of the stringent standards applicable to financial securities, a prospectus may be withheld for less stringent reasons than would sustain similar action based upon public report standards. A valuable "before the fact" safeguard is thus provided to a limited number of purchasers.

*Other Federal departments*

In connection with controls exercised by the Post Office Department, Federal grand juries recently indicted 25 individuals connected with sales in 8 land promotions in which the mails were allegedly used to defraud. Criminal proceedings and civil administrative orders denying the use of the mails undoubtedly act as deterrents to others but they fail to prevent harm to many buyers in the first instance.

The Department of Justice has pressed criminal prosecutions in seven Western States charging violations of the mail fraud statutes. The large areas of these States points toward many out-of-State land purchasers having been defrauded. But again, this "after the fact" action is only partially effective.

The broad power of licensing of the Federal Communications Commission helps to control radio and television advertising. Thus, mention of a possible hearing or a request for radio and television station discontinuance of harmful advertising is usually effective.

State demands that Congress extend the jurisdictions of both the Securities and Exchange Commission and the Federal Trade Commission to provide greater control of sales of out-of-State land have been unsuccessful.

*Pros and cons of increased Federal controls*

The proponents of increased Federal controls over land subdivision activities stress that present Federal measures are inadequate to prevent harm to prospective purchasers of out-of-State land.

Opponents argue that more Federal procedures are unnecessary in view of recent increased activity of the Post Office Department, the Federal Trade Commission, and the Justice Department. Further, they doubt the constitutionality of further controls, which increasingly impair the right of freedom of contract.

MASSACHUSETTS PROBLEM

Since this Commonwealth is an "investor" State, protection of resident purchasers of out-of-State subdivision land is the foremost concern.

*Massachusetts legislative proposals*

The legislative proposal under study in this report—House No. 2363 of 1963, charges the board of real estate brokers and salesmen with regulating out-of-State land sales of a promotional nature in Massachusetts. Full disclosure is required regarding the property and the proposed terms of sale prior to a public offering of the land. Unlike other State procedures which usually center on subdividers and promoters, this bill is directed at real estate brokers and salesmen. The proponents of this proposal stress that 20 States regulate out-of-State land sales. The opponents object to more governmental interference in a business activity. They also argue that as more of the "situs" States containing the large tracts of land being offered for sale, adopt procedures, the need for Massachusetts action becomes less necessary. Finally they emphasize that there has been no large-scale public demand for such legislation.

*Financing costs of proposed controls*

It is difficult to estimate costs of the proposed land sale controls at least until the location of the administration of the new law has been determined—in (a) the board of registration of real estate brokers and salesmen, (b) the office of the attorney general, (c) the State department of commerce, (d) the State department of public utilities ("blue sky" law division) and (e) a new State agency.

Additional costs to the Commonwealth would be met by the collection of new fees from subdividers and promoters who in any case are required to meet the expenses of the investigations of these individual projects. This new revenue should substantially equal the new costs of administration.

*Proposed model law*

The report closes with rather extended model statutory provisions for State regulation of sales of land subdivisions. This model has been prepared by the greatly interested members of the National Association of License Law Officials.

REGULATING SALES OF REAL PROPERTY LOCATED OUTSIDE THE COMMONWEALTH

CHAPTER I. INTRODUCTION

*Legislative background*

This study based on House Order No. 3356 of 1963, which is reprinted on the inside of the front cover of this report, directed the legislative research council to investigate and report relative to the subject matter of House Document No. 2363 of 1963. The latter legislative proposal, introduced by Representative Beryl Cohen, of Brookline, on petition of John W. McIsaac, provided for State regulation of certain sales of real property located outside of the Commonwealth.

*Sources of information*

The sources of information for this report have been public and private in character. As for the public sources, conferences have been held with Senator George V. Kenneally, of Boston, chairman of the joint legislative committee on State administration, with three informed members of the house of representatives, Representative Beryl W. Cohen, of Brookline, Representative Russell H. Craig, of Lynnfield, Representative William F. Otis, of Boston, and with Mr. John W. McIsaac, the Massachusetts Board of Real Estate Brokers and Salesmen.

The subject here under discussion dominated a recent joint meeting of the Southern Regional Conference of Attorneys General and the Southern Conference of License Law Officials at Charleston, S.C. Summaries of these proceedings have been obtained, particularly of related addresses by an assistant attorney general of Florida,<sup>1</sup> and the chief counsel of the Florida Real Estate Commission.<sup>2</sup> Finally, among these public sources, is an address by the attorney general of California.<sup>3</sup>

As to private sources of information, an effort was made to present the views of a cross section of the real estate community. Among the conferences with individuals and organizations contacted for this purpose was a joint meeting with the officers and legislative counsel of both the Massachusetts Association of Real Estate Boards and the Brokers Institute of the Greater Boston Real Estate Board. The realtors with whom contact was made included Previews, Inc., and Town & Country Homes, Inc.

The views of organized labor were obtained at a conference with legislative counsel representing the Massachusetts State Labor Council, AFL-CIO. Similarly, valuable material was made available by the directors of the Boston Better Business Bureau, Inc., and of the National Better Business Bureau, Inc.

Outside Massachusetts, Mr. Edward Semenow, executive director of the National Association of License Law Officials, provided valuable information. Of value also were the findings of a recent real estate research program conducted by the graduate School of Business Administration of the University of California in Los Angeles. This program resulted in a detailed volume discussing the problem of land subdivision sales in the State of California.<sup>4</sup>

The Legislative Research Bureau expresses its appreciation for the extended and valuable cooperation of all these individuals and organizations in the preparation of this report.

#### *Scope and nature of problem*

Since World War II, total sales of out-of-State land lots have grown by leaps and bounds so that by the end of this year an estimated \$700 million will be spent nationally for this purpose.<sup>5</sup> This rapidly expanding business has brought many large and serious problems which concern not only State and Federal Governments, but also reputable real estate men.

The magnitude of this mushrooming activity across the Nation is indicated by the fact that in Arizona alone, more than 630 separate developments of desert land have occurred during the last 18 months. Similarly, the sales of nearly 400 promoters of homesites and marginal acreage in Florida rocketed over the \$250 million mark in 1962 and will probably go even higher this year.

These land developments are ordinarily started by a promoter obtaining a very large tract of vacant land, containing thousands of acres, remotely located in a distant State or country from the purchasers. These tracts are first divided into subdivisions and, in turn, into lots. Sales are vigorously promoted by national advertising campaigns utilizing every modern means of mass communication and marketing technique. Prominent among these is television, radio, newspapers, magazines, and direct mailings, all of which have contributed to elevating out-of-State land sales to the status of "big business."

An example of unusual sales promotion activity last year occurred at 29 major fairs and carnivals throughout the United States, including the World's Fair in Seattle, Wash.; and the Brockton Fair and the New England Home Show in Massachusetts. A southwestern land company set up attractive booths at all these events to lure local residents and other passersby into registering by offering a chance gratis to win a "free" lot located in a New Mexico tract. Almost everyone signing an entry form shortly received notification by mail indicating that he had won a free lot but that to receive it he must within a 10-day limit forward \$49.30 needed for "closing costs."

Each winner sending in such a check was then contacted by a salesman who stated that county regulations in New Mexico do not allow both a septic tank and a water system to be placed on a single lot. He must therefore buy his second lot, this time at the full price of \$495. Throughout the negotiations the buyer fails to learn the location, encumbrances, utilities or other important information relative to the lots purchased sight unseen. Through the use of this bait and switch method, more than \$1 million was collected during 1962 by New Mexico operators from the sale of 11,293 "free" lots and of 1,027 lots

<sup>1</sup> This and succeeding footnotes are gathered by chapters in app. A of this report.

sold at the regular price. As a result, many better business bureaus were deluged with inquiries for information and help by winners of these "free" lots.

Another local sales approach which fortunately never succeeded, was a scheme designed to sell out-of-State land lots not already owned by the promoter, through the medium of grocery supermarkets. The plan was to give their customers a credit toward the price of a lot, based upon their total supermarket purchases during a given period. Only prompt action by the authorities prevented the promoter from putting the plan into operation.

Ordinarily, terms of purchase are adjusted to attract buyers. Installment payments are made low enough to be feasible with the budget of almost any person. The entire transaction may be by mail or a salesman may intervene personally. In connection with each lot purchased a down payment of \$10 is generally required, followed by payments of \$10 per month until the total purchase price has been met. Occasionally, the purchase may be made with no money down and with payments of installments of \$15 per month until the entire price has been paid.

Commonly, a prospective purchaser is told that the prices of other lots situated not far from his intended lot, have already gone up and therefore his purchase should not be delayed if he wishes to avoid a higher price. He is promised that the land will be improved with roads, schools, churches, utilities, shopping and business centers, transportation, country clubs, golf courses, and marinas for boating and fishing. Attractive, multicolored sales brochures show the land as though already developed, thus presenting a rosy picture of neighborhood togetherness. All of this can be his, the buyer is told, plus a lower cost of living due to the climate.

In spite of these and other questionable practices, it would be grossly unfair to label all companies selling out-of-State land lots as dishonest since many of them are undoubtedly honest. Nevertheless most experts agree that present laws and procedures are inadequate. Unfortunately, opinions vary as to the nature and extent of proposals necessary to rectify the situation.

#### *Purchase contracts*

The purchase contract form used for the real estate sales under discussion is a detailed and formidable document, with much of the content in fine print. Under the contract, the seller agrees to convey the land only when the buyer has completed all installment payments. Numerous additional provisions have legal significance beyond the comprehension of the average buyer. For example, in the event of any default by the buyer, the seller is entitled to retain all payments to date as "liquidated damages." Moreover, the terms of the written contract embrace the entire agreement and no other representations or warranties have any weight. Quite often, the form will cause the buyer to agree that the contract may not be recorded or assigned by him, unless the seller gives permission to do so.

Under the agreement, violation of any single one of its provisions is sufficient to constitute a breach of contract by the buyer and to make the entire outstanding balance of the purchase price immediately due and payable.

Under such contract terms the buyer faces many uncertainties. In all likelihood, he has bought the land sight unseen and his lot may be entirely different from its description, at least as understood by the buyer. Utilities may be unavailable or inadequate or threaten a prohibitive cost. As time passes promised improvements may fade away. Highway facilities may not become available, along with schools, churches, shopping centers and the like.

In addition, the financial stability and honesty of the subdivider are matters of uncertainty and deep concern to the buyer. For one thing, the subdivider may not yet have title to the lots he has sold, and only possesses an option to purchase the land involved. He may expect to pay for a large tract by using the money received from many small lot sales, only to have such payments prove insufficient for acquisition, thus forcing him into insolvency.

As long as the subdivider has title to the land, he may use both sold and unsold lots as collateral in raising funds to make promised improvements. In that case the land is burdened by a mortgage which takes financial precedence ahead of the interest of the buyer unless the purchaser has recorded his "agreement for the sale of real estate" before the subdivider mortgages the land. In short, as long as title remains with the subdivider, the land can be seized by the latter's creditors to satisfy debts, liabilities, or judgments; furthermore, tax liens and mechanics' liens may attach to the land and supersede the interest of the buyer.

If the subdivider is unsuccessful in business activities he may not be able to convey the title to the lots he has sold, as he agreed to do. If he is dishonest he will defraud the buyer by failing to use the latter's money (a) to pay off encumbrances on the property, or (b) to provide promised improvements.

In view of these factors, purchasers of out-of-State land subdivisions clearly labor under a considerable variety of difficulties.

#### *Civil remedies of buyer*

Legal proceedings by a buyer usually involve two principal situations (a) when the seller defaults, usually because he has become insolvent, and (b) when there is a claim of fraud or misrepresentation connected with the sale of the land. In the first situation, the buyer may sue for breach of contract, and in the second, he may seek damages or rescission.

In theory, these remedies appear adequate. But as a practical matter, they are not. A close examination of the usual facts surrounding a transaction will reveal difficulties and impracticalities against the average buyer asserting his legal rights. The distances between the parties and the land is usually very great. For a purchaser to engage a lawyer in the distant jurisdiction concerned, and then travel a great distance to join him in taking care of the desired litigation entails heavy expense. The buyer ordinarily is unable to meet these costs, and therefore usually abandons his civil remedies.

#### *Conveyance of land*

Despite the basic differences between the usual deed used in an ordinary legal conveyance of property and the "agreement for the sale of real estate" both types of instruments result in a transfer of land. Society attaches great importance to transactions involving the sale of real property. As a result, the law imposes many formalities and safeguards in order to afford protection to the parties concerned. In transactions dealing with the conveyance of land, the usual practice is for both buyers and sellers to retain lawyers to protect their respective interests.

But when it comes to the purchase of out-of-State land subdivision lots the buyer is almost always without the services of a lawyer. He will frequently view a lawyer as a prohibitive expense in view of the few hundreds of dollars involved in the purchase price for such land. No title search is conducted on his behalf and legal safeguards are inadequate to assure delivery of title to him when he has completed his payments.

An examination of the contracts, brochures, advertisements, and circumstances used in many of these land transactions leads to the frequent conclusion that the buyer has not actually been defrauded in a technically legal sense, he has just made a very poor deal.

Under such circumstances is action by the Commonwealth of Massachusetts either necessary or desirable? If so, what form should such State action take? Might proposed procedures constitute an unwarranted interference or restriction of the basic right of freedom of contractual relation? Related to these questions is the following recent statement by a U.S. Deputy Attorney General:

"We view with deep concern the inroads made by swindlers in the real estate development industry. They not only threaten the consumer's pocketbook and morale, but also do great harm to the large body of legitimate subdividers who must contend with this unfair competition and operate in an atmosphere of suspicion and distrust."<sup>6</sup>

#### *Constitutional and other legal aspects*

When the land and the promoter are within the same State as the purchaser no problem of jurisdiction arises. These conditions clearly permit a reasonable exercise of the police power inherent in the State.

This is not so, however, when either the promoter, the land, or both, are outside of the State in which the buyer resides. In this event the transaction crosses State lines, and obviously certain Federal and constitutional issues arise. The promoters' activities fall within one of the three following categories:

1. Those promoters who reside in Massachusetts and sell out-of-State land subdivisions to Massachusetts residents.
2. Those promoters who reside out of State and sell out-of-State land subdivisions to Massachusetts residents, and
3. Those promoters who reside out of State and sell Massachusetts land subdivisions to residents of this or other States.

Under what circumstances may a State regulate domestic activity flowing within and without its borders? Has it the power to impose controls upon solicitations which originate beyond its borders? Does a local statute which prohibits offerings to sell land subdivisions out of State before the local law has been complied with, place an unconstitutional burden on interstate commerce?

Authorities in law state that unless Federal legislation intervenes, the State may enact laws of local concern even though the law may affect interstate commerce or regulate it to some extent. The test is whether the State law is a regulation of interstate commerce and, therefore, unconstitutional, or a valid exercise of the police power, and, therefore, constitutional. The requirements of such a State law must apply equally to both in-State and out-of-State promoters, otherwise the local law may be attacked as being discriminatory and, therefore, unconstitutional.

The question of jurisdiction arises whenever a State attempts to regulate an out-of-State corporation which has only minimal activity within the borders of the home State. Formerly a State regulation of a foreign corporation could not be sustained when jurisdiction was based solely upon acts of mere solicitation of sales. Something else also had to be shown in order to acquire jurisdiction. This rule is no longer in effect.

Experts are now of the opinion that a course of mail-order solicitation is sufficient in land sales cases to establish the jurisdiction of the State in which solicitation occurs. They reason that there is no difference between (a) solicitation by agents in the State which has sufficed to establish jurisdiction heretofore, and (b) solicitation by advertising in magazines circulated in the State. Either premise is sufficient to give jurisdiction to a State.

Regulation of sales of out-of-State land subdivisions in Massachusetts raises a collateral question. Can a Massachusetts promoter be regulated who sells Massachusetts land subdivisions only out-of-State? This question has often been overlooked when establishing subdivision procedures, with the result that States often inadvertently foster the same activities when they emanate from within their borders, which they outlaw when they emanate from out of State.

#### CHAPTER II. STATE PROCEDURES ELSEWHERE

Subdivision developments are usually controlled on two bases: (a) One procedure is chiefly concerned with street layouts, drainage, and similar matters in accord with local ordinances; and (b) another procedure, statewide in character, is designed to protect the purchasers of subdivision lots from fraud, deceit, or misrepresentation.

This study is concerned with the latter type of procedure which was in effect in 15 States in 1962 according to a survey of State statutes (Arizona, California, Florida, Hawaii, Illinois, Maine, Nebraska, Nevada, New Jersey, New York, Ohio, Tennessee, Utah, Vermont, and Wisconsin). In addition five States have since enacted laws covering a number of related subjects (Colorado Minnesota, Michigan, New Mexico, and Oregon).

Not all State statutes are alike, but they tend to cover the same subjects, as shown below (see app. B for supporting detail). The frequency of statutory subject area coverages is indicated by the numbers of State statutes in which these subjects occur, but a given number of States does not necessarily include exactly the same list of States:

- (1) Eleven States penalize publication of false advertising;
- (2) Ten States restrict use of public reports in advertising;
- (3) Nine States (a) require public notice of intent to sell; and (b) provide for suspension and revocation of real estate licenses under certain conditions;
- (4) Eight States protect the right to a hearing before an order is issued prohibiting false advertising;
- (5) Seven States require payment (a) of filing fees; (b) out-of-State inspector fees; and (c) the furnishing of copies of contract forms to public agencies; (d) authorize a public agency to issue orders prohibiting misrepresentation in sales; (e) require prior approval of advertising copy by a public agency before it may be issued; and (f) apply criminal sanctions for false advertising;
- (6) Six States (a) define the word "subdivision," and (b) prohibit blanket encumbrances in conditions of sale;

(7) Five States (a) require local subdivision inspector fees and (b) for release of land sold from blanket encumbrances; (c) provide a method to rescind a contract induced by false advertising, and (d) provide for establishing constructive service of legal process and an on-site, out-of-State subdivider.

These provisions are aimed at eliminating buyer difficulties resulting from unreliable advertising or inadequate advance information before subdivision lot purchases occur.

Subdivision registrations enable the State to obtain information from the subdivider as to the name and address of the owner, the condition of the title, outstanding encumbrances, the complete terms of the offering, precise location of the land, and information pertaining to accessibility, utilities, and other pertinent matters. In some States this may be followed by an inspection for the information purposes of the public agency charged with regulation of subdivisions. In other States a mandatory public report is also required, as to which every buyer must sign a receipt that he has received and read this report before a binding contract may be made.

