INTERSTATE MAIL ORDER LAND SALES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FRAUDS AND MISREPRESENTATIONS AFFECTING THE ELDERLY

OF THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

Part 1.—Washington, D.C.

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NOTE.—Three hearings on 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

MONDAY, MAY 18, 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 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senators Williams, Neuberger, and Keating.

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 Keevers, minority chief clerk.

OPENING STATEMENT OF THE CHAIRMAN

Senator WILLIAMS. We will call the subcommittee to order.

We will have to recess almost immediately because of a quorum call on the civil rights bill, but I would like to open with a short statement.

Today this subcommittee turns to mail-order land sales, a subject briefly discussed at preliminary hearings by the full Committee on Aging last year.

We have called witnesses from 10 States to testify during the next 3 days on what happens when laymen buy land, sight unseen, for retirement or investment in remote parts of distant States.

When a person buys land for security in his retirement years, he makes one of the most important investments of his lifetime. He should be relatively certain that promises made to him in writing or by spoken word will be fulfilled. He is staking the happiness of his final years on the understanding he has of his installment land purchase contract, and usually his hopes are great when he signs that contract.

In 1963, during and soon after the full committee hearing, it became quite apparent that many buyers had been misled or duped by unscrupulous subdividers.

Federal investigations since our hearing have resulted in indictments and several convictions. Some major cases are yet to be decided. Many States have acted within recent months, and public awareness of abuses has increased.

As a result, the most blatant excesses of early days appear to have been modified. As far as we can determine, few advertisements now say that there is water where there is none or improvements where there is only untouched wasteland.

Some old techniques, however, appear to have long lives. The subcommittee has learned in recent days, for example, that the "free lot"

gimmick is still with us. Individuals still receive letters informing them that they have "won" lots. They are then asked to pay the costs of closing the deal. In the cases we have heard about, these "costs" are almost $150.

We intend to learn more about this promotional effort during these hearings.

We will also ask for answers to a more general question: Have the publicity and increased enforcement activity of recent months resulted in a significant reduction of misleading advertising and sales promotion, or are some shady developers merely finding more subtle ways to mislead the buyer?

We will also be keenly interested in learning more about the difficulties of enforcing State and Federal law, and we will consider any suggestions that may be made for greater effectiveness by governmental or private organizations.

One final point should be made.

My own view of the mail-order land sale industry is that it is still in its infant stages and that all its problems have not yet been solved. This industry will most certainly be strengthened if buyers can be certain that they have reasonable protection against deceptive or misleading practices.

It should be made clear here that the industry has already accomplished fine results in many parts of the Nation. Thousands of retired persons are now living in well-planned communities built on once-marginal land, or on lots deep in the desert, and even on land that was once jungle or swamp. We will hear from witnesses who will tell us just how much has been accomplished.

In summary, the high standards of the many should not be endangered or clouded by the actions of the minority. With the objective of presenting a balanced picture of the accomplishments and the dangers, this subcommittee now begins this inquiry.

I will say at the outset, too, I would like to state our deep appreciation to Mr. Robert Caro, a very distinguished reporter from Newsday, for all of the help he has given us. This help runs back over many months. He is one of our witnesses, I am glad to say—the anchorman on today's list of witnesses.

The first witness will be Mr. Gerald J. McBride, president of the National Association of License Law Officials, also administrator to the Nevada Real Estate Division, from Carson City.

Mr. McBride, if you will excuse me for a few minutes?

(Short recess.)

Senator NEUBERGER (presiding). The meeting will resume and Mr. McBride will take the stand. Mr. McBride, we will be glad to hear your statement in any way you wish to present it.

STATEMENT OF GERALD J. McBRIDE, PRESIDENT OF NATIONAL ASSOCIATION OF LICENSE LAW OFFICIALS, AND ADMINISTRATOR TO THE NEVADA REAL ESTATE DIVISION

Mr. McBRIDE. Thank you. My remarks start out by saying, Mr. Chairman—I think I had better amend that statement—Madam Chairman, and members of the subcommittee:

I am honored and happy to appear before you as a spokesman for the National Association of License Law Officials. In this connection,

I have called upon the membership of NALLO, individually and collectively, to assist me in gathering the information I will disseminate to you; for, as always, we stand ready to assist you in whatever way we can.

The questions which were posed to NALLO, in the letter I received from Senator Williams, were most pertinent to the topic at hand. I might add that they were also very thought-provoking questions for the members of NALLO.

We were asked for comments on the following:

1. Estimates on the number of people who have already bought land through the mail, and how much acreage is involved.

In answering this, I have relied heavily upon figures prepared by the California Division of Real Estate. These figures were, I believe, forwarded some weeks ago in a letter addressed to Senator Williams. They reflect that California public reports for the past 5 fiscal years have covered 677,590 acres, representing 861,778 lots. The figures represent sales offerings made in California by both in-State and out-of-State subdividers. They do not include out-of-State subdivisions, which were not offered in California.

I can estimate, based on statements of other officials, and on sales claims of subdividers, that the sales mark reached at least $500 million in Florida last year alone. A total estimate, for the entire United States, will take some time to compile, for there is no accurate source at the present time. This is a difficult project, since the great bulk of these transactions are as yet unrecorded except in the records of the subdividers. The cumulative total of contracts on which purchasers are still paying must be enormous.

Senator NEUBERGER. It has been quoted, I think, that the entire industry was worth about $700 million annually.

Mr. MCBRIDE. Yes, Senator. That has been quoted, and I think that is a pretty good estimate. I have no way of really knowing.

2. We were asked if NALLO felt that the more blatant sales promotions are now toned down, what we thought of the trend to "investment acreage," and other new sales themes.