Four States (Maine, Ohio, Tennessee, and Vermont) define a sale of out-of-State land located more than 25 miles beyond their borders as involving the sale of a security thus bringing State "blue sky" laws into action. As a consequence, their State agencies are not limited to full disclosure standards when considering applications for registration required before sales offerings in each State, and now apply the higher fair, just, and equitable standard imposed by the securities law.

In 1962 a questionnaire on the status of State statutes regulating sales of land subdivisions was sent to members of the National Association of License Law Officials. A summary of their responses appears in appendix C of this report, and indicates that (a) 10 States have enacted laws; and (b) nine States contemplate such legislation.

These answers also disclose that many States regard their major problems as (a) mail solicitations; (b) free lot advertisements; (c) the inability of prepurchase inspection; (d) the content of certain national magazine advertising; (e) activities of unlicensed land operators; (f) absence of public reports; and (g) objectionable direct mail advertising. To remedy these problems these States suggest new State legislation, Federal legislation, control of advertising, mandatory use of local real estate brokers; and, finally, licensing of subdividers by each State.

Twenty States presently have laws regulating sales of out-of-State and in-State land subdivisions. Their regulatory procedures follow two distinct lines: (1) Registration and public report, and (2) advertising controls, which are discussed below in turn.

#### *Registration and public reports*

As previously noted, State laws relative to out-of-State land offerings are not identical. However, many States provide a registration procedure requiring that before a public offering of land subdivision lots may be legally made, a "notice of intention" must be filed with a public agency. The notice indicates (a) the name of the owner or subdivider; (b) full details on the State of the legal title, including mortgages and any other encumbrances; (c) the proposed conditions for future sales; (d) copies of the contract and other forms to be used; and (e) detailed utility information.

These States usually authorize full investigations, including onsite inspections. If encumbrances exist, numerous State laws provide for stringent controls of the finances of the subdivision. Since a mortgage obtained by a developer usually covers a large area which consists of hundreds of acres and thousands of lots, State controls may require a provision in the blanket mortgage or other encumbrance which automatically releases each individual lot when the buyer has complied with the terms of his contract.

Failing this provision, the State law may require that the money collected from individual purchasers be impounded or placed in escrow. Sometimes the State requires that title to the land be placed in trust, or that the subdivider furnish the purchaser with a bond or other acceptable guarantee for his protection. Unless one of these requirements is met, sales of land subdivision lots subject to a blanket encumbrance are prohibited.

Even if the land to be subdivided is not encumbered, many States still impose certain controls on payments made by the purchaser. In these States also,



these controls require placing the funds in trust or escrow until title to the land is delivered.

Issuance of a public report is mandatory in most States following registration. A number of States require that every purchaser be furnished with a copy of this report before a legal contract may be entered into. In the State of California, the subdivider must obtain a receipt from the buyer setting forth that he has received and read that document. Furthermore the subdivider must retain the receipt for a stated period of time for purposes of verification. Use of the public report in advertisements of the land subdivision is prohibited.

These laws governing both registration and public reports are designed to provide safeguards for the purchaser against his own shortcomings and his failure to make physical inspection of the land which he usually purchases "sight unseen."

#### *Advertising controls*

The second basis of State regulation is concerned with advertising. This sales approach is most often used by subdividers to develop out-of-State prospects. A great many of the problems arising between the buyer and subdivider are directly traceable to the kind of advertising to which the buyer has been exposed.

While most advertisements are not actually false, certain emphasis, half-truths and other devices often make them misleading. That they have been successful on many occasions is the deep concern of many State and Federal authorities.

A number of States have passed laws making false or misleading advertising a criminal offense. These statutes protect the purchaser inadequately since publication of the undesirable advertisement is not prevented in the first instance, and punishment of the offender occurs after the harm has been done. Additionally, experts advocate more stringent control of advertising by outlawing improper emphasis, half-truths, and the omission of material facts which make an advertisement misleading.

To apply the latter controls more effectively a number of States now require that all advertising material must be first submitted to their State agencies for examination and approval.

#### *Developments in selected "situs" and "investor" States*

States which regulate land sales fall into three categories: (a) States containing the land which is for sale, commonly referred to as situs States, (b) States which furnish the purchasers for that land, commonly known as investor States, and (c) a combination of both. To illustrate their various practices the text discusses the procedural requirements of three States—namely, Florida, New York, and California—which are quite active in these land transactions.

*Florida.*—This State is known as an important situs State, and, to a lesser degree, as an investor State. It holds great attraction for Massachusetts residents for retirement as well as vacation purposes.

Florida perhaps contains most of the land located on the eastern seaboard of the United States which is sold by subdividers to out-of-State purchasers. Within its boundaries operate by far the largest number of subdividers found in this part of the country. Its economic welfare depends in part on the sales and development of land subdivisions. This State has provided a number of very successful and highly satisfactory land subdivision promotions.

Hence, the public image of land sales to out-of-State purchasers is of great interest to the State of Florida which as far back as 1956 enacted new legislation on this subject. This action was of special significance as a first attempt by a situs State to apply regulatory procedures.

Undoubtedly the new legislation reflected disclosures of fraud and misrepresentation by some subdividers. Moreover, fraudulent practices of "fly-by-night" land subdividers in other States besides Florida helped develop a general nationwide flood of unfavorable publicity. As a result public confidence weakened in the integrity of all subdividers and the sales of land lots suffered.

Florida, therefore, enacted legislation establishing procedures to provide additional safeguards for purchasers. The new Florida statute provided among other things for—

1. Licensing of subdividers and salesmen;
2. State approval of all proposed advertising used outside Florida;
3. Injunctive relief to prevent false advertising;
4. Penalties against the publication of misleading information; and
5. Site inspections, both local and out of State.

By early this year, the inadequacy of this early Florida law became generally recognized. The Governor of Florida appointed a committee to study the inadequacies of existing controls of interstate land sales. This important committee consisted of outstanding citizens, including prominent bankers, realtors, members of the chamber of commerce and bar association, and, ex officio, a member of the Florida Real Estate Commission. Legally, it had the services of Benjamin T. Shuman, chief counsel of the Florida Real Estate Commission and Attorney Edward S. Jaffrey, assistant attorney general of Florida, who are both nationally well known on this subject.

This committee recognized that the primary problem of controlling promotional land sales of local subdivisions was the prevalence of "easy down, easy pay plans." If such installment sales could be regulated much of the problem would be solved.

The committee's resultant legislative program was enacted and became effective on September 1, 1963. This new statute created a Florida Installment Land Sales Board consisting of five members. The board was directed to establish rules and regulations to administer the act so as "to reasonably assure that purchasers will receive title contracted for and all improvements promised." Among many safeguards provided in the new statute are the following 11 features: (1) Broad jurisdictional provisions; (2) mandatory licensing of subdividers and salesmen; (3) disclosure through registration of subdivisions before they are offered for sale; (4) approval of contract forms for use in individual installment sales; (5) escrow and trust accounts; (6) recording of purchase contracts; (7) approval required before advertising, promotional literature, descriptions, or maps may be used; (8) annual reports by land subdividers, and audits thereof; (9) broad power to subpoena and hold hearings; (10) provisions for investigations, including on-site inspections; and (11) criminal sanctions and civil enforcement provisions.

This new Florida law has been passed, too, recently to permit a judgment. Certainly this statute represents a vigorous effort by a situs State to avoid improprieties connected with sales of out-of-State land subdivisions.

*New York.*—The State of New York is the second jurisdiction whose action on this subject is to be considered. This biggest of investor States has for many years been the most lucrative national market for sales of out-of-State land lots. From the big cities, notably New York City, have come by far the largest number of purchasers from this section of the country.

New York first enacted a law in 1936 dealing with the sale of out-of-State land subdivisions which prohibited certain fraudulent practices. In 1940, there followed the first comprehensive statute devoted entirely to the regulation of this type of land transaction. After a long interval, a number of important amendments were added this year.

In order to protect New York's land purchasing public adequately from fraud and deceit by sharp subdividers, this important State has enacted one of the most stringent public disclosure laws in the Nation. Up to this year the laws of New York and Florida were almost identical in their requirements for public disclosure. The major differences now between the two States reflect the very recent New York amendments which became effective on July 1, 1963, providing that (a) no sales or lease efforts of out-of-State subdivision lots shall be made unless prospects are given an "offering statement," and (b) a subdivider who engages in sales or lease efforts with subdivided land without obtaining approval of such an "offering statement" shall be guilty of a felony. This crime classification makes possible the extradition of a subdivider from another State.

The required "offering statement" filed with the Department of State shall contain: (1) The name of the subdivider or promoter; (2) a certified statement of assets and liabilities of the subdivider or promoter; (3) a complete description of the subdivision; (4) all pertinent information relative to existing water, street, and sewage disposal facilities, and the probable dates of completion of new facilities and the individuals charged with responsibility; and (5) the sales terms and conditions applicable to each unit.

*California.*—This State is the third of the selected States whose out-of-State land subdivision statutes are being examined. Only this year legislation was enacted in California differentiating out-of-State subdivisions from in-State subdivisions.

The original subdivision law of California, passed in the early 1930's, has been amended repeatedly. For many years a public report of a subdivision disclosing all pertinent facts has been a prerequisite to sales offerings. However, it

was not legally possible to stop the issuance of a public report until recently even though the subdivider's application disclosed obvious discrepancies, omissions, and even outright deception and fraud.

This year, the attorney general of California has emphasized the need of controlling installment sales of subdivided land in the West. He urges specific State and Federal legislative proposals, and argues that—

“\* \* \* the public report approach, at best, is a disclosure system. It fails to go to the root of the problem. If public reports are to be used, one question to be considered is whether they disclose all the information a buyer should have. Should not the buyer-investor, especially one buying out-of-State land sight unseen, have the type of facts which other investors are given under securities disclosure acts?”<sup>1</sup>

The attorney general also points out that California subdivision land frauds have recently been investigated by the California Assembly Interim Committee on Governmental Efficiency and Economy which reported to the 1963 legislature that, “California being both a situs and an investor State, faces serious enforcement problems \* \* \*. While the present full disclosure law has been helpful \* \* \* it is ineffective to deal with this complicated problem \* \* \*.” The attorney general added “When subdivision land is being nationally offered as an investment to the small investor, the assembly committee points out, \* \* \* we must recognize that the investor in real estate subdivisions should be given the same type of protection afforded the public in connection with investment in other recognized securities.”<sup>2</sup>

In the light of such public pronouncements, the California Assembly enacted a law this year giving the State division of real estate authority to deny a public report to a subdivider whenever fraud or deceit is detected in the proposed registration.

Another significant 1963 provision incorporates the “securities” sections of the real property securities law which the division of real estate by regulation deems to be applicable. On this basis, the division of real estate may disapprove the issuance of a public report, if the out-of-State subdivision being offered for sale is deemed to be other than “fair, just, and equitable.” The concept of treating out-of-State land sales as “securities” is a far-reaching attempt at effective State regulation because the blue laws of the State are thereby made applicable to these transactions in partial degree.

Disapproval of a public report is extremely important to a subdivider because the law of California requires him to furnish every prospective buyer or lessee of out-of-State subdivided lands with a verified copy of that document. In addition, the subdivider must obtain and retain a signed receipt from the purchaser or lessee stating not only that he has received the report but that he has also read it. Among the statutory enforcement provisions are criminal sanctions, injunctive relief, and cease-and-desist orders.

This brief analysis of the statutory controls in Florida, New York, and California is presented as background material for judging the controls proposed for Massachusetts in House No. 2363.

#### *States containing land for sale*

As noted above, some States are situs States providing sites for numerous land subdivision projects, others are investor States containing many prospective purchasers and a few States have characteristics of both types. Every situs State is also an investor State, but every investor State is not necessarily a situs State. Appropriate statutes to provide regulating procedures in strong situs States, therefore, differ from those which are suited to strong investor States.

Most of the offered land is situated in 10 States of this Nation (Arizona, California, Colorado, Florida, Hawaii, Nevada, New Mexico, Oregon, Texas, and Utah), in South America, and in some Caribbean countries. These areas require subdividers to apply for registration of prospective subdivisions, setting forth all facts relating to the land, but most do not effectively provide for a prospective purchaser to receive the resulting public report. Following registration, the State agency issues a public report, similar to an illustrative California public report which is published as appendix D of this report. The laws of these jurisdictions are of course not identical but they are similar in many respects.

Of those States considered to be strong situs States with much land being subdivided there are at least three which do not have laws specifically designed to regulate sales of the lots in their land subdivisions. These three States are Nevada (where recent attempts to legislate controls were turned down), Texas

and Utah. Situs jurisdictions have additional problems created by absentee owners who purchase lots for speculation without ever expecting to locate on this land, thereby causing subdivisions to remain undeveloped. With the passage of time, chains of title to this vacant land become cloudy so that financing is affected and planned improvements are postponed. Eventually the undeveloped subdivision becomes a public problem.

#### *Investor States*

All States are to a degree investor States, but this characterization is especially true of States which, while lacking in land, have an overabundance of purchasers. The foremost are the five large States of California, New York, Ohio, Pennsylvania, and New Jersey.

These prominent investor States would supposedly have enacted statutory safeguards protecting their residents in making purchases of out-of-State land lots. But not all investor States have passed legislation on this subject. Thus, New Jersey defeated such proposed legislation during 1963. Likewise, a regulatory measure for Pennsylvania never came out of committee. In contrast, the States of California, New York, and Ohio adopted additional protective measures in 1963 providing strict regulatory procedures.

Most public report States must issue a public report once the subdivider has furnished all of the information even though the State may deem the statement of the land offering to be misleading; on the other hand States employing the "securities" concept may withhold a public report, when warranted, if the proposed offering is not "fair, just, and equitable."

#### *Reciprocal State agreements*

States have a serious problem of effectively reaching persons located beyond their State lines. The most practical answer to this problem, according to much important opinion, is enactment of State statutes authorizing reciprocal enforcement. Such enforcement becomes even more important in view of the increasing number of States with laws regulating out-of-State land sales. Certainly, nationwide adoption of these agreements would greatly improve cooperation between the States, and provide additional protection for the buyers of out-of-State land subdivisions. Fortunately, this development would also benefit the useful and honest developers of tracts of land who now suffer from the activities of unscrupulous subdividers.

### CHAPTER III. FEDERAL PROCEDURES

Out-of-State sales of land which are the subject matter of this study obviously involves an interstate activity which gives rise to Federal jurisdiction.

Hence this report will briefly discuss the activities connected with the regulation of promotional land sales by various Federal agencies.

#### *Federal Trade Commission*

One of the functions of the Federal Trade Commission is to regulate advertising in interstate commerce in order to eliminate advertising of a false or misleading nature. To this end investigations may be initiated at the discretion of the agency or upon the complaint of some defrauded purchaser.

Not too much difficulty is encountered by the department in curbing advertising material which is clearly false. However, certain areas of advertising are difficult to regulate even though actually misleading since the offending statement may be presented in opinion form or as a quotation from some famous person. Efforts to stop the use of advertising under such conditions present many complicated legal problems which often defeat action by the Commission.

Boston recently witnessed a large and expensive display of advertising in local newspapers, featuring the testimony of a prominent radio and television personality in favor of purchase by local residents of out-of-State subdivision lots.

Similarly, hotels, motels, gas stations, restaurants, and wayside stands along the highways of Massachusetts, frequently have a generous supply of attractive multicolored brochures on display, strategically placed so they may be easily picked up and read by the general public. These pamphlets usually include prominent illustrated endorsements by famous persons urging purchase of land situated in distant States. Such endorsements are usually of so general a nature that they cannot properly be regarded as false advertising, yet they are likely to mislead the reader.

Another favorite method is the use of a statement leading an inattentive reader to believe that he is reading an on-the-spot description of the subdivision being offered for sale, when actually a close reading demonstrates that the statement deals with predictions of future developments. Under these circumstances the accuracy of the predictions cannot be challenged, although this advertising is misleading. Moreover, the Federal Trade Commission is primarily concerned with after-the-fact developments. Unfortunately considerable delay is inevitable between any investigation and hearings which precede issuance of a cease and desist order.

Given all these circumstances the effectiveness of this agency in adequately protecting the buyers of interstate land subdivision lots is doubtful.

#### *Securities and Exchange Commission*

The jurisdiction of the Securities and Exchange Commission over the sale of interstate subdivision lots, is limited to sales of land involving an "investment contract," thus developing a "security" document such as the Commission is organized to control. By itself a deed conveying title to real property is not a "security." But when that deed is part of a transaction which develops a contract that provides for a return on an investment, the transaction is subject to the jurisdiction of the Commission. This concept of an investment contract could be extended to cover practically all land sales, since most purchasers expect profits to be forthcoming from future improvements of the land by subdividers.

The Commission would then not be limited by the full disclosure standard in passing upon the application for registration. Instead, the Commission would apply the more exacting and stringent "fair, just, and equitable" standard of the securities law.

The Securities Act of 1933 requires disclosure to investors of all material facts concerning sales of securities offered to the public in interstate commerce or by mail, in order to prevent fraud, deceit, or misrepresentation. The issuer of the securities is required to file with the Commission a statement of registration, which presents financial and other information relative to the offering and the issuer. A copy of this prospectus must be furnished to every purchaser at or before the sale or delivery of a security.

If the Commission is of the opinion that the prospectus contains false, misleading, or insufficient information, the sale of the security may be prevented through the civil and criminal powers of the Commission. Due to these rigid standards, the Commission's operations have been highly effective. Thus, important information is furnished to every purchaser of out-of-State land involving a contract "security." Unfortunately, these safeguards are not available to all out-of-State land purchasers since they only apply to sales involving a "security."

#### *Post Office Department*

Congress has a constitutional power to regulate the postal system (U.S. Constitution, art. I, sec. 8). By Federal statute the Post Office Department has been directed to exclude from the mails all material deemed to be offensive or contrary to the public interest.

On the basis of this authority the Department denies the use of the mails to schemes which utilize false advertising or other fraudulent sales practices in an effort to obtain money or property from purchasers. However, no restrictive order may be issued by the Post Office Department until an administrative determination has been made that the complained of scheme or practice is of a fraudulent nature. In the meantime the alleged fraudulent practice is allowed to continue.

If the advertising placed in the mails relative to interstate sales of land subdivisions is merely deceptive or misleading, rather than false, postal action becomes difficult. In the majority of instances, this advertising is not actually false, even though capable of deceiving or misleading the reader. Under the latter circumstances proof of false intent is extremely difficult, yet exclusion from the mails so requires.

The Federal Statutes make it a criminal offense to use the mails to defraud, and therefore empower the Department to initiate proceedings under both civil and criminal laws. On both legal bases "an intent to defraud" must be proved in all related proceedings, but a degree of proof required in a criminal proceeding must go beyond a reasonable doubt whereas proof by a fair preponderance of the evidence suffices in a civil proceeding. In certain instances, civil procedures may therefore be preferable since less proof is necessary.

During recent months, the Post Office Department has conducted a nationwide program combating the fraudulent use of the mails in the sales of interstate land subdivisions. By August 15, 1963, Federal grand juries had indicted 25 individuals in connection with 8 land sale operations in which the mails were allegedly used to defraud. Moreover, an important postal official recently stated: "And this \* \* \* is just the beginning."<sup>1</sup> The Department then had 135 firms under investigation.

As with the Federal Trade Commission, however, the procedures available to the Post Office Department can be initiated only after the deed is done. Hence considerable time elapses during which an offender can continue undesirable activity.

While punitive regulatory procedures deter future violations, the problem is only partially met since the original fraud practiced upon the purchaser of out-of-State land is not prevented.

#### *Department of Justice*

The Department of Justice is the instrumentality through which the Post Office Department acts when the mails are being used to defraud. On this basis, the Justice Department has instituted criminal prosecutions in seven States charging violations of the Federal mail fraud statute (California, Oregon, Arizona, New Mexico, Idaho, Colorado, and Kansas).

The large area covered by these numerous prosecutions indicates the large number of purchasers of out-of-state land lots who allegedly have been defrauded.

Here once more the procedure is only partially effective in preventing frauds, since it is an after the fact procedure.

#### *Federal Communications Commission*

On the basis of a broad power of licensing, the Federal Communications Commission helps to control possible abuses in radio and television advertising. Censorship is forbidden so that Commission controls must, at best, be indirect.

The Commission is reluctant to revoke the license of a station because of abuses in advertising. Instead the curbing of such abuses is shifted to other agencies.

However, a mere threat of an FCC hearing or a request for cessation of objectionable practices is usually sufficient to bring about a beneficial result.

#### *Increased Federal controls*

The attorney general of Minnesota has urged Congress to amend the Securities and Exchange Commission Act in order to require the same standards, now used for stock issues, for the sale of subdivided land.<sup>2</sup> He argues that the jurisdiction of the Federal Government in this area is obvious, since promoters must sell in interstate commerce to obtain the volume of prospects necessary to their operation.

The secretary-director of the New Jersey Real Estate Commission also seeks more Federal assistance on this problem. He urges the creation of a Federal clearinghouse so that each State may have the full benefit of what other States are doing.

A U.S. Senate subcommittee this year has looked into the allegation that the Nation's senior citizens are being swindled in sales of land by mail order. After considerable testimony in favor of more Federal policing, Senator Pat McNamara, subcommittee chairman, said, "evidence of shady dealing warranted a full-dress committee inquiry into the whole range of frauds practiced against the aged."<sup>3</sup>

In testimony before this subcommittee, the real estate commissioner of Arizona demanded outright Federal intervention to halt phony sales. Legislation was thereupon suggested to authorize the Federal Trade Commission or the Securities and Exchange Commission to police interstate land subdivisions lot sales, but no action has resulted.

#### *Pros and cons of increased Federal control*

Proponents of increased Federal control point to (a) the obvious weaknesses of Federal procedures and (b) the inability of individual States to effectively legislate in this area.

They argue that Federal action such as that of the Securities and Exchange Commission is most effective as a preventive measure insofar as its limited jurisdiction will permit and stress that all other Federal procedures are "after the fact" measures which operate after the complained of harm has taken place, and therefore are of limited value to a defrauded buyer.

The proposed amendment of the attorney general of Minnesota would extend the public disclosure provisions of the Securities and Exchange Commission Act, now limited to the sales of "securities," to the sales of out-of-State land subdivision lots. Such extension would result in "before the fact" protection for the buyer of out-of-State land.

As another means of increasing Federal controls, other proponents favor the strengthening of Federal laws dealing with interstate advertising. They urge a requirement that all advertising be submitted to the Federal Trade Commission or Securities and Exchange Commission for approval before being used.

Opponents of increased Federal controls usually agree that Federal controls are somewhat inadequate, but they argue Congress should not add to Federal authority in this field because the regulation of sales of out-of-State land subdivisions should be primarily the concern of the States. They believe additional Federal laws are unnecessary in view of recent expanded activity by the Post Office Department, the Federal Trade Commission, and the Department of Justice resulting in the issuance of cease-and-desist orders and many Federal indictments. Also, as each succeeding year brings more State enactments on this subject, more Federal laws are less necessary.

In addition, there is the argument that increased Federal controls are unconstitutional, because they are not only an unwarranted arbitrary interference with the freedom of contractual relations, but impose an unnecessary supervision of a business activity.

The commissioner of the Missouri Real Estate Commission who is opposed to Federal legislation says,

"\* \* \* most subdividers are honest—this (Federal legislation) would just add extra expense, redtape, and delay. I don't believe you can protect people from their stupidity. The records show that most of those who get "hooked" do not inspect the property in question and do not as a matter of fact make any investigation whatever. They just clip a coupon and send in the "so easy downpayment—the howl, of course, comes later."<sup>4</sup>

Finally, a number of opponents feel that before stronger laws are considered, the industry should first do a more effective job at self regulation.

#### CHAPTER IV. MASSACHUSETTS PROBLEM

##### *Status of out-of-State land purchases*

Up to the present time Massachusetts has been an investor State, as evidenced by many urban residents purchasing land outside the Commonwealth. Hence, the emphasis in our laws to protect the public from the dangers of fraudulent sales of out-of-State land subdivision lots.

In Massachusetts, as in various other States, the out-of-State land fraud problem has not had sufficient time to assume large proportions. Purchasers of land subdivisions are not yet aware, in large numbers at any rate, of the frauds to which they may have been subjected. Frequently they sign up and start making payments on land purchases so as to become owners of desired land for use years hence, during retirement. Meanwhile, they make required payments without investigating subsequent developments out of State.

Until recently, the assumption was made that most persons would examine land in which they are interested before final purchase. However, in out-of-State land promotions, such is not the case, due to (a) the great distances often separating the buyer from the land, (b) high pressure sales techniques, and (c) easy financial installment terms, especially at first. Certainly large numbers of Massachusetts people of modest means are even now being induced to buy land located in a distant State or country, sight unseen.

An important factor in these situations is the fact that these transactions depart from the familiar traditional method of conveying real estate by deed. Instead, a conditional sales contract is ordinarily used by the seller for the purchaser of land in an interstate subdivision. Promoters of land sales take advantage of the fact that under such contracts, rights of the purchaser are highly vulnerable. Of course, they avoid any explanation of the differences between a deed and a conditional sales contract to a buyer, and often do their best to mislead the customer into believing that he is actually becoming the owner of the land at the time of original signing.

*Massachusetts legislative proposal*

It must be borne in mind that every State has somewhat different circumstances to consider. Statutes should therefore be tailored to meet special State needs and desires. Perhaps this explains the absence of legislation in some States, and the nature of the procedures in others, notably in the so-called public report States.

The subject matter of this study, House No. 2363 of 1963, proposes a new section charging the present board of registration of real estate brokers and salesmen with the administration of procedures for Massachusetts brokers and salesmen who engage in promotional sales of land subdivisions out of State (G.L. c. 112, s. 87EEE).

As a prerequisite to any such offering, brokers must submit:

"\* \* \* full particulars regarding such property and the proposed terms of sale, and said broker and his salesmen must comply with such rules, regulations, restrictions, and conditions thereto as the board, in its discretion, may impose."

The bill requires the board to investigate the proposed offering at the expense of the broker concerned. All brokers and salesmen are, however, prohibited from making any reference:

"\* \* \* to the board of registration of real estate brokers and salesmen or to any member or employee thereof, in selling, offering for sale, or advertising or otherwise promoting the sale, mortgage, or lease of any such property, nor make any representation whatsoever that such property has been inspected or approved or otherwise passed upon by said board or by any official, department, or employee of this Commonwealth."

Finally, enforcement is provided by authorizing the board to:

"\* \* \* suspend, revoke, or refuse to renew any license when it is found that the licensee has failed to comply with the requirements \* \* \* (of the proposed law) \* \* \*"

These provisions of House No. 2363 are directed at brokers and salesmen of out-of-State land subdivisions. They differ from the usual public report or "security" procedure almost always aimed at the owner or promoter.

The proposed bill does not directly provide for a public report but the rule-making power conferred upon the board might be utilized for this purpose. Provisions establishing State jurisdiction and State advertising controls of out-of-State land subdividers and promoters, previously shown as main concerns of the problem, are not included in the Massachusetts legislative proposal.

On the other hand, the vast majority of the 20 States having laws regulating out-of-State land subdivision sales provide for a public report type of procedure. Most of these States prohibit false or misleading advertising and a few of them also require prior approval of advertising. The three foremost States have been discussed in chapter II (Florida, New York, and California).

*Pros and cons of proposal.*—Those favoring passage of House No. 2363 point to these 20 States with laws controlling purchases of out-of-State land subdivisions. These jurisdictions include situs States, investor States, and a few with both characteristics. The proponents stress that many defrauded Massachusetts buyers do not know what lies ahead of them and emphasize that "Never in the history of real estate transactions has a buyer of land stood so naked of legal protection as does the purchaser of remote promotional subdivision land."<sup>1</sup>

In similar vein a committee of the National Association of Attorneys General recently stated that "\* \* \* when the number of victims reach into the tens or hundreds of thousands and threatens to go even higher \* \* \* the problem does come to be of governmental concern."<sup>2</sup> An assistant attorney general of Massachusetts states that "there is a void in the law which suggests that Massachusetts might consider protective measures."<sup>3</sup>

Representatives of the Massachusetts State Labor Council, AFL-CIO, state that there is a definite need for legislation on this problem. They urge, however, that H. 2363 be amended by substituting the word "person" for the word "broker" throughout the text.

The Boston Better Business Bureau states that complaints by local purchasers of out-of-State land have not been numerous, but that there have been many related inquiries which started about 3 years ago. This organization



stresses the need for a strong statute strengthening public control of related advertising.

The real estate fraternity feels that some legislation is necessary. It objects, however, to the focussing of the control provisions of House No. 2363 on the real estate brokers and salesmen of Massachusetts. It urges amendment to direct these control provisions toward owners, agents, or developers of out-of-State land subdivisions and to require them to qualify before they may sell land in Massachusetts. In like vein, a recent statement of the president of the National Association of Real Estate Boards endorsed legislation providing for a "full disclosure law by owners or agents revealing all pertinent facts about such property to each prospective purchaser and to obtain a receipt for such notice."<sup>4</sup>

Those individuals and organizations opposed to an increase in Massachusetts controls argue that the doctrine of caveat emptor (let the buyer beware) should govern these land transactions. They object to governmental interference in business to protect the foolhardy or wantonly careless individual against his own conduct. They believe such controls constitute an improper use of governmental power.

Other opponents emphasize that greater governmental control violates the constitutional guarantee of free contractual relations and imposes regulations which are both unnecessary and arbitrary. They argue that there has been no great public demand for this control legislation, and that complaints have been too few to warrant action by the general court.

Some opponents emphasize that the legislative reforms of many States, plus increased activity on the part of a number of Federal agencies, are only now getting into full swing. They argue that these developments, given more time, will be adequate to combat land frauds in the sales of interstate land subdivisions. Hence they argue that new Massachusetts controls are unnecessary.

Finally, the opposition claims that more and more situs States (containing the larger land areas offered for purchase) are passing laws applying stringent procedures to these transactions. Hence the need becomes less urgent for adoption of new legislation applying increased control in Massachusetts.

#### *Financing costs of proposed controls*

It is difficult to estimate the probable cost to Massachusetts of the proposed controls. This cost would depend upon whether the administration of the new law is to be assigned to the board of registration of real estate brokers and salesmen, as provided in House No. 2363, or whether this administrative burden should be placed elsewhere—with the attorney general, the State Department of Commerce, the State Department of Public Utilities (Blue Sky Law Division), or a new independent State agency.

In any case, the resultant additional costs would be paid by the Commonwealth. The State would collect the new registration fees and thus would be reimbursed by land subdividers who must pay for all necessary investigations of their activities. These collections should substantially equal the new costs of administration.

#### *Proposed model law*

The National Association of License Law Officials (known as NALLO) has prepared suggested model statutory provisions for State regulation of sales of land subdivisions (see appendix E). This association has a membership of real estate officials from each State, the District of Columbia, and two Canadian Provinces, and has been active nationally in urging passage of State laws controlling interstate land sales. Five of the twenty State statutes already enacted on this subject are based on the model law suggested by this association. Ten other States are also considering taking the same action. The NALLO proposal has been approved almost verbatim by the National Association of Real Estate Boards.

If the above model law is enacted by Massachusetts, standard registration and public report procedures would be in effect for the first time in the Commonwealth.

## APPENDIX A

## CUMULATIVE LISTING OF FOOTNOTES OF REPORT BY CHAPTER

## CHAPTER I

<sup>1</sup> Edward S. Jaffrey, assistant attorney general of Florida, "Subdivided Land Promotion Schemes," Apr. 19, 1963, address to the joint session of the Southern Regional Conference of Attorneys General and the Southern Conference of National Association of License Law Officials.

<sup>2</sup> Benjamin T. Shuman, general counsel of the Florida Real Estate Commission, "Subdivided Land Promotion Schemes," Apr. 19, 1963. Address to the joint session of the Southern Regional Conference of Attorneys General and the Southern Conference of National Association of License Law Officials.

<sup>3</sup> Stanley Mosk, attorney general of California, "Subdivision Promotions in the West," April 1963, article in the magazine, State Government, summer issue, 1963.

<sup>4</sup> William D. Warren, professor, and John M. Carmack and John M. Vincent, "Report to the Commissioner of Real Estate," State of California, Oct. 1, 1962.

<sup>5</sup> Trevor Armbrister, "Land Frauds," article in the magazine, Saturday Evening Post, dated Apr. 27, 1963.

<sup>6</sup> Nicholas deB. Katzenbach, U.S. Deputy Attorney General, article in the magazine, Barron's, dated Mar. 18, 1963.

## CHAPTER II

<sup>1</sup> Stanley Mosk, attorney general of California, "Subdivision Promotions in the West," April 1963. Article in the magazine, State Government, summer issue, 1963.

## CHAPTER III

<sup>1</sup> Trevor Armbrister, "Land Frauds," article in the magazine, Saturday Evening Post, dated Apr. 27, 1963.

<sup>2</sup> Walter F. Mondale, attorney general of Minnesota, August 1962, article in the magazine, House and Home, dated August 1962.

<sup>3</sup> Senator Pat McNamara, Senate subcommittee chairman, article in the magazine, House and Home, dated March 1963.

<sup>4</sup> Letter from Rolla E. Stephens, commissioner of the Missouri Real Estate Commission, received December 1963.

## CHAPTER IV

<sup>1</sup> William D. Warren, professor, and John M. Carmack and John M. Vincent, "Report to the Commissioner of Real Estate," State of California, Oct. 1, 1962.

<sup>2</sup> "Land Frauds," report to the Committee on Consumer and Investor Protection of the National Association of Attorneys General, Mar. 8, 1963.

<sup>3</sup> Samuel Adams, assistant attorney general of Massachusetts, Aug. 22, 1963.

<sup>4</sup> Arthur P. Wilcox, president of the National Association of Real Estate Boards, in the Boston Traveler, May 18, 1962.

APPENDIX B

Subjects covered in land subdivision statutes of 15 States in 1962<sup>1</sup>

Nature of subjects covered by statutes	States by numbers <sup>2</sup>														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1. Definition of subdivision.....	X	X	X	X				X	X						
2. Agricultural land excluded from definition.....	X	X						X							
3. Community apartment ownership.....	X	X	X												
4. Notice to commissioner of intent to sell.....	X	X	X			X	X			X	X	X	X		
5. Resale after foreclosure.....	X	X								X					
6. Notice required of change in setup.....	X	X								X					
7. Option or sale of lots as material change.....	X	X								X					
8. Filing fee.....	X	X	X			X	X			X	X				
9. Out-of-State inspector fees.....	X	X	X				X		X	X	X				
10. Local subdivision inspection fees.....	X	X	X						X	X	X			X	
11. Contract forms to commissioner.....	X	X					X		X	X	X			X	
12. Utilities to be furnished.....	X	X												X	
13. Civil liability for failure to pay fees.....	X	X												X	
14. Contents of land sale contract.....	X	X	X							X					X
15. Failure to record unauthorized encumbrance, misdemeanor.....	X	X													
16. Misappropriation of installment payments, misdemeanor.....	X	X													
17. Notice of selling price of lots to commissioner.....	X	X								X	X				
18. Blanket encumbrance and release clauses.....	X	X					X			X	X				X
19. No blanket encumbrance in conditions of sale.....	X	X	X				X			X	X				X
20. Impounding of deposit moneys required.....	X	X		X						X					
21. Bond required to satisfy claims of defrauded buyers.....	X	X			X										
22. Copy of subdivision report sent to buyer.....	X	X	X		X										
23. Copy of subdivision report sent to advertiser.....	X	X				X									
24. Restrictions on use of public report in advertising.....	X	X	X		X	X		X	X	X	X	X	X	X	
25. Suspension and revocation of real estate licenses.....	X	X	X		X				X	X	X	X	X	X	
26. Sale of foreign land by local broker.....	X	X				X	X								
27. Penalty for publication of false advertising.....	X	X	X	X	X	X		X	X	X		X		X	
28. Order prohibiting misrepresentation in sales.....	X	X	X	X	X							X		X	
29. Proceeding to rescind contract induced by false advertising.....	X	X	X	X	X		X	X				X			
30. Filing copies foreign advertising of local land with commissioner.....	X		X	X	X							X		X	
31. All advertising copy to go to commissioner.....	X		X	X	X						X	X		X	
32. Hearing preliminary order prohibiting false advertising.....	X	X	X	X	X			X				X		X	
33. Exemption of advertising media having no interest in land.....	X	X	X	X	X							X		X	
34. Injunctive relief re false advertising.....	X	X	X	X	X			X		X		X		X	
35. Criminal sanctions in false advertising.....	X	X	X	X	X					X	X	X		X	
36. Constructive service of legal process on out-of-State subdivider.....						X	X			X	X	X		X	
37. Out-of-State land treated as "security".....						X	X			X	X	X		X	
38. "Fair, just, and equitable" standard for permit.....						X				X	X	X		X	
39. Statute limitations starts after recording contract.....	X	X													

<sup>1</sup> Source: William D. Warren, professor, and John M. Carmack and John M. Vincent; "Report to the Commissioner of Real Estate," State of California, Oct. 1, 1962.

<sup>2</sup> States are shown by the following numbers: 1, Arizona; 2, California; 3, Florida; 4, Hawaii; 5, Illinois; 6, Maine; 7, Nebraska; 8, Nevada; 9, New Jersey; 10, New York; 11, Ohio; 12, Tennessee; 13, Utah; 14, Vermont; 15, Wisconsin.

APPENDIX C

Status of land subdivision statutes, 1962<sup>1</sup>

Names of States <sup>2</sup>	Have law	Legislation contemplated	Problems	Suggestions
Alabama.....	No....	No.....	None.....	None.
Arizona.....	Yes....	Maybe.....	Direct mail.....	Federal legislation.
Arkansas.....	No....	Yes.....	"Free" lot ad.....	No.
California.....	Yes....	Maybe.....	Direct mail.....	Federal legislation.
Connecticut.....	No....	No.....	None.....	Federal legislation.
Delaware.....	No....	No.....	Direct mail.....	
Florida.....	Yes....	Maybe.....	None.....	None.
Georgia.....	No....	Maybe.....	None.....	None.
Hawaii.....	Yes....	None.....	Inability of investors to inspect.	
Idaho.....	No....	None.....	None.....	None.
Indiana.....	No....	No.....	Minor.....	Federal legislation.
Iowa.....	No....	No.....	National magazine ads.	Federal legislation.
Kansas.....	No....	Yes.....	Not serious.....	License subdividers.
Kentucky.....	No....	Maybe.....	Unlicensed operators.....	
Maine.....	Yes....	No.....	None.....	None.
Massachusetts.....	No....	No.....	None.....	None.
Michigan.....	Little.....	Policy statement.....		
Minnesota.....	No....	NALLO property.....	Yes.....	State and local control.
Mississippi.....	No....	No.....	None.....	None.
Missouri.....	No....	No.....	Direct mail.....	None.
Montana.....	No....	No.....	None.....	None.
Nevada.....	Yes....	NALLO property.....	Many.....	Good State law.
New Hampshire.....	No....	No.....	No.....	Use local brokers.
New Mexico.....	No....	No.....	No public report.....	None.
North Carolina.....	No....	No.....	Magazine ads.....	Need regulations.
North Dakota.....	No....	No.....	None.....	Use local brokers.
Ohio.....	Yes....	No.....	Direct mail.....	Federal legislation.
Oklahoma.....	No....	No.....	Ad by letter.....	None.
Oregon.....	No....	Yes.....	Marginal land and false ads.	
South Carolina.....	No....	Not yet.....	Direct mail.....	Newspaper ads.
South Dakota.....	No....	No.....	None.....	None.
Tennessee.....	No....	No.....	None.....	None.
Texas.....	No....	No.....	Obtaining information.	None.
Utah.....	Yes....	Doubtful.....	None.....	Federal legislation.
Vermont.....	Yes....	No.....	None.....	None.
Virginia.....	No....	No.....	None.....	None.
Washington.....	No....	No.....	Yes.....	Publicity, Federal legislation.
West Virginia.....	No....	No.....	None.....	None.
Wisconsin.....	Yes....	No.....	Direct mail.....	None.
Wyoming.....	No....	No.....	Yes.....	Use local broker.
District of Columbia.....	Little.....	No.....	Out-of-State contact.....	Both State and Federal.

<sup>1</sup> Source: William D. Warren, professor, and John M. Carmack and John M. Vincent; "Report to the Commissioner of Real Estate," State of California, Oct. 1, 1962.

<sup>2</sup> No responses were received from the 10 States excluded from this list (Alaska, Colorado, Illinois, Louisiana, Maryland, Nebraska, New Jersey, New York, Pennsylvania, and Rhode Island).

## APPENDIX D

*Sample Public Report by California on Proposed Utah Land Subdivision in 1962<sup>1</sup>*

BEFORE DEPARTMENT OF INVESTMENT, DIVISION OF REAL ESTATE  
OF THE STATE OF CALIFORNIA

W. A. Savage, Real Estate Commissioner

In the matter of the application of RICHARD B. PARK for a final subdivision public report on GARDEN VALLEY RANCHOS, IRON COUNTY, UTAH

Amended—Final Subdivision, Public Report, File No. 20131

This report is not a recommendation or endorsement of the subdivision but is informative only.

Buyer or lessee must sign that he has received and read this report.

*This report expires 5 years from date or upon material change.*

(October 29, 1962)

## SPECIAL NOTES

1. This property is undeveloped acreage.
2. It may be subject to mineral claims with the right of entry.
3. Roads are unimproved dirt roads. Improvement and maintenance of roads will be at expense of lot owners.
4. Purchasers will have to develop their own water supply.
5. Purchasers must develop their own individual sewage disposal system.
6. Lots will be sold on contracts of sale.

NOTE.—The land covered by this report is described as sections 27, 28, 33, and parts of 29, 32, and 34, Township 34 South, Range 18 West, Salt Lake Meridian, Iron County, Utah, as shown on map filed in county recorder's office of said county on May 15, 1961.

Location and size: Northeast of Modena, State Highway 56, and approximately 2 miles east of Beryl, Iron County, Utah. Approximately 3,128 acres divided into 1,247 parcels.

Restrictions and other matters of record: Conditions, reservations, and restrictions that may run with the land, including city or county zoning restrictions, should be investigated by the purchaser. Copies of those items which are recorded may be inspected at the office of the Iron County recorder. Information about zoning may be obtained at the office of the Iron County Planning Commission.

Streets: Have been offered for dedication for public use but have not yet been accepted by the county. When usage demands, the county will maintain said roads. However, prior to maintenance by county it has been estimated that maintenance by owners will cost about \$1.50 per year for a 330-foot lot.

Flood and drainage: The subdivider's engineer advises:

"I have examined the subdivision plats of this subdivision against the record field measurements and I find that the subdivision is properly engineered.

"Drainage of the entire area is from north to south by tributary channels into detrital wash. The natural drainage channels furnish rapid removal of storm runoff water eliminating any flood hazards in the area between such channels."

The division of real estate has no engineering personnel to make independent judgments on the suitability of drainage arrangements. Purchasers should make further inquiry of the subdivider or local government officials.

NOTE.—The subdivider advises that there is no flood control agency.

Winds and rains: Heavy winds blow from time to time in many regions, and this may or may not prove detrimental to this subdivision. During certain periods of the year, heavy rains may occur. Damage may result to property along natural drainage courses which have not been protected by sufficient flood control measures.

Water: There is no water service to this tract. Purchasers must develop their own water supply.

<sup>1</sup> Source: Department of Investment, Division of Real Estate, State of California.

Information furnished by the subdivider would indicate that water might be obtained in the area by drilling water wells to depths estimated between 125 and 150 feet. That the estimated cost for drilling and casing a 125-foot well, including pumping equipment, would be between \$900 and \$1,000 subject to variation. A permit from the State engineer at Salt Lake City will be required to drill a well. There is no apparent assurance that permits will be issued in all cases and we are advised permits for wells to be used for irrigation purposes will be denied.

The division of real estate is not advised as to the quantity of any water that may be available. Prospective purchasers should ascertain these matters including costs involved as to the specific parcel under consideration. Also, inquiry should be made of local health authorities for any specifications and requirements and of the State engineer, State Capitol Building, Salt Lake City, which regulates the drilling of wells and appropriation of water for the State of Utah.

In addition to the above, this subdivider advises regarding following items:

**Purchase money handling:** All money will be impounded in escrow or trust account in accordance with section 11013.4(a) except for such amounts as may be covered by a bond filed in accordance with section 1013.2(c) or 11013.4(b) as may be appropriate. Sections refer to the business and professions code. In the case of sales on contracts of sale, money will be impounded only until the contract is executed and delivered to the purchaser.

**Contract of sale:** Sales may be made on contracts of sale. Prospective purchasers should read and understand the terms of these contracts before signing them.

**Utilities:** Gas is not available.

Electricity is available from the Escalante Valley Electric Association, Inc. A \$5 membership fee is required. Normal procedure for connecting new extension is to charge a year's minimum monthly power bill in advance, \$48. It is also necessary to sign a 5-year contract.

Telephone service is available from the South Central Utah Telephone Association, Inc. A \$10 membership fee is required and an equity of \$40 is collected.

Prospective purchasers may contact the Electric Association at Beryl, Utah and the Telephone Association at Escalante, Utah, for complete information.

**Sewage disposal:** Septic tanks are to be used for sewage disposal. Prior to installation, purchasers should contact the local health department for specifications and requirements.

**Fire protection:** Escalante Valley Coordinating Council Station at Beryl Junction.

**Miscellaneous:** It is approximately 23 miles to the high school and junior high school; 12 miles to the grammar school; and 2 miles to the community shopping center (general store); and 48 miles to Cedar City. Schoolbus service is available to all schools.

**NOTE.**—Purchasers should contact the local school board regarding school facilities and bus service.

#### APPENDIX E

### MODEL SUBDIVISION SALES CONTROL LAW<sup>1</sup>

#### GENERAL PROVISIONS

As used hereinafter, "subdivided lands" and "subdivision" refer to improved or unimproved land or lands divided or proposed to be divide for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, this chapter does not apply to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in any said structure.

For the purposes of this part, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement; excepting that taxes and assessments levied by public authority shall not be considered a blanket encumbrance.

<sup>1</sup> Source: National Association of License Law Officials.

## INVESTIGATION, REGULATION, AND REPORT

Prior to the time when subdivided lands are to be offered for sale or lease, the owner, his agent or subdivider shall notify the real estate department in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information :

- (a) The name and address of the owner.
- (b) The name and address of the subdivider.
- (c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.
- (d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.
- (e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.
- (f) A true statement of the provisions for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
- (g) Such other information as the owner, his agent or subdivider may desire to present.

The real estate department may require such additional information concerning the project as is deemed necessary, for which purpose the department may prepare a questionnaire for the owner, his agent or subdivider, to answer. A filing fee of \$\_\_\_\_\_ shall accompany the answered questionnaire.

The questionnaire concerning any subdivision proposed to be sold or leased as potential mineral, oil, or gas property shall be accompanied by a filing fee of \$\_\_\_\_\_.

When the real estate department makes an examination of any subdivision, the department shall make a public report of its findings thereon. The department may publish the report.

It shall be unlawful to sell or lease or offer to sell or lease lots or parcels in a subdivision prior to the issuance of a public report unless the filing of additional information following the receipt of a notice of intention is expressly waived by the real estate department, or, after submission, to materially change the setup of such offering without first notifying the real estate department in writing of such intended change.

A copy of the public report when published by the real estate department and an opportunity to read same will be given to each prospective purchaser or lessee by the owner, subdivider or agent and his receipt taken therefor prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision.

Receipts taken for any public report shall be kept in file in possession of the owner, subdivider, or agent subject to inspection by the real estate department for a period of 3 years from the date the receipt is taken.

The public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized, or printed in larger or heavier type than the balance of the report unless the true copy of the report furnished by the real estate department so indicates.

It shall be unlawful for the owner or subdivider to sell or lease lots or parcels within a subdivision unless one of the following conditions is complied with :

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the real estate department until :

- (1) The title or other interest contracted for, whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until
- (2) A proper release is obtained from any such blanket encumbrance, or
- (3) Either the owner or subdivider or the purchaser or lessee may default under their contract of sale or lease and there is a determination as to the disposition of such moneys or they be voluntarily returned to the purchaser or lessee.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the department until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond to the State of \_\_\_\_\_ is furnished to the real estate department for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the department, which shall provide for the return of moneys paid or advanced by

any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained: provided, however, that if it should be determined that such purchaser or lessee, by reason of default or otherwise, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

(d) There is conformance to such other alternative requirement or method which the real estate department may deem acceptable to carry into effect the intent and provisions of this part.

The public report of the real estate department, when issued, shall indicate the method or procedure selected by the owner or subdivider to comply with the hereinbefore provisions.

The real estate department may investigate any subdivision being offered for sale or lease in this State. For the purposes of such investigations, the department may:

(1) Use and rely upon any relevant information or data concerning a subdivision obtained by him from the Federal Housing Administration, the U.S. Veterans' Administration or any other Federal agency having comparable duties and functions in relation to subdivisions or property therein.

(2) Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

(3) Require evidence of compliance with the requirements of appropriate authorities.

(4) Require an inspection of the subdivision to be made.

When an inspection is to be made of subdivided lands, wherever situated, being offered for sale or lease in this State, the real estate department may require, in addition to the filing fee, an amount equivalent to 10 cents a mile for each mile going and returning, estimated by the department to be traveled to the location of the project, and an amount estimated to be necessary to cover the additional expenses of such inspection, not to exceed ----- dollars a day for each day consumed in the examination of the project.

Every sales contract relating to the purchase of real property in a subdivision shall clearly set forth the legal description of the property, the principal amount of the encumbrances outstanding at the date of the sales contract, and the terms of the contract.

When five or more lots or parcels within a subdivision are optioned, leased, or sold, to another, or, when such or an interest therein is acquired by one owner, lessee, or optionee, the real estate department shall be notified by the parties to the transactions.

Records of the sale or lease of parcels within a subdivision shall be subject to inspection by the real estate department and the department shall be notified of any change of address affecting the location of the owner's, subdivider's, or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

The real estate department may adopt rules and regulations to implement the provisions herein.

Any owner, agent, or subdivider who fails to pay the fees required as herein provided, for filing fee or inspection fee, shall be liable civilly in an action brought by the real estate department, for a penalty in an amount equal to treble the amount of unpaid fees.

Whenever in the opinion of the real estate department any person has or is violating, or is about to violate, any of the provisions of this part, the department may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in a subdivision, the department may issue an order prohibiting the sale or lease, or either, of the property in this State. If, after such an order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded.

Every officer, agent, or employee of any company, and every other person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circularization of any false statement or representation concerning any land, or subdivision thereof offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concern-



ing any said land or subdivision 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 felony.

The following acts are misdemeanors :

(a) The willful violation or failure to comply with any of the provisions of this chapter.

(b) The willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the real estate department.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale within this State without first complying with the provisions of the chapter.

(d) The advertising for sale or lease in this State of a parcel in an out-of-State subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-State subdivision, who has not complied with the provisions of the chapter, to offer within this State subdivided lands.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this State for deposit in the State treasury a civil penalty in the sum of ----- dollars, together with ----- dollars for each month or a fraction thereof during which he continues such violation.

For the purposes of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this chapter, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this chapter and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of any such action at any time before the recording of such instruments.

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STATEMENT BY JAMES H. R. CROMWELL, CHAIRMAN OF THE BOARD, AMERICAN REALTY & PETROLEUM CORP., JUNE 22, 1964

First, permit me to thank this subcommittee on behalf of American Realty & Petroleum Corp. for this opportunity to make a statement for the record of the subcommittee's hearings.

As Senator Williams has observed, it was our intention to appear personally to testify. However, in the course of the committee's last-minute change of dates, an unavoidable conflict arose, and I found it impossible to come to Washington on your rescheduled date.

The nature of the testimony we had originally planned to give has also been indicated by Senator Williams. More than a year ago, when the interstate land sales industry generally was being attacked by a few newspapers because of the misdeeds of a small group of promoters, our company undertook a major role in rallying responsible members of the industry to a rigid code of ethical standards which would govern advertising and sales.

We drafted such a code after extensive research and consultation which included discussions with members of this subcommittee's staff, who were continuously informed of our efforts. Although the committee's files contains copies of this code prepared by us, I attach a copy for the record of this hearing (exhibit No. 1). It is very similar to the code ultimately adopted by much of the industry in collaboration with the National Association of Better Business Bureaus, and I am proud to state that our company subscribes to and adheres to these codes of ethical standards.

Our company has, and continues to, participate in every move to strengthen standards. We are a publicly owned company, and we try to conduct ourselves in a manner which will not only fulfill our responsibilities to our 12,000 shareholders, but to the thousands who have bought and continue to buy our land and the homes we build.

The files of this committee will also show that we have invited your staff members to inspect at first hand our development projects—at Rainbow Lakes and Silver Springs, in Florida, and at Rio Rancho Estates, at Albuquerque, N. Mex.—so that they could see how honest development is undertaken, the kind

of planning and investment that is involved, and so that, by speaking with the residents of these developments, they could learn what legitimate interstate land sales companies do for those who purchase from them.

Were you to undertake such a visit, you would find that in our 3 years at Rainbow Lakes we have completed 150 miles of a 170-mile, \$2,200,000 road-building program, 3 years ahead of schedule. I am speaking not of bulldozed trails, but of rock-based, asphalt-topped roads, county-approved roads. More important, you would find a thriving, rapidly growing community of almost a thousand persons for whom we have provided and continue to provide extra services in the form of clubhouses, lake and beach improvements, recreational facilities and personnel to an extent far beyond what was originally pledged. A visit to Rainbow Lakes would demonstrate the absurdity of Mr. Caro's statement that it is primarily "the poor and the elderly" to whom interstate land developers appeal.

Gentlemen, Rainbow Lakes Estates was sold almost entirely by mail-order promotion. The most modest home in the development costs \$7,000; the most expensive, in excess of \$40,000. The bulk are in the \$12,000 range. More important, I believe it would be highly instructive and inspiring to interview the residents and learn firsthand how the legitimate interstate developer makes it possible for those with modest to middle incomes to have retirement homes in the sun.

During the period when this committee was considering holding hearings in various parts of the country, we offered our facilities at these developments as sites for your hearings. Those invitations still stand. We take great pride in what we have done, and are eager to hold it up to public scrutiny.

I note all this by way of preface because I must now offer a statement far different from the one we had originally planned. Two witnesses before this committee have made statements about our company, and you have invited us to reply.

The statement by Mr. Robert Caro, of *Newsday*, is clearly too shoddy to deserve comment, were it not that he has sought to dignify it by an abuse of your committee's privilege. He presumes to impugn an honorable business enterprise, because, more than a quarter of a century ago, one large stockholder transgressed. Had Mr. Caro been a responsible reporter, he would have found that in the 28 years since, this man has lived a life of integrity and has been honored for his services to his neighbors and his community. For the hurt which Mr. Caro has so wantonly inflicted on this man's children and family by cruelly reviving and publicizing a sin of 28 years ago, long repented and fully compensated for, I firmly believe he will find it far more difficult to obtain ultimate forgiveness than will his victim.

The remainder of Mr. Caro's statement on our company concerns two major stockholders of whom he disingenuously observes "neither have (sic) ever been convicted of or admitted violating any laws, nor have they admitted any violation," and whom he then seeks to convict by innuendo. He notes that companies with which they were associated have been the subject of proceedings by the Food and Drug Administration and the Federal Trade Commission. I submit that it is well known to the Senators of this committee that there is probably not one major corporation in the drug, pharmaceutical, cosmetic, tobacco, or toothpaste industries which has not been the subject of such Federal administrative actions, and that no reputable person would impugn the probity of the officers of these corporations because of such administrative actions. Because these matters have no part in the affairs of our company in any way, it is not for me to discuss them in detail. I have been assured by the stockholders involved that should the committee care to inquire further, they will submit all such details.

Since Mr. Caro has singled out one stockholder and two directors of our company as a basis for an attack on us, I should like to discuss the records of some of our remaining directors, the majority, which Mr. Caro ignores.

First, Mr. Irving W. Blum, our president, a certified public accountant since 1925 and a land developer since 1940. He has built in Daytona Park, Fla., Lake Truesdale, N.Y., and erected developments in many other areas.

Maj. Gen. Charles A. Willoughby, U.S. Army, retired, who was in France in World War I; served as military attaché to Venezuela, Colombia, and Ecuador in the 1920's; Chief of Intelligence of Gen. Douglas MacArthur's command from 1939 through 1951; in control of security services occupation of Japan, 1945 through 1951, and is now a writer, lecturer, and contributing editor of many leading publications.

Mr. Robert Berger, a professional and military engineer as well as a certified public accountant; production supervisor for the U.S. Army Air Force from 1942 to 1945; president, B. B. Electrical Contractors, Inc., which has completed over \$30 million worth of electrical installations for the U.S. Department of State, Corps of Engineers, Department of Navy, and municipal and Federal agencies.

Mr. Mitchell S. Roberts, lecturer and teacher in marketing research and advertising and business administration at the Bernard Baruch School of Civic and Business Administration for 15 years—a marketing analyst, economist, and member of the American Marketing Association.

Mr. Howard W. Friedman, a certified public accountant since 1947, senior accountant for two New York City accounting firms; controller and director of finances for various sales organizations, member of New York State Society of Certified Public Accountants.

Mr. Leo White, vice president of Chemical Bank New York Trust Co., the fifth largest bank in the United States.

As for myself, I have served as president of the Cromwell Dodge Corp., president of American British Improvement Corp., partner in Cromwell & Co., industry consultants, and I am extremely proud to have served as U.S. Minister to Canada.

These are only some of the reasons why we consider Mr. Caro's attempted smear utterly contemptible.

The statement concerning Rio Rancho Estates which was offered by Mr. Van Horn, of the New Jersey Real Estate Commission, does deserve reply, although it seems to be based on inaccurate information and misinterpretation.

But first, I want to make a general statement about our advertising. All of our advertising and promotional materials rigidly adhere to the code of ethical standards which we promulgated. We also subscribe to, and adhere to, the code of advertising standards promulgated for our industry by the National Association of Better Business Bureaus, and by the industry associations to which we belong.

Before our advertising or promotional material was released, it was reviewed by Mr. J. Robert Hoffman, vice president of the National Association of Better Business Bureaus, who has been commended by this committee for his work in our industry. This is an entirely voluntary submission, undertaken by us to make certain that the enthusiasm of our copywriters, coupled with the natural exuberance of most advertising men, does not result in exaggerations. Mr. Hoffman has personally inspected all our properties, and is acquainted with the facts. Our advertising agency works closely with Mr. Hoffman, and advises us that no statement to which he objected was permitted to remain in our advertising.

Moreover, in addition to this voluntary submission to the National Association of Better Business Bureaus of our advertising material prior to publication, all of our advertising is checked in advance by the agencies of the States in which the properties involved are located. Our Rio Rancho Estates advertising was submitted to and found acceptable by the assistant attorney general of the State of New Mexico. All Rainbow Lakes Estates advertising was approved by the State of Florida Real Estate Commission.

In addition, in many other States in which we sell, there are State commissions which also review in detail our advertising and promotion. This review is generally undertaken by officials who have personally inspected our property. New York State, for example, always inspects a property before any approval is given. All this official scrutiny is above and beyond that of the Federal Trade Commission, the Post Office Department, and the other Federal agencies normally involved in advertising regulation, from whom, incidentally, we have never had a complaint.

I submit to the Senators that virtually no industry has so much examination and regulation of its advertising as the interstate land sales industry.

Now, I should like to examine point by point Mr. Van Horn's statement. Mr. Van Horn introduces his comments on our company's advertising with the remark that it is "by no means an extreme or bad situation. Much of the promotional material is fairly done \* \* \*." And then he goes on to enumerate criticisms.

Let me say at the outset that I disagree strongly with him. If his criticisms were correct, I believe we would indeed be in an extremely bad situation. The truth is, however, his observations are the result of incorrect information and misinterpretation.

On the first point—the key question of the history of the rise in land values in and around Albuquerque, I offer in evidence exhibit No. 2. The committee will note that the exhibits list individual parcels as well as bulk land sales, some of which have appreciated many more than 20 times in a few short years. One example shows a 500-times price increase in 30 years—another shows a 120-times price increase in 17 years—another of 86 times in 18 years; another of 150 times in 26 years; and there are many, many more.

Second, the status of our ownership of the land along the Rio Grande. Rio Rancho Estates consists of approximately 55,000 acres. The company owns in fee over 12,000 acres and is the contract purchaser of the remainder of the property. The contract purchaser device, while not usual in the East, is commonly used in the western part of the United States in situations where easterners would use a purchase money mortgage. Under this arrangement, upon closing of the sale, the property is conveyed by the contract seller to a bank as title agent. The bank holds the title in trust for buyer and seller. In the case of Rio Rancho Estates, the purchase contract has been executed and title has been conveyed to the First National Bank in Albuquerque as title agent. Our company has obtained a policy of title insurance insuring its title to the property, subject only to its obligation to pay the remainder of the purchase price. Thus, just as in a purchase money mortgage, the company is the equitable owner, and it has the absolute right to obtain fee title to any part of the property held in escrow at any time. This question certainly would not have come up if the company owned the property subject to the typical eastern purchase money mortgage with release clauses, since title would then rest with the company. Although different legal devices were used to conform to New Mexico practice, the result is the same. In any event, the company is the equitable owner of this land along the Rio Grande.

Mr. Van Horn questions why we do not offer for sale our land along the banks of the Rio Grande. The fact is that our development plan contemplates using a good portion of this area as park land and recreational areas available to all residents of Rio Rancho Estates. Rio Rancho Estates has various community facilities such as clubhouses and swimming pools which we do not sell, but we offer all residents the use of these facilities. Community planning for the benefit of all is an essential feature of our development in which we take great pride. The future of the riverfront area is being planned along the same lines, for the maximum value and benefit of all. Can it be doubted that the present and future residents would prefer that we do not sell all this river frontage to private owners, but keep as much as is feasibly available for all to use and enjoy?

Next, the statement that the property owners' kit sent to the customer shows an unscaled map, a nearly unreadable map, and a metes-and-bounds description of the property is utterly a series of errors. Unless we are being confused with another company, I cannot understand how this arose. The property owners' kit maps referred to are, first, a map of the entire property, drawn to scale, with a mileage scale, and with designation of where present development is taking place, and a designation of the area where the purchaser's lot is located. I offer a sample as exhibit No. 3. A smaller map which is part of the kit is a detailed plat map to exact scale, indicating the exact lot purchased. Rather than being a metes-and-bounds description, it is an exact copy of the filed plat in the county clerk's office. (See attached exhibit No. 4.) Thus the purchaser has all the information possible regarding the location of his lot and its relation to other areas in and out of the development.

We come now to the nature of our exchange privilege. The facts are simple. We offer all purchasers two separate exchange privileges. One grants the privilege of exchange for any available lot of equal value, without any building requirement at all. This has a time limitation.

If a purchaser is on a long-term installment plan, he has up to 5 years to make an exchange, without any building commitment. If, however, he has paid in full within 30 days of the purchase, he must make the exchange within 1 year—unless he plans to build, in which case he comes under the perpetual pledge for an exchange into a utility area. The reason those who pay in full at once are held to the 1-year limit ought to be obvious: such purchasers invariably visit the property within the 6-month time limit for cancellation, and are fully acquainted with the present status and future plans of development. Their title to property is then recorded and all legal forms completed. One of the reasons we are able to keep our land prices down is that we try to eliminate the extra expenses which accompany continuous legal and recording charges. Since installment plan purchasers do not obligate us to immediate title transfer and recording charges, their exchange privilege is longer.

The language of this privilege is as clear and simple as our law firm can make it:

"Buyer shall have the right to exchange property described herein at any time during the next 5 years after date of this purchase agreement for any other available property of equal size and value at no increase in price whatever. If buyer pays in full for the property described herein within 30 days from the date of this purchase agreement, buyer shall have the right for a period of 1 year after the date of this purchase agreement, to exchange the property described herein for any other available property of equal size and value at no increase in price to buyer whatever. If when buyer is ready to build a home for himself utilities have not reached his site, seller will exchange a full half-acre lot (21,780 square feet) in area serviced by utilities, for a same size lot of buyer."

I think it is clear that the second exchange privilege provides that if, when the buyer is ready to build a home, utilities have not yet reached his lot, then our company will give him in exchange a full half acre building lot in an area already serviced by utilities. This privilege assures to each buyer a building site in a utility area without any additional cost to him, whenever he is ready to build. Thus our service exchange privilege guarantees that each buyer, when he is ready to build, will be able to build upon a lot having electric, gas, water, and phone utilities, at no increase in cost.

I should like to point out that all utilities are now available in the present residential area; in daily use by the families already living there. If a person owns a lot in an area which utilities have not yet reached, and wants to build, we will exchange his lot for a lot where all utilities are already available. No purchaser at Rio Rancho needs to worry about utilities—for this exchange privilege will be good whether he wishes to build today, tomorrow, next year, 10 years from now, or even longer.

The assertion then that we lead customers to believe that they may live in an area serviced by utilities at any time whatsoever with no problem and no increase in money is exactly true—because we do make this commitment, and we live up to it.

Concerning police protection, it was stated that there is a sheriff and one assistant for the entire county and that there are no deputies in the Rio Rancho area. This is incorrect. The fact is that two deputy sheriffs actually live on the property. A number of other deputy sheriffs live in the Alameda-Corralles area within a few miles of the present residential area. As evidence, we enclose a letter from the sheriff's office (exhibit No. 5).

Now, concerning the present state of fire protection. While the Bernalillo Fire Department is at some distance from parts of the property, the Sandoval County Commission has established a fire district on Rio Rancho Estates (see exhibit No. 6) and the company has already ordered a fully equipped firetruck for that district (see exhibit No. 7), with delivery expected within the next 30 days. Meanwhile, for the benefit of present residents, the company has taken the initiative in organizing a volunteer fire department in order to assure that personnel will be available to fight fires at all hours of the day and night. The residential area has fire hydrants already installed and the company owns a water truck with a firehose hookup. This truck is maintained on the property at all times in first-rate operating condition.

Our statement that present taxes are about \$1 per year clearly refers to the taxes payable by a buyer until his purchase price is paid for in full, computed at current rates. Unless the rate changes or the property is reassessed, the statement that current taxes are about \$1 per year is correct. Of course, when title to a lot is conveyed to a buyer, the taxes will increase, because they will then be based on his purchase price. We do not dispute the cited figures, but we wish to point out that they relate to lots already paid for, whose title has been conveyed to the purchaser. However, only approximately 1 percent of our buyers pay in cash; the balance executes purchase agreements which provide for payments lasting in excess of 5 years on the average.

Since buyers under the installment purchase agreements will pay taxes based on the assessments which prevail while title remains in the company, the statements in our brochure clearly are accurate for all except cash purchasers. As to cash purchasers, the company informs each buyer before closing that as soon as he takes title his taxes will be as much as \$7.92 per half-acre lot at the present rate, rather than about \$1—although we feel that in context the difference is almost insignificant.

Mr. Van Horn states that only one luxury community is generally close to the property, where we assert there are several. I attach exhibit No. 8. This is a

map of the Rio Rancho Estates area indicating the location of other developments. Mr. Van Horn has conceded that the Paradise Hills development is a luxury development. Also directly adjoining our property, Sky View Acres offers homes between \$18,000 and \$30,000. Nearby Mock Homes also offers homes from \$19,000 to \$40,000.

Mr. Van Horn said that we submitted an offering statement prepared for the New York State Real Estate Commission as promotional material and also asserted we did not really send it out. May I point out that the offering statement referred to was not submitted as promotional material and obviously could not be construed as such (exhibit No. 9). It is sent only to New York residents as required by New York law. It was submitted to New Jersey for the commission's information, since it is a very informative report. None of our literature contains any misleading artist's renderings. The few artist's renderings we do use, out of necessity, are clearly labeled as such.

Mr. Van Horn suggests we are misleading, because we don't tell people how far down they will have to drill for water in areas where there is no electricity. The fact is that how far down on his own property the water table may be is irrelevant to the buyer, because, as previously explained in our exchange privilege, he is assured of water and power from a public utility company whenever he builds his home. He need never drill a well at all.

Next, Mr. Van Horn says that the material in the New York State offering statement does not always jibe with information filed in Sandoval County. I can only presume that Mr. Van Horn did not thoroughly read the offering statement, because it clearly states that in New York State we were offering certain sections totaling 9,200 lots, not the entire tract of Rio Rancho Estates. For the acreage offered, the New York State prospectus jibes perfectly with Sandoval County records.

In summing up, Mr. Van Horn seems to say that the public should get a complete and detailed public report, but also complains that our 26-page report seems to him, on the one hand, to be incomplete, but on the other hand, to be too burdensome to be read, and people will not read it.

This is more than an amusing paradox—it is the heart of dilemma today facing both the land developer and the regulatory authorities. We live in the age of the tabloid newspaper, and the digest magazine. Personally, I am in essential agreement with President Eisenhower, who was noted for his insistence, both as Supreme Allied Commander and President, that all essential information on any problem could be boiled down to one page. But I am well aware that in our industry today book-length volumes, although utterly unnecessary to an informed decision, will continue to be required. To Mr. Van Horn's observation I add the fervent plea that required printing be confined to material which the regulatory authorities deem essential to informed decisionmaking.

There is a far more serious problem facing our industry, however, and that is the one to which I must address myself at this moment—the question of the opprobrium which has been brought down upon the entire land development industry by the irresponsibility of a few so-called reporters.

Gentlemen, I submit to you that one of the great industries which built America is the land development industry—yes, the industry whose entrepreneurs are sneered at by Mr. Robert Caro as the "land-by-mail-promoters," with the implication that the term itself is an almost obscene epithet. I am myself quite proud to be a "land-by-mail-promoter." We of the industry come of a long and honorable line—one which helped found this Nation, from the days of the industry's honored father, Christopher Columbus, whose letters to Ferdinand and Isabella first set off the American land boom.

Our lineage includes the roster of many of the most distinguished names in American history: Capt. John Smith, William Penn, Lord Calvert, Oglethorpe, are a few. You know I could go on and on. I am sure that the distinguished Senators will recall even more from their own knowledge of the history of our country.

From our history, there is one land developer I should like to dwell on for a moment. I refer to George Washington, the Father of his Country. I should like to recall to you that when he planned and laid out the town now known as Alexandria, Va., it was still only a savage wilderness. You may recall that it was quite a while before settlers could be encouraged to buy these lots from George Washington's brother, Lawrence, and the other land promoters involved. It was difficult for many people to believe then that the 60 acres allotted for the town would ever really be settled.

But, as you know, it was only later, when George Washington and his brother, Lawrence, went into land promotion and speculation in a really big way, that the foundation of the Washington wealth was laid. I should like to recall just one of the benefits that derived from the Washingtons' eagerness to sell off a parcel of 50,000 acres—just one "land deal." For a long time, they could find no buyers, and then they succeeded in interesting a group of Germans in this tract. But the Germans withdrew the offer on learning they would have to pay, like all Virginians, taxes to support the Church of England. And so the Washington brothers then set about to persuade the Virginia General Assembly to pass legislation exempting dissenters from paying taxes to the established church.

Gentlemen, I should like to note here that one of the significant documents of the American tradition, Lawrence Washington's discourse on the economic benefits of freedom of religion, had its source in that land speculation.

There is only one point more about George Washington's land promotion I should like to call to your attention. On April 18, 1751, there appeared in the Virginia Gazette an advertisement offering for sale three lots in Fredericksburg, Va. The seller was George Washington, and he offered these lots on installment terms—8 months to pay. Yes; to a writer such as Mr. Caro, the Father of his Country might be described as being guilty of "advertising installment land sales." Incidentally, two of those lots were sold, not merely interstate, but across the ocean, to some Glasgow merchants, so you see that the practice of selling land sight unseen is certainly not new to our times.

Of the mail-order land promotion and sales which settled the West during the 19th century and the early years of this century, I am sure I need not speak. I should like to skip those years and get right down to what is happening now.

Let's take the East, where I and the chairman of this subcommittee both live. There is not a major city in the East which has not, in the past decade, outgrown its boundaries, turned its truck farms into suburbs, and its outlying farms into new towns and villages. And in the process, real estate values have more than doubled, and tripled, and quadrupled. One illustrative story—the president of our company, Mr. Irving W. Blum, bought many years ago as an investment a number of potato farms on Long Island. He sold them after the war to a developer whom others thought of as an impractical visionary—those potato farms are the heart of what is now Levittown, Long Island. They have multiplied in value more than 25 times in the 20 years since that sale.

And what has happened all over the East is now happening in the West. The fact is that we are now witnessing the greatest migration in American history—far greater than that gigantic wave of immigrants who poured onto our shores in the first decade of this century. That produced less than 9 million new residents for this country—but the Southern and Western States alone—Arizona, California, New Mexico, Nevada, and Texas—added over 10 million from 1950 to 1960.

In this mass migration, companies like my own are playing an important role. And I should like to submit to the Senators a very simple proposition—when a company buys good land, invests money to develop it along sound lines, builds roads, utilities, and other major facilities, provides community services to an extent undreamed of not just in Washington's day but even 10 years ago, then it is entitled to boast about its wares in advertising, across State and even National boundary lines, and to sell its wares at a profit \* \* \* and it deserves not the kind of casual, uninformed criticism which this committee has heard, but active encouragement and praise.

I submit to you that this is the case with my company. I submit as one exhibit (No. 10) the latest stage of a development plan which has been over 2 years in the making and is still undergoing refinement. I submit to you also a simple observation: Rio Rancho Estates is a large area, 55,000 acres. But it is not way out in the desert, or the mountains, where we could have bought acreage at low, low cost. Our entrance is only 4½ miles from the present city limits of Albuquerque, among the 10 fastest growing cities in this country. It is squarely in the path of Albuquerque's expansion (exhibit No. 11, Northwest Mesa report). And it is entirely in the Rio Grande water basin, as you can see from the map on page 28 of exhibit No. 10.

More than \$2 million have already been invested in the development of this land—in roads, in utilities, in swimming pools, clubhouse, and other facilities.

So much about our company. I should now like to take up the larger question to which we had originally intended to confine ourselves—that of the industry generally and the need for legislation at the Federal level.

Our company believes there is such a need. But let me say at the outset that our reasons are far different from Mr. Caro's. I submit that it is manifestly ridiculous to contend, as he does, that the market for the interstate land developer is "the poor." What "poor" person can possibly commit himself, first, to buy land, even on the installment plan at the lowest possible terms, and second, to plan to build a house on that land at some future date. I should think it obvious even to lower intelligences that any developer who addressed his marketing efforts to the poor would rapidly join their number.

The fact is, and our company will back this with the experience of 25,000 sales, that those who buy are of the great middle class of America—the largest segment of our population.

Equally as absurd is Mr. Caro's dire prediction of a "national disaster" in another few years when "tens of thousands of elderly couples" move to "partially developed" retirement communities in the "undeveloped counties of Florida and the Southwest." The truth is that tens of thousands of such couples have made such moves in the past few years, and are doing so at this very moment. And what is happening?

A number of honest and competent reporters have investigated at firsthand, and have reported anything but a disaster. They write that by and large these people are pleased with what they find. I cite for the record two recent examples of excellent investigative reporting, by Thomas C. Langdon, in the Pittsburgh Press of June 1 through June 5, and by Calvin Snow in the New Yorker magazine of April 4, 1964 (exhibits No. 12 and No. 13).

I submit to this committee that what is actually happening and will continue to happen in this great southward and southwestward migration is that new communities are being built and are growing; and they will be built, and they will grow. I submit that this new settlement and growth will of itself provide many jobs where there were none before; that as a labor market is created, private enterprise and community effort will bring in industry to utilize that labor market; that as these communities grow and develop they will find ways to provide themselves with adequate municipal services. I submit that, yes, there will be growing pains. But I submit, that this is the history of our country.

Scandal-mongering reporters will seek and find cases of insufficient hospital facilities, sewage problems, utility, and police and fire protection problems. They can always find such problems in their own backyards, but then they might stub their toes on their own interests, and they certainly wouldn't make headlines.

Mr. Caro's suggestion that the Federal Government undertake to legislate against "the whole concept of herding together large numbers of elderly persons" because this is "an idea frowned upon by many leading gerontologists" is, I submit, not merely a *reductio ad absurdum* of his entire testimony. Nor is it merely another instance of his irresponsibility. It is, I would suggest to this committee, indicative of that mentality which already prevails in too huge a portion of the world, which seeks to breed distrust in, and sabotage the working of, the private enterprise system, because it sets itself above the ordinary man, whom it views—as requiring—in Mr. Caro's words—"a shield" to "protect" him from himself.

I believe myself that history shows that the average man's best shield and protection is his ability and his right to exercise his own judgment, which is the essence of democracy. I believe that the history of free enterprise has demonstrated that businesses which perform useful services at competitive prices thrive, and those which do not are driven from the marketplace. I know of no industry more highly competitive than the land development business; I know of no industry which more clearly demonstrates that those companies providing honest services at fair prices grow and prosper, and those which do not go out of business.

I believe the public should be protected from fraud. I am not convinced that new legislation is necessary to do this; I feel that more vigorous enforcement of post office, FTC, and other legislation now on the books might do the job. I know that every legitimate developer will join me in saying that we would support larger appropriations for the post office investigations department, or the Justice Department, if either or both should be necessary for more vigorous enforcement. Fraud is unfair competition to all of us, and it denies the consumer true freedom of choice.

I cannot believe this committee would seriously consider Mr. Caro's suggestions of legislation that would limit the age groups which would be permitted to—to quote Mr. Caro's term—"herd together"; or his suggestion that this com-



mittee limit geographically where people be permitted to settle. I hold no brief for either Collier County, in Florida, nor for Mohave County, in Arizona. My company has declined to buy land in both. The three properties we control are eminently suitable for homesites—arable, dry land, in good water areas, in close proximity to long-established communities with all necessary municipal facilities and services.

But there are people who like to live in the desert, and those who like to live along canals in redeemed swampland. Need I cite Palm Springs, Calif., and good portions of Miami, Fla.? I cannot believe that this committee would entertain refusing to permit the development of any area of this country.

I know of no way by which you can prevent the underfinanced, badly managed companies in this industry from doing business. I have heard suggestions for the creation of a kind of SEC for this industry. I know you are aware that neither the strict regulations of the SEC, nor their effective enforcement, has prevented a great many companies from selling stock to the public and subsequently going out of business.

I do support any Federal legislation which would require full disclosure of meaningful facts in interstate real estate offerings. I partially agree with Mr. van Horn's comment that the volume of material required by the disclosure law in New York State might deter many people from reading it. However, I also know that when people are making a major purchase, they welcome all the information available. I do feel the requirement that the information be filed and available, and that it be verified by official investigation at firsthand is sufficient to eliminate the fraudulent operators. The stringent New York State law could be an excellent working model for possible Federal legislation. But let it be clear that I am recommending Federal legislation not for intrastate sales, but only for interstate operations. At the present time various, differing State laws control interstate sales, and I believe that Federal legislation would be preferable. It seems ridiculous, but it is true, that if we were to place any national advertising complying with the law in any one State, we could conceivably be violating a law in a half dozen other States, because each State's laws and administrative regulations are different. The fact is that some States have laws which reflect their unwillingness to lose citizens to other States. And in some States one runs into the kind of capricious interpretation (or misinterpretation) which derives from personal feelings of this kind. One State may say, "You must not say this" \* \* \* and another State may say, "You must say that very thing."

Instead of one Federal registration, as is proper with interstate commerce, we have separate registrations in each of the States with increasingly high legal and other costs. Instead of one inspection of the property, to this point we have had to bring various State inspectors on 15 separate trips from the various States. We have had to pay over \$10,000 in expenses for these trips, over \$5,000 just in the many States' filing fees and well over \$50,000 in legal fees for various lawyers in the many States to handle the complicated State registrations for us. All of this on one property alone. These are certainly unnecessary costs.

Gentlemen, I would think interstate land sales are truly interstate commerce, to be regulated only at the Federal level.

But let us remember that the present State laws are doing an excellent job of policing, and additional Federal legislation on top of the present State laws would be unnecessary and wasteful. However, I do believe that one Federal agency to replace the presently existing State agencies would be far more preferable and far more economical, for Government, for the consumer, and for the businessmen. If it is possible to replace the separate State regulation with one overall, interstate Federal law, then we are all for it. To leave as is the present individual State laws and add an additional Federal bureau would be, we feel, unnecessary.

Finally, I urge your support for the pending "Housing and Community Development Act of 1964," designed to facilitate the kind of advanced community planning known as the "Newtown" concept, particularly section 201, designed to lower costs and raise standards in area planning and provision of community facilities. This is important legislation for the benefit of all.

And I know that any legislation which your committee recommends which enables honest developers to prosper and forecloses the operations of the dishonest will receive the most strenuous support not only from my company, but from developers generally.

Thank you for this opportunity to present our views.

## LIST OF EXHIBITS

1. Draft code of ethics.
2. Examples of rises in land values.
- \*3. Examples of map from property owner's kit.
- \*4. Detailed plat map from property owner's kit.
5. Statement of sheriff of Sandoval County.
6. County commissioner's resolution on fire district.
7. Letter showing sale of firetruck to Rio Rancho Estates.
- \*8. Map showing locations of luxury communities in relation to Rio Rancho Estates.
- \*9. Offering statement of Rio Rancho Estates.
- \*10. Development plan of Rio Rancho Estates.
- \*11. Northwest Mesa report.
- \*12. Articles from the Pittsburgh Press June 1-June 5.
- \*13. Article from the New Yorker, April 4, 1964.

## EXHIBIT 1

From: Commco Pr Inc., 310 Madison Avenue, New York, N.Y.

For: American Realty & Petroleum Corp., 16 West 61st Street, New York, N.Y.

## DRAFT CODE OF ETHICS

In the light of recent developments which have focused national attention on the methods used by realty development companies for selling subdivisions to out-of-State purchasers, there is the need for a clear distinction to be drawn between ethical realty developers and those who have no scruples about defrauding the public.

Out-of-State land sales have become a major industry with sales running into hundreds of millions of dollars annually. But the whole concept of land development for either investment or immediate residential use is in extreme danger of being legislated to death, particularly by State bodies. Unless the industry cleans house, it is certainly destined for serious harm as a result of becoming a political football.

It is proposed that the American Realty & Petroleum Co. take the lead in organizing a national body comprising those companies that are willing to abide by a set of standards, and that a trade practice code should be set up for universal guidance.

While a minimum standard of performance will be required to insure membership, there can be no objection, of course, to promulgating policies that prove superior to the minimum, and as matter of fact such policies are to be encouraged.

A list of standards, in our opinion, should include the following:

A. In any form of advertising or by personal representation, statements of the following nature should be avoided:

1. Any description of climate which implies weather conditions other than those normally prevailing in the area.
2. Statements claiming proximity to municipalities, schools, houses of worship, shopping facilities, main roads, outdoor sports, transportation, etc., that cannot be supported by actual mileage tests.
3. Statements claiming water availability that do not specifically reveal the current state of development of central water systems, or, where no central water system is available to purchaser, which fail to reveal the depth of the water systems, or fail to reveal the depth of the water table which individual purchasers may be required to reach.
4. Money back guarantees which fail to clearly set a time limit.
5. Offers of something for nothing.
6. Statements implying sewer availability, utility availability, and finished roads when these are merely in planning stages.
7. Statements exaggerating size of plot that are not in keeping with the actual square footage offered.
8. Statements implying appreciation of value, that cannot be supported by actual facts.
9. Heavily retouched photos or artists rendering of projections and plans not clearly labeled as such.

\*In subcommittee file.

B. Offers of land on which development company cannot deliver a deed, shall not be made.

C. Maintenance of a sales training program for personal representatives that will insure a calm, nonhurried presentation, designed to eliminate false statements, and oral promises that cannot be kept.

D. Avoidance of brokerage firms that tend to set up unethical "boilerroom" operations for selling of land.

E. Maintenance of a fair contract, with all stipulations clearly legible, in easily readable type.

F. Checking out of commission sales by a salaried employee of the company, to insure that a fair presentation of facts had been made.

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EXHIBIT 2

JENNINGS & JOHNSON, REALTORS-INSURERS,  
*Albuquerque, N. Mex.*

Re increase in land prices.

RIO RANCHO ESTATES,  
*Albuquerque, N. Mex.*

GENTLEMEN: In accordance with your request, I offer the following examples of actual purchases and sales made by me on land.

March 1957, 82 acres at \$700 per acre, located about Panorama and Constitution, resold 40 acres of the 82 acres in 1 week for \$1,500 per acre.

March 1958, 40 acres at \$1,100 per acre, located at Pennsylvania and Montgomery, resold the whole 40 acres January 1959 for \$4,000 per acre.

June 1958, 140 acres at \$2,650 per acre, located south of East Central, ¼ mile west of the Western Skies Hotel, resold whole 140 acres March 1963 for \$5,500 per acre.

February 1948, 25 by 135 feet in the 4500 block of East Central at \$320 per foot, 2 miles from downtown, resold in 1 year for \$1,000 per front foot.

Land in Albuquerque and the surrounding area has been on the increase for the last 15 years and in some years has taken tremendous jumps in price. For example, in the early part of 1958, most land within 2 miles of construction in the east, northeast, and north part of the heights was priced from \$700 to \$1,000 per acre, and during the month of April 1958 the State of New Mexico auctioned off numerous 40-acre parcels in the area of Juan Tabo and Lomas, and at the auction they brought \$3,000 an acre and up, with Mr. Dale Bellamah paying \$5,250 per acre for one 40-acre parcel. This year I have sold one 40-acre parcel for \$5,500 per acre and another for \$6,000 per acre in this same area. Of course the commercial and multiple-dwelling sites are going for a much higher figure. Commercial is going from 50 cents to \$1 per square foot and multiple dwelling sites from 30 cents to 65 cents per square foot.

Hoping the above is enlightening, I remain,

Very truly yours,

ROBERT J. JOHNSON.

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JOSÉ LUIS YGUADO & ASSOCIATES,  
*Albuquerque, N. Mex.*

EXAMPLES OF LAND RISE, ALBUQUERQUE METROPOLITAN AREA

Northeast: Buena Ventura addition, R-3 property, blocks 6 and 7, lots 1-16, inclusive, 1958, \$33,000; 1963, \$59,200. 8 acres originally purchased for \$250 per acre 1960 sold for \$8,000 total.

Northwest: 1942, 15 acres were bought for \$15 per acre as part of a large tract. 1955, these 15 acres sold for \$5,000 and resold in 1960 for \$20,000 (approximately \$1,300 per acre).

West: Coors & Arisco, 1959, 7 acres were purchased for \$10,000 and 8 months later sold for \$28,000.

Fronting Central, 10 acres purchased in 1958 for \$18,000 and 1 year later sold for \$40,000.

Airport Road, 5 acres bought in 1933 for \$300 worth of groceries—1959 same 5 acres were sold for \$45,000.

Southwest: 1946—13 acres were purchased for \$40 per acre and later divided. (For our purpose we'll call this property B and C.)

Property B (7 acres) sold in 1947 for \$160 per acre; resold in 1959 for \$7,000; resold in 1962 for \$15,000. It is now included in a shopping center complex.

Property C (6 acres) sold in 1947 for \$420; same year 1 acre sold for \$500; and balance (5 acres) sold in 1961 for \$8,750; 1962 the acre sold for \$2,150 (this property also in a shopping center complex.)

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PRIDE HOMES,

*Albuquerque, N. Mex., November 14, 1963.*

RIO RANCHO ESTATES, INC.,  
1429 Central NW.,  
Albuquerque, N. Mex.

GENTLEMEN: I, E. G. (Bill) Begnaud, president of Pride Homes, have contacted different realtors concerning the rise in price of real estate values in this area during the last few years. One realtor in particular, whom we consider an oldtimer and who has been in the real estate business all his life, remembers the following transactions:

The New Mexico State Fair grounds was purchased in the early 1930's for approximately \$35 an acre. This land now is definitely worth \$20,000 an acre.

In 1931 or 1932, 180 acres south of the Altura addition sold for approximately \$9,000. In 1948 the same realtor bought back 15 acres of this land for approximately \$90,000. I recently purchased in the Altura subdivision a residential lot approximately one-third acre in size for \$15,000.

The Elena Gallegos Grant was brought for approximately \$2 an acre in the mid-1920's. In 1961 Gulfmat Co. bought 10 acres of this land for approximately \$10,000 an acre.

The Parkland Hills Addition in southeast Albuquerque in 1925 was bought for \$35 an acre on a tax deed. Any available building lots in that area now are selling for approximately \$10,000, depending on size and location.

If any additional information is needed, please feel free to contact me.

Yours very truly,

E. G. BEGNAUD, *President.*

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EXHIBIT 5

OFFICE OF THE SHERIFF,  
SANDOVAL COUNTY, N. MEX.,  
*Bernalillo, N. Mex., February 3, 1964.*

RIO RANCHO ESTATES, INC.,  
Albuquerque, N. Mex.

DEAR SIR: This is to inform you that this office is willing and able to furnish police protection to the Rio Rancho Estates subdivision in Sandoval County, N. Mex., at any time of day or night.

Further, there are two deputy sheriffs residing in the Rio Rancho Estates subdivision.

Sincerely yours,

P. BACA, *Sheriff.*

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EXHIBIT 6

RESOLUTION

Whereas the residents of Rio Rancho Estates subdivision wish to establish a fire district to afford fire protection to present and future residents of Rio Rancho Estates; and

Whereas the County Commission of Sandoval County may establish said fire district pursuant to sections 58-5-22 to 58-5-2 18, New Mexico Statutes Annotated, 1958 Compilation: Now, therefore, be it

*Resolved*, That a fire district be, and it hereby is, established on the property known as Rio Rancho Estates, said property being more particularly described in

exhibit A attached hereto, and made a part hereof, as though fully set forth herein.

JOE GABALDU,  
MELITON LOVATO,  
JOSE E. RUIZ,  
*Commissioners.*

Attest:

JUAN ARCHIBEQUE, *Clerk of Sandoval County.*

I hereby certify that the foregoing is a true and correct copy of a resolution duly passed by the Sandoval County Commission at its regular meeting on February 3, 1964.

JUAN ARCHIBEQUE, *County Clerk.*

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EXHIBIT 7

THUNDERBIRD SALES CORP.,  
*Albuquerque, N. Mex., April 9, 1964.*

Mr. CHESTER P. WADLEY,  
*General Manager, Rio Rancho Estates,  
Albuquerque, N. Mex.*

DEAR SIR: As per our sales agreement with you, we will deliver to you in either the month of June or July 1964 a firetruck in good condition. This firetruck is currently in use by the town of Bernalillo, N. Mex., and fulfills the requirements of a firetruck for your fire district. The firetruck is being traded in to us by the town of Bernalillo for a new firetruck ordered by the said town in February 15, 1964.

Any help that we can render to you in the meantime, feel free to call on us and thank you for the order on this used truck.

Very truly yours,

J. M. WHORLEY, *Manager.*

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RIO RANCHO ESTATES,  
*Albuquerque, N. Mex., February 15, 1964.*

Mr. CHESTER CARITY,  
*American Realty & Petroleum Corp.,  
New York, N.Y.*

DEAR MR. CARITY: We have this day purchased a firetruck for the independent fire district organized within the boundaries of the Rio Rancho Estates subdivision in Sandoval County, N. Mex., by authority of the County Commission of Sandoval County in accordance with rules and regulations issued by the State fire marshal of New Mexico.

This firetruck is currently in operation in the town of Bernalillo, county seat of Sandoval County. It is in excellent condition and carries 500 gallons of water. The town of Bernalillo has placed a firm purchase order with the Thunderbird Sales Corp. for a new firetruck, trading in the truck we are purchasing from Thunderbird.

We have made a downpayment of \$500 to the Thunderbird Sales Corp. and will have delivery of our firetruck when Thunderbird delivers the new firetruck to the town of Bernalillo. In accordance with Thunderbird's bid to Bernalillo, the new truck will be delivered within 102 days.

When delivery is made on our firetruck, it will be donated to the independent fire district of Rio Rancho Estates. Full payment for the truck will be made by Rio Rancho Estates, Inc.

Very truly yours,

CHESTER P. WADLEY, *General Manager.*

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SUPPLEMENT TO STATEMENT OF ALTON W. VAN HORN, IN BEHALF OF THE NEW JERSEY REAL ESTATE COMMISSION

Thank you for the opportunity of filing this supplemental statement supplementing original comments in behalf of the New Jersey Real Estate Commission before the committee in Washington, D.C., on May 20, 1964, and particularly for the opportunity of responding to certain comments bearing on this commission's original testimony and contained in a statement filed in American Realty & Petroleum Corp.'s behalf bearing date of June 22, 1964.

Prefatorily it should be stated for the record that there has been no opportunity to review the 13 exhibits which appear to have been filed with the June 22 developer's statement. It should also be a matter of record that the original comments in behalf of this commission apply to conditions found at the time of investigation, and the original statement before the committee clearly so stated. It could logically follow that certain matters that were then found worthy of objectionable comment may by now have been so altered as to no longer warrant the same comments.

Dealing with the comment that the original New Jersey statement "seems to be based on inaccurate information and misinterpretation," it should be recognized that the information was largely that furnished by the developer and his employees. Regarding the matter of "misinterpretation," it is fairly routine for the developer seeking release to quarrel with the interpretation of the regulatory agency in the discharge of its duties if the interpretation is adverse.

The foregoing comments apply again to the American Realty statement, "His objections are the results of incorrect information and misrepresentation."

On the matter of the alleged great rise in land values in the area, the information submitted (to this commission) has been re-reviewed and it continues to be this commission's belief that the examples cited lack meaningful comparability with the size and type of units being offered to individual buyers in this development.

Regarding the matter of the ownership of lands along the Rio Grande and their portrayal to the public along with lands which are being offered, it continues to be this Commission's view that these lands are not now owned by the corporation and that they should not be portrayed along with those being offered unless there is clear indication that lands in this vicinity are not available for purchase. Reference here is made of course to making this matter clear in the promotional material rather than permitting it to be discovered after the purchaser is furnished a purchaser's kit indicating what he has contracted to buy. If it is the intent of the developer to "offer all residents the use of these facilities," it would appear to be minimum fairness to so set these areas aside in the promotional material.

Dealing next with the matter of the so-called property owner's kit, several things warrant comment. First, the property owner is sent this after he has made his purchase, as this commission understands the use of this so-called kit. Next, the map which was commented on by this commission and which appears to be the subject of comment in the American Realty's statement was received by this commission and identified as "REC 3-11/63." The most careful scrutiny of this map fails to show any "designation of where present development is taking place." The statement that "thus the purchaser has all the information possible regarding the location of your lot and its relation to other areas in all of the development" is totally insupportable on the basis of anything filed with this commission. No scale, as this commission understands the meaning of the word, appears on "REC 3-11/63". If the minute numerals thereon are intended to indicate distances, they want in clarity.

Dealing with the matter of the exchange or switch privilege, this Commission continues to disagree with the developer's presentation regarding the simplicity and clarity of these proffers as they are made in the promotional material. However, more significant than the matter of the language used is the fact that the developer's entire approach would appear to this commission to be one which would continue to sell lands remote from utilities and existing development (in the form of dwellings) and to place the buyer in a position of dependence upon the developer in order to get back to where he originally had good cause to believe he would be located, namely, in a developed area. This whole matter of reliance upon an exchange brings into play the necessity of maintaining a pool of exchange lands. In essence, it is the position of this commission that the buyer should be plainly aware of what he is purchasing and where he is purchasing from the outset. This would be required of a New Jersey licensee in a New Jersey transaction and seems equally fair to require it of a promotion outside New Jersey where a New Jersey licensee participates in that promotion.

The heavily underlined statement on page 7 of the June 22d statement which reads, "The assertion then that we lead customers to believe that they may live in an area serviced by utilities at any time whatsoever with no problem and no increase in money is exactly true—because we do make this commitment, and we live up to it," merely highlights the developer's intention to continue to sell remote lands and to place reliance on a switch privilege.

On the matter of police protection, the original statement was based on original findings at the time of the investigation. If the facts have been altered subsequently, this would be a commendable improvement.

The foregoing general comment would also apply to the matter of fire protection.

Dealing now with the matter of taxes, there appears to be agreement on the matter of what taxes an owner would be required to pay when he acquired ownership in fee. It was and continues to be this Commission's position that any statement dealing with the taxes paid per lot by the developer so long as he holds the land in bulk is misleading in the extreme for the reason that the prospective purchaser will be required to pay a very different and larger sum upon acquisition of title.

On the matter of the presence and proximity of luxury communities, the difference here appears to be a question of what constitutes a luxury community and what constitutes being bordered by several luxury communities. It should be noted that much of this development is bordered by the rawest sort of lands to be found in the area.

On the matter of the New York State's offering statement, two observations are in order. First, the New Jersey Real Estate Commission's files would indicate that it was submitted along with the promotional material and, second, it is indeed a most informative compendium of information—one which the developer's latest statement would indicate that they do not intend to deliver to purchasers in New Jersey.

On the whole matter of water, its availability, its depth, its cost to reach, etc., we apparently return to the philosophy that since one can be transferred from where he is to where he would like to be, this question is moot. The New Jersey Real Estate Commission does not, in reasonable exercise of its regulatory function, believe this an adequate answer.

The June 22d statement is wrong in its suggestion that "Mr. Van Horn did not thoroughly read the (New York State's) offering statement." Further perusal of the New Jersey original statement will make this clear, particularly if it is coupled with perusal of the New York State offering statement.

With respect to the comment that one "also complains that our 26-page report seems \* \* \* burdensome," etc., the thrust of the comment has apparently mis-carried or been misconstrued. The thrust of the comment was that the need is for a simple, concise statement, whether or not a further fully detailed statement of 26 or whatever number of pages is available as supplement.

The comment concerning the matter of boiling essential information down to one page is particularly well taken, especially if that one page is to cut through the redundancy of statement, restatement, slightly changed statement, etc., inherent in the developer's saturation promotional material approach, and if that boiled-down statement is to contain information omitted from the developer's saturation promotional approach.

It seems particularly significant to note that the developer's statement made no comment with respect to New Jersey's criticism of the fact that many significant items concerning the true nature of the lands, elevation, climatic conditions and similar features were totally missing from the promotional material.

Review of the developer's criticism of the original New Jersey statement serves only to strengthen the belief that Federal regulation, providing, among other things, for a simple, concise public report, is desirable.

If it is the intent of the developer to suggest that New Jersey is concerned with an "unwillingness to lose citizens to other States," one is referred to New Jersey's original comment concerning regulatory philosophy. This philosophy has at all times been implemented, and any suggestion of an attempt to prevent New Jersey residents from buying in other areas is as diametrically opposed to the fact as could possibly be.

[From U.S. News & World Report, May 25, 1964]

#### BOOM IN THE DESERT—WHY IT GROWS AND GROWS

It's a different kind of prosperity that now is rocketing along in the sandy Southwest.

"Brain factories," "fun palaces," and "prepackaged cities" are some of the lures that are sending populations up, ending isolation from other States.

The sun shines almost all the time, but air conditioning takes care of the heat. Water remains a problem, but shortages are being overcome. Irrigated lands grow nearly everything for the table.

This three-State survey brings you up to date on a vibrant area of America.

#### THE SUCCESS SAGA OF NEVADA, NEW MEXICO, ARIZONA

The great American desert, once regarded as a vast wasteland, waterless and forbidding, today is the scene of an expanding boom.

Boom times spread over three States—Nevada, New Mexico, and Arizona. In each State, the base for growth and optimism has a different foundation.

In New Mexico, it's the "think and theory business"—brains—on which the future is being built.

Nevada, growing in population and glamour, has cast its lot with gambling. Arizona is the desert State of industry, retirement, and recreation.

Water everywhere in the desert is a problem. Yet water shortages generally are being overcome, or there is hope of future solution. Where temperatures above 100° were a problem, air conditioning is providing the answer.

Everywhere there is sunshine—80 to 85 percent of the daylight hours in the year. Humidity is low, usually 15 percent or less, generally assuring comfort for people with sinus trouble or asthma.

All through this desert empire, contrasts are sharp.

Even the term "desert" is a bit misleading. Most of it is surprisingly varied in terrain and in plant and animal life. The horizon almost everywhere is etched with mountains. At sunset, their shadows sometimes lean east nearly 40 miles across the flat desert floor.

In Arizona in the spring, you can go from 80° or 90° temperatures in Phoenix to snow in Flagstaff, 125 miles away, at an altitude of 6,900 feet. Some of the country's great commercial forests are in Arizona.

You don't need air conditioning in much of New Mexico, most of which sits high on a plateau. In winter, eight ski centers operate at elevations up to 12,000 feet.

Nevada has four distinct seasons in the northern part of the State. Temperature variations of 50° within 24 hours have been reported in Reno. Southern Nevada is a dry desert, where annual rainfall is 3 to 15 inches.

Arizona has on its borders the two largest manmade lakes in the United States—Lake Mead behind Hoover Dam, and Lake Powell behind the new Glen Canyon Dam, both on the Colorado River. It is a common sight in the desert country to see autos towing boats, heading for newly created recreation centers.

Nevada tops the Nation in rate of population increase. Arizona leads in rate of industrial growth. New Mexico has the best per capita record in public spending for higher education, keystone of the space-age industry.

It's here in the desert that year-round living, a new American way of life, is being developed to its fullest degree. Increasingly, it's a life in self-contained communities planned from the ground up in attractive, historic, and scenic surroundings. This, too, is part of the boom.

*Nevada: Round-the-clock gambling and "liquid" hospitality, population explosion stimulated by an entertainment industry, haven for tax weary*

A visitor checking into a hotel in Las Vegas gets these first impressions: Although it's 8:30 in the morning, near the registration desk people are crowded around the gambling tables, trying their luck at blackjack and at craps. In his room a few minutes later, the phone rings and the voice of room service says: "The management would like to welcome you with a drink; may I take your order?"

Gambling, and the tourist business it generates, has set off in Nevada the greatest population explosion any State has ever had. In the 3 years since the census of 1960, Nevada's population soared from 285,000 to an unofficial estimate of 442,000 last October, a 55-percent jump. The most optimistic forecasts are for 705,000 Nevadans by 1970 and perhaps 1,200,000 by 1975.

The surprising thing about this explosion is that it is occurring with only a slight increase in industry. Nevada today has a mere 6,700 manufacturing workers, less than one-fifth the national average in proportion to population.

Entertainment and resort living, backed by gambling, is the big Nevada growth stimulator. It is a business that, around the clock, has many ways of separating visitors from their money while they are having a good time. You can take in air



elaborate stage show at a hotel for the price of a single drink. The management knows it will get its money back, and more, at the gaming tables later.

Nickels to dollars: There is one slot machine for every 22 Nevada residents. You can play one, two, or three machines with one handle—for nickels, dimes, quarters, half dollars, and dollars. At the Mint, a place on Las Vegas' Fremont Street, one recent afternoon the wife of a construction worker from Arizona played a row of four \$1 machines for more than 2 hours. She hit six jackpots and several lesser payoffs. If she had known when to stop, she would have been one of the few lucky ones who come out ahead.

Here is how a slot machine works in Nevada:

The standard machine has three rows of 20 symbols on a cylinder—cherries, bells, oranges, etc.—for 8,000 possible combinations. In 8,000 plays, on average, the machine will return 5,300 coins to the player in small payoffs, usually 3 to 10 coins. Another 2,000 coins are returned in jackpots—a preset payoff adjusted by the casino to suit itself. This leaves 700 coins. From these, the State is paid taxes that range from 3 to 5.5 percent. The rest goes for local taxes, operating expenses, and profit.

In 1963, Nevada collected \$13.5 million in gambling taxes, or 28 percent of its general fund revenues. Nevada ranks seventh in the country among States with income from gambling. But, "What is peanuts to a big State like California," with a multibillion-dollar budget, "is caviar to Nevada," says a Las Vegas casino operator. Nevada's budget is \$106 million for the current year.

Nevada has no personal or corporate income taxes; no admissions, warehouse, inheritance, or gift taxes. It calls itself "the storm cellar for the tax weary." The gambling industry opposes more production industry in the State for fear that manufacturing might someday become sufficiently important for gambling to be voted out of existence.

Attractions for nongamblers: Gambling is being served up in increasingly attractive settings. It remains the main lure, but is no longer the sole attraction. The Dunes Hotel in Las Vegas is getting a 22-story addition that will have a floor of shops, a ballroom and a "Top of the Strip" restaurant with no gambling. A 40-acre "Vegaland," modeled after California's Disneyland, is opening this month.

More families are coming to Las Vegas for vacations, and children are often seen at dinner with their parents. Now, says a hotel official, "the showgirls put on clothes for the dinner show, take them off for the late show."

Nudity has gone about as far as it can go in the nightclub shows. On the stage, the makeup of the showgirls can be so garish, the orchestration so loud, and the exposure so overwhelming that the idea of sex is lost.

Las Vegas was founded in a land rush of 1905. For many years a sleepy watering stop on the rail line from Chicago to Los Angeles, it began to grow during the 1930's with the building of nearby Hoover Dam. During World War II, industry came to nearby Henderson to utilize the power and water produced by the dam.

About that time, tourists discovered that Nevada had legalized gambling. In 1950, the Atomic Energy Commission established its Nevada Test Site, where the first of hundreds of nuclear test explosions was set off in January 1951. Added to gambling, this set off a growth spiral of more visitors and jobs, more building of resort facilities, more workers and spenders that, in turn, supported more gambling.

The upward spiral in Las Vegas has never stopped, carrying with it most of the Nevada growth statistics. In 1963, hotel space totaling 163 floors, some 4,000 rooms, was begun or completed. By the end of 1964, Las Vegas will have among its resort hotels 3 with 1,000 or more rooms.

For churches—cooperation: Participation in civic, church, and school affairs is high in Nevada. It has more churches per capita than any other State. Says a Roman Catholic priest: "We have wonderful cooperation from the casinos. We should. We pick up the pieces when they're finished with them. It's not the gambling; even the church looks on gambling as just another industry. But the people it attracts, all the kooks and bums, and hangers-on."

This priest finds that, among those working in the resorts, "only the strongest marriages can survive." He gets calls from would-be suicides at 2 a.m. who will not tell him who they are; from a distraught wife crying that "my husband's ex-wife is moving in with us"; from people who beg for bus fare home.

Boom in population: From 1864, when Nevada became a State, until 1959, when Alaska was admitted to the Union, the "Silver State" was last in population.

Since the 1960 census, Nevada claims to have passed both Wyoming and Vermont. Still, with 2¼ times the area of New York State, Nevada has no more people than the Harlem section of New York City.

Reno, the seat of Washoe County, and the county itself were dominant in Nevada politics until 1960, when the balance of power shifted to Clark County and Las Vegas, its county seat. Latest figures show nearly 236,000 people in Clark County, as against some 117,000 in Washoe County. More than one-half of the State's population thus is concentrated in Clark County.

Reno and Las Vegas are some 400 miles apart, about the same distance that separates San Francisco and Los Angeles, the cities which send most visitors to Nevada. Reno is staid and conservative, much like San Francisco; Las Vegas is flamboyant and brash, like Los Angeles.

In the Nevada Legislature, south battles north, as in California. In Reno, the University of Nevada is orienting its programs to science and technology, giving Reno a new attraction for industry. The Desert Research Institute at the university is working on such problems of a desert society as water development and weather modification. At Las Vegas, the Nevada southern campus of the university will grant its first degrees this June.

Reno was known as the divorce capital of the United States long before gambling brought Nevada added publicity. Six weeks' residence for divorce still is important business. But now marriage is still bigger business. Last year, Washoe County had 23,361 marriages, compared with 4,306 divorces. In Las Vegas, there's a sign: "\$15 Cupid Wedding Chapel, Free Corsages to Every Bride." A justice of the peace in Las Vegas is estimated to be making \$75,000 a year, mostly by performing marriage ceremonies.

The outlook for Nevada is for continued boom so long as California keeps growing. The president of Rocketdyne, a division of North American Aviation, Inc., which has large land holdings for rocket test purposes near Reno, says, "The potential for growth here in northern Nevada is the same as in southern California."

Federal spending is sizable in Nevada mostly in Clark County. The bulk of it is spent by the AEC: 186 million last year, supporting some 7,300 workers. Spending for the next fiscal year by this agency is due to drop a bit. Las Vegas, however, expects to continue to grow.

"We're like the playroom off the kitchen," say a casino operator, "only 50 jet minutes from Los Angeles, where 60 percent of our business comes from. Las Vegas is in its infancy. It's destined to become a world playground."

*New Mexico: A booming "think and theory business," sunshine, more water, too, growth in farming, cattle raising, mining, industry*

New Mexico's boom is tied to the "think and theory business" more than anything else. A laboratory, a computer or an office dominated by a blackboard and chalk are the trademarks of this business.

In 1945, New Mexico ushered in the atomic age when the first nuclear bomb was exploded at Los Alamos. Now, space age activities are spread out over the State's vast emptiness. Increasingly, it is attracting people and activities that gather around research facilities and universities.

Albuquerque has become a national center for firms developing teaching machines and programs. Research at the University of New Mexico has increased more than five times in terms of dollar contracts since 1959. One-third of the degrees granted by the university last year were for advanced studies. New Mexico has 1 doctor of philosophy for every 350 adults—highest ratio for any State in the Nation.

The State reports a population growth of 40 percent in 10 years. College enrollment has more than doubled and will double again by 1970. This autumn, St. John's College, of Annapolis, Md., will open a branch campus in Santa Fe.

Fifth in size of the 50 States, New Mexico has only a little more than 1 million people in an area as big as Pennsylvania, Ohio, and Indiana combined; States with a total population of more than 26 million. But the charm of this sparsely settled land, its combination of good living and the opportunity to grow along with industries of the future, beckons more and more people from other regions.

The Spaniards settled in New Mexico before the founding of Jamestown, Va., or the arrival of the Pilgrims in New England. One of four inhabitants now is of Spanish descent. Property titles often go back to Spanish land grants.

Many of the State's 60,000 Indians live in pueblos on sites that have been occupied for centuries. They have preserved their tribal beliefs, their beehive ovens, and ladderlike housing. This mixture of Indian and Spanish culture

with that of the "Anglos," settlers from the East, makes New Mexico a unique place to live.

Many New Mexicans are concerned about the inundation of the Spanish and Indian cultures as the State grows. Indians are leaving their pueblos and reservations for year-round jobs. At Los Alamos, a laboratory employee may be the local corn priest of an Indian tribe.

New Mexico's altitude gives it an invigorating "high octane" climate. All but the southeastern portion is above 4,000 feet. Rainfall and humidity are low. Although the sun shines almost all the time, air conditioning is not a must.

Water supplies are adequate, but not plentiful, "We don't have enough water for industries with low-paying jobs," says a State official. Perhaps it's just as well."

Occasional droughts wipe out small ranch operators some years. This contributes to the shift to fewer and larger agricultural holdings. New Mexico is losing farm population faster than the United States as a whole.

Gov. Jack M. Campbell says, "It's believed that New Mexico has sufficient water for future needs if it is used wisely." Much of the State remains to be surveyed for water. Water rights are bought and sold like land.

Sources of water: Additional water resources are being developed. The Navajo project in time will irrigate 110,000 acres of Indian lands. The new Ute Dam near Logan will supply industrial water at 3 cents per 1,000 cubic feet. In 1970, water from the San Juan River in the Colorado Basin will be pumped into the Chama River, a branch of the Rio Grande. That river is at wading depth most of the year after irrigation supplies are drawn off.

Prior to 1950, New Mexico's economy was based on farming, livestock, copper, potash and oil and gas. Most of these basic activities have been expanded in recent years. There are more than a million head of cattle in the State.

Some of the State's 800,000 irrigated acres produce up to 20 tons of tomatoes per acre. Cotton is grown at 4,500 feet. New Mexico produces 92 percent of the U.S. output of potash. More than 80 rigs were drilling for oil and gas early this year, a sharp recovery from the 1962 oil slump.

One new activity can reshape the economy of an entire area. Proving of molybdenum near Questa is bringing some recovery to Taos County, a depressed area. Questa now has no municipal water or sewerage system, no doctor, pharmacist or barber. But this is to change—and drastically.

The Molybdenum Corp. of America plans to develop a \$20 million mine and mill, to be in full operation by January 1966. Molybdenum is used mainly in strengthening steel alloys. The company has some 20 square miles of land with proven ore reserves. Employment at full capacity of the mine and mill will be about 450.

A glad hand for industry is extended in New Mexico. State and local taxes are the lowest in the West, and 15 percent below nationwide levels. Storage and processing of goods for shipment to other States is tax free. New Mexico's Industrial Revenue Bond Act lets industry finance development with tax-free municipal bonds at low interest rates.

Still, there is little to attract manufacturers of consumer products in New Mexico. The major concentration of people, some 400,000 is in a 90-mile section of the Rio Grande Valley between Belen and Santa Fe. Fewer than 10 percent of jobs in Albuquerque are in manufacturing, compared with more than 25 percent nationally.

The loss of people with lesser skills probably has progressed further in New Mexico than elsewhere. "We're exchanging population," says Richard A. Bittman, industrial economist with the department of development. Most of the highly skilled are coming from elsewhere. The relatively unskilled, those born in the State but possessing only a high school education, are leaving for areas with more manufacturing. Union membership is low. Labor supply is ample.

A 13-story Federal building is going up in Albuquerque. It reflects the increasing reliance over the years on U.S. spending as the underpinning for the New Mexico economy. Total Federal outlay here in 1962 was \$1.1 billion, more than \$1,000 for each resident. Federal spending has continued at this annual level with minor fluctuations. More people are employed in federally sponsored nuclear and space projects in New Mexico than ever worked at farming, ranching, or mining.

"In-laws can pop in." Los Alamos, birthplace of the nuclear bomb, today has a population of nearly 14,000. Some 3,875 of these are employees of the University of California, which operates the Los Alamos Scientific Laboratory.

The security fence and guarded gates that once shut off the installation are gone. Emphasis now is on peaceful uses of atomic energy. Subdividers have moved in. Some residents feared that opening up Los Alamos would let in crime. None has developed. But at least one scientist there is unhappy: "Now my in-laws can pop in on us without warning."

It is at Los Alamos that 96 percent of all nuclear fission and fusion warheads in the U.S. arsenal were developed. Los Alamos is, after the Sandia Corp., which handles the ordnance phases of the nuclear weapons program, the largest of the many Federal facilities that have made New Mexico a vast research and development laboratory for the space age. Facilities for recording, tracking, sighting and recovery of missiles dot many square miles of the State.

At White Sands Missile Range, more than 15,000 missiles have been tested since 1946. A new \$25 million project with a peak of 900 workers, is underway for testing escape equipment for the Apollo moon vehicle.

Land prices have risen less in New Mexico, with large, private land holdings, than in Arizona and Nevada. A State-owned 59,464-acre ranch, leased at 5 cents an acre a year, was sold in January for \$36 an acre. Near Deming, half-acre "ranchettes" are offered for \$249. Homes for less than \$10,000 can be found in the Albuquerque area.

Life in New Mexico is close to nature. It has a touch of mañana about it. Wide-brimmed hats and levi's seen on the streets of Albuquerque are worn regularly by people who work on the land, not in imitation of the pioneers of the wild west. In New Mexico, the yesterday of history and the tomorrow of the space age are combined in living today.

*Arizona: A tremendous spurt in manufacturing, skilled labor for space age, attractive business climate, lush land—when there's water*

Factories in the desert—and a healthful climate for year-round recreation outdoors—are the chief catalysts for Arizona's amazing growth.

The rate of Arizona's population rise has consistently exceeded that of the Nation. It matches the rate of California since 1900, when that State had almost the number of people in Arizona today—1.6 million. Arizonans foresee an eventual increase to match California's present total of nearly 18 million. One projection is for 2.2 million people by 1970.

In the first 15 years after World War II, Arizona gained 315 percent in manufacturing jobs. Florida was second among the States with 135 percent. Last year, manufacturing output was more than 10 times the \$86 million value of manufactures in 1946. Phoenix has become the third largest electronics producer, after Los Angeles and San Francisco and ahead of San Diego.

Top executives cite these attractions for new industry:

An adequate labor supply exists in all but the highest skilled and professional fields. Newcomers to the State usually take any work offered until their skill is in demand. Recently, a plastics manufacturer wanted to move to Tucson. No mold setters were listed by the employment office. An advertisement brought replies from 17 men with the needed skill. They had been working at other jobs.

Productivity is high. Absenteeism is lower than in the more industrialized States. Workers can count on good weather for their days off. In the hot summers, workers from uncooled homes are glad to be in air-conditioned plants.

An electronics employer says: "We feel we get higher productivity here, even though we can't prove it. Our foremen don't spend their time looking for people or policing them. People in the plant think of the business as 'we,' rather than 'them' and 'us.'"

A right-to-work law has been in effect since 1947. Union activity and membership are low in Arizona, except in mining and construction. Major employers such as General Electric, AiResearch, Sperry, and Motorola are not unionized. Labor-management relations are almost uniformly good.

The business climate is attractive, too. "We offer a cohesive welcome from the city and county for any prospective industry," says a chamber of commerce official in Tucson. "We also make every effort to keep happy those that we already have." A General Electric official says, "We're very impressed with the progressive air of the area."

Attracting professionals: Challenge and opportunity of space age activities are the main pull for the highly technical and professional people who must be recruited nationally.

Research and graduate training facilities are a major magnet to some companies. Arizona State University has become a key factor in industrial develop-

ment of the Phoenix area, providing skilled people and graduate training. In Tucson, the University of Arizona is attracting such activities as the Kitt Peak Observatory, which need scientific, engineering, and research facilities and personnel. At Yuma, an official of new Arizona Western College says, "We're organizing our curriculum to fit the economic potential of the region."

Improved transportation has ended the former isolation of Arizona and made possible better distribution to western markets. Plant-to-consumer freight charges are lower, and there is quicker delivery than from main plants back east. An infants' wear manufacturer hopes to process Arizona-grown cotton and do the firm's knitting here. "There's adequate water for spinning, bleaching, and dyeing," he reports.

A revival of mining contributes to overall expansion. This is a reversal of a long downtrend, when richer ore bodies and surface geology were exhausted. Since the war, new techniques for exploration and working of low-grade ores have revived the industry. Kennecott in Arizona is producing 60,000 tons of copper a year from mines that once were abandoned. Copper output in Arizona in 1962 was 644,000 tons—more than half the U.S. total.

A breakthrough in consumer-goods manufacturing is underway in the Phoenix area, which now has enough people to support local production. Phoenix has passed the half-million mark and its metropolitan area—Maricopa County—has 840,000 people. Tucson's population recently passed the 300,000 mark. This despite the fact that Hughes Aircraft, one of the city's major employers, is down to 2,200 workers from a peak of 5,800 in 1959.

Invisible problem: So far, there's been no restriction on water use, and there's never been rationing although people can't wash cars or water lawns as they do in other States. Says one water expert: "It's hard for people to believe there's a water problem when they go boating, fishing, or water skiing, or as long as the faucet at home runs steadily."

Dams store some runoff now. Phoenix has four lakes in its Salt River project. Prescott has a new, 60-acre recreation lake. The newly completed Glen Canyon Dam is holding back millions of tons of silt that the Colorado River used to wash downstream. No longer is that river's water "too thick to drink; too thin to plow."

Without water, this land is useless. With water, Arizona's barren desert becomes a lush cropland, yielding a wide variety of farm products. A gourmet meal can be served with foods grown within 10 miles of downtown Phoenix on former desert—grapefruit or canteloupe, salad with onions, olives, celery, and radishes, roast beef or lamb, with broccoli and potatoes, milk or wine, and pecan or lemon meringue pie.

Streams yield 1 million of the 4.5 million acre-feet of water used in the Phoenix-Tucson area. Pumping from underground wells supplies the rest. This pumped water is a diminishing resource. No one knows when it will run out. In 1931, when rancher Lawrence Mehren broke desert for a citrus ranch near El Mirage, he struck water at 98 feet. Today, the well is at 400 feet. Wells cost about \$20 a foot to drill. Some go down as far as 2,400 feet.

Newcomers, rather than long-time residents, are riding the upward spiral in land prices. They are such men as ex-carpenters Del Webb, Bob Staggs, and Bob Hall, citrus developer Glen Curtis at Yuma, Dave Murdock in Phoenix. These men came here with little more than their skills and determination. They saw opportunities and accepted risks that the old-timers, with more to lose, did not take.

The boom in land prices has been highly selective. The Sperry-Phoenix plant is on land valued at \$300,000. The entire 160 acres sold for \$350 in back taxes 20 years ago. Desert grazing land that sold for \$1.50 an acre in the 1940's goes for \$100 to \$300 an acre now. Land that brought \$200 an acre before World War II is \$5,000 an acre and up now.

The land speculation of the past few years has slowed. One developer says, "People realize there's a lot of land around Phoenix without going out 25 miles. That land is not going to be worth much more for a long time to come."

Runaway land prices had been caused partly by the limited amount in private hands. Federal land covers nearly 45 percent of Arizona; Indian-held land another 27 percent, and State-owned land nearly 13 percent. This leaves only about 15 percent in private ownership.

Indian land can be leased for up to 90 years. State land is sold to develop new basic resources. Last year, 12,900 acres of State land was sold to McCulloch Corp., for a new planned community on Lake Havasu.

For new city—old palms: Lake Havasu City is expected to become western Arizona's largest city after Yuma. Already, \$5 million has been spent on development. A hotel has been completed; wells have been drilled for the needs of 15,000 people. The first 2,300 of 11,000 mature palm trees are being planted along main streets. A plant of the McCulloch Corp., a California-based producer of chainsaws and outboard motors, is being built. It will provide 500 jobs initially—perhaps 4,000 in time. The community is being publicized as "a Palm Springs with water."

It is in this way that new life is being built on the desert. Often, the building is from scratch. "We have clean, new cities," says a State official. "They are dynamic in character, and growing."

And Arizona—as well as the rest of the desert—is growing with them.

(Although the subject matter is not within the scope of the present hearing, the chairman accepted the following statement for the record with the stipulation that it be referred to the Subcommittee on Housing for the Elderly.)

PREPARED STATEMENT OF TOM TEETS, A RESIDENT OF SACRAMENTO, CALIF.

Tom Teets is my name and I live in Sacramento.

I came out here to have a hearing and tell what is happening to hundreds of old people in Sacramento.

The city of Sacramento has received a gold medal for having the best redevelopment project in the United States. They got the medal from Mr. Melville, a New York philanthropist. The jury that decided on which city has the best redevelopment project was composed of Mr. Reuter, of the Food for Peace Committee, and Mr. Allen, of Skidmore, Owings & Merrill which drew the plans for the redevelopment project.

I want to quote from newscippings that I have to refute the great claim of the jury that awarded Sacramento a medal.

That medal must be already tarnished, as no public hearings were held to get facts before the award was made, so it would appear that Mr. Melville, of New York, was a bit naive to accept the recommendation of Skidmore, Owings & Merrill as they were just boosting their own plans.

So, likewise Mr. William L. Slayton, of the Federal Urban Renewal Administration, of Washington, D.C., conferred with Governor Brown about the urban planning in California. "Sacramento is really doing a good job in its redevelopment area." Slayton said, "I am impressed with all the work that has been done since my last visit here 4 or 5 years ago." Conferring with Brown and Slayton were John G. Melville, San Francisco regional administrator of the URA and Sherrill Luke, the Governor's urban affairs coordinator. "California," Slayton said, "is making rapid progress in slum clearance after lagging somewhat behind the rate of redevelopment progress in some other States."

Mr. Brown apparently only showed his visitors the new shiney front entrance composed of great new Federal and State office buildings, a new department store, a million-dollar underpass, to accommodate one concern, which the State highway department did not recommend. All these are a great liability.

So look out the back door and see what the redevelopment agency has done with 5,500 single men since 1957. They claim they have placed 1,200 in 12 good places. Where? It is not stated.

The redevelopment agency only considers the permanent population as their responsibility to relocate. But the nature of the work of men in a farming district prevents them from paying monthly rentals to make them eligible to be considered permanents as they only pay the rent nightly, which gave the redevelopment agency the opportunity to ignore them.

So where are the 1,200? They are mostly pensioners that only get a meager amount of money and low-paid workers and they are crowded into many former stores and warehouses filled with small beds or cots. The sick and well crowded together like sheep in a barn. One mission which feeds many hundreds daily and lets several hundred sleep in the basement dining room sitting on benches and leaning on tables. Which is possibly the cause of the great increase in tuberculosis. Sacramento has the largest incidence of tuberculosis of any city in California.

So it appears there is a great and pressing need right now for the Federal Government to make an immediate investigation to prevent the spread of this human degradation as it appears right here and now in Sacramento.

Redevelopment has given some politicians the opportunity to make a fast buck as is shown by an article in the Sacramento Bee of January 31, 1963:

[From the Sacramento Bee, Jan. 31, 1963]

“OFFICIALS SHOULD DROP REDEVELOPMENT HOLDING

“Public confidence in the integrity of the city government, in the multimillion dollar redevelopment program in the west end and in the elected and appointed city officials would demand that Mayor James B. McKinney and Sooky Lee, a member of the city planning commission, immediately divest themselves of property they recently acquired in a redevelopment zone for investment purposes.

“Two considerations are involved here: Stipulations of the letter of the law and traditional morals involving public officers and the slightest possibility of a conflict in interests. There is no suggestion here of evil motivation, or the chicanery or double dealing in the acquiring of the property by McKinney and Lee; their good judgment in this incident, however, is suspect.

“The property involves a holding at 401-403 J Street they acquired with a third party last December. The law clearly stipulates that no official or officer involved in the planning of a redevelopment project or in formulating policy on that project, or in rendering a decision on that project, may acquire property within a bounded redevelopment area once those boundaries are established. The record explicitly shows the property was acquired in December 1962; the planning commission set up the boundaries on the project in which the disputed parcel lies in June 1962, 6 months earlier.

“The mayor has satisfied a provision in that law requiring public announcement of holdings; still the question of his moral and legal right to acquire the property exists. The issue of conflict in interests—of a government officer profiting on planning he has had a part in deciding—doggedly hangs with both McKinney and Lee. Each should move immediately to liquidate this holding, for there is both ethical and legal concern.

“The question presents itself: If this incident is to go unchallenged what is to prevent every member of the city council and every member of the city planning commission from going into the third redevelopment project area, now in the planning stage, and acquiring whatever property they might wish before the council, a year or so from now, adopts the project formally? The law might permit this but public opinion would indict them swiftly and surely.

“The redevelopment agency should have dealt more sternly and stiffly with this case but it appeared reluctant. It begged off with the explanation ‘that’s not our question to decide.’ Think not either this will go unnoticed by the Federal Urban Renewal Administration; the integrity of the Federal Government, as well as the city government, is involved.

“In short, lack of judgment has precipitated a sour note and if the mayor and Lee act responsibly they will dispose quickly of this interest. The public still insists that the men it gives the honor of serving them remain, like Caesar’s wife, Calpurnia, above all suspicion.”

APRIL 3, 1964—COUNCIL BOWS TO UNITED STATES IN REDEVELOPMENT TIFF

The city council ran up a small white flag of truce Thursday night to Federal demands that it set up a workable program to stop the development of blight. The council asked the redevelopment committee to prepare a list of names of persons to be on a citizens’ committee for workable program. It acted after it received a letter from J. G. Melville, regional administrator of the Federal HHFA in San Francisco.

“It is believed that the time is long past due for the governing body to decide whether positive action will be taken to continue eligibility requirements to receive Federal assistance to aid in the improvement of their community,” Melville had written, and added, “the HHFA will make its future determination on your eligibility on the basis of such action.”

Mayor McKinney said, following the council meeting, that he felt it was time to name a committee and added he thought that most of the council agreed with him. In the past the council has thought other working committees satisfied the requirement for the workable program committee according to the mayor.

None of the council members commented on Melville's latest letter. Sacramento City Manager Cavanaugh, who has been involved in sharp exchanges with the Federal Administrator, also did not comment.

So, Mr. Melville, Federal Administrator, has been instructed by Mr. Robert C. Weaver, FHA Administrator, to meet with Mayor McKinney and end the dispute. Mr. Weaver also told the mayor, "it was not Mr. Melville's attempt to create a deteriorating relationship with your city, but was a sincere desire on his part to improve the relationship of this agency with your city in the administration of the antiblight program."

So, this appears to mean that Mr. Weaver has said to the city of Sacramento, you are on trial, but we will let you pick your own jury to try your case.

Well, anyway, they only want \$11 million more to get started to build some human necessities instead of the out-of-this-world show of hotels which our poor California legislators could not afford to live in as they only get \$6,000 a year salary.

So, in conclusion Senators, I hope you will withhold the \$11 million which the Sacramento Redevelopment Agency wants to start a new 50-block project until a thorough hearing is held to determine the justification of the new project.