I think the answer to the first part of the question is definitely yes. There are several reasons, I believe, for the reduction in the amount and blatant character of subdivision advertising. Not the least of these is the fact that the Justice Department, as a result of fraud investigations made by postal inspectors, has obtained convictions in several cases, and has several more pending under indictment. This has acted as a great deterrent, perhaps the most effective one.

Senator NEUBERGER. In other words, the news spread and this caused them to do what—go into hiding for a while, or go under cover?

Mr. MCBRIDE. I think it caused the more obvious fraudulent operations to backtrack, to retreat, and I think they are now more subtle. The resulting publicity on these Federal indictments and convictions has done much to stop the more obviously fraudulent schemes. Advertising media have become more selective in accepting material for publication, and the many cautionary articles that have appeared in newspapers and magazines over the Nation have helped educate the public in some degree to the danger of purchasing land through the mail.

The second part of this question evokes the response from me that there is a definite increase in two types of promotional advertising—the "investment" and the "retirement" types. The exposés of earlier promotions revealed that lack of physical improvements on many subdivisions makes habitation difficult at best, and impossible at worst. Now we find that stress being placed either on holding the land as an investment for resale later at a profit or buying it now, so that when retirement age is reached the land will be paid for and ready for occupation.

It seems to me that "investment" promotions are purely speculative and must be so stressed. The "retirement" approach can either be a godsend to our elder citizens or it can be disastrous—according to the ability of the subdivider to make his promises come true.

3. We were asked if we felt that anticipated migrations of lot owners to the subdivisions would cause problems, and if we felt there would be difficulties standing in the way of large-scale development of remote subdivisions, including problems in the installations of utilities and other improvements.

In trying to answer these questions, I had to look beyond the obviously fraudulent schemes and try to determine what the cause-and-effect relationship will be some years hence. I pondered over the employment outlook for sudden large populations in areas previously unoccupied, where jobs are uncertain or nonexistent. I considered the tremendous capital outlay required to bring utilities, paved roads and streets, hospitals, schools, and the other necessary services required in any community, be it urban or suburban. I wondered whether low-cost housing units would degenerate rapidly into submarginal or slum areas, bringing even more problems. The single answer to that series of questions was yes, there would be more problems. It is far more reasonable for me to believe that population migrations will extend to the fringes of existing communities rather than to the remote or premature subdivisions because of these problems.

4. The next request was for guidelines or suggestions for healthy development of reputable communities. On this point, NALLO feels that we would be operating outside the scope of our professional knowledge, and we must respectfully refer you to those who are in the field of planning and zoning, for such are an integral part of the modern community.

5. The final question posed was the NALLO position on State or Federal legislation. In this regard I am happy to report that a number of States enacted laws during the past 2 legislative years which have direct bearing on the sale of subdivided lands. These State laws were either the "full disclosure" type or the "fair, just, and equitable" type. Some attempts at legislation failed and those States still have little or no control. NALLO had adopted a pattern subdivision law and has encouraged its members to seek its adoption in their own jurisdictions, with some success.

On the subject of Federal legislation, I am authorized to report on behalf of NALLO that the one proposed measure recently submitted to us is now under study by NALLO committees and must be brought before our entire membership for discussion and the recommendations resulting therefrom at our next annual conference. We are as yet unable to offer comments or suggestions which would be of benefit or

use to this honorable body since we have not had sufficient time to study the proposed measure, nor bring it before the membership as required in our constitution and bylaws.

Madam Chairman, in connection with my statement I would like to discuss a particular case in the State of Nevada. Actually, the land was located in Nevada, the promoter in California, and in this connection I have some exhibits and a short film to run. This concerns a case which went to Federal trial and resulted in a conviction. The case was primarily the sale of land which was called by the promoter the famous Comstock Ranch.

The CHAIRMAN. This is a conviction under the mail fraud statutes?

Mr. MCBRIDE. Yes, ma'am.

The CHAIRMAN. Now who brought that case?

Mr. MCBRIDE. The Federal Government indicted the promoter, I think, on about 22 counts of mail fraud. He was convicted on 19 counts.

The CHAIRMAN. In California?

Mr. MCBRIDE. In California. The promoter in his advertising made some of the following representations concerning his land: That the land being sold was level to gently rolling, lush green meadows. The land being sold was the famous Comstock Ranch. The land was by the banks of the beautiful Humboldt River. That improved roads ran through the properties. There was no water problem to the land. Water from Government wells could be carried in to the land. Electric lines ran over the property. Land was good grazing land and photographs displayed at the sales were actually taken on the land being sold.

I have with me two pictures that were taken during the actual sale of land and close inspection of these two pictures will show some of the photographs that he used in his display. If you examine them carefully you will see they represent wooded areas, fields under cultivation, streets, paved roads, and so forth. The actual condition of the land is represented by the short film that is on the machine here.

The CHAIRMAN. Was there a retirement lure on any of this advertising?

Mr. MCBRIDE. Preliminarily it was a ranching or farming pitch. The pictures include all age groups and I don't believe there was any particular emphasis on the retirement aspect.

Senator NEUBERGER. Where was this on this map of Nevada?

Mr. MCBRIDE. I will point it out. The land in question ran on both sides of what we call the north fork of the Humboldt River, up in the foothills, about 6,500 feet above sea level.

Mr. Chairman, the running of this short film will conclude any statement I will have and I will be happy to answer any questions.

Senator WILLIAMS. Is this film set up?

Mr. MCBRIDE. It is ready to go.

Senator WILLIAMS. How long does it run?

Mr. MCBRIDE. It runs about 5 minutes.

Senator WILLIAMS. Fine.

(A short film was presented.)

Mr. MCBRIDE. I will attempt to do some narration while this is being run. The blackboards that you observe in the film identify the particular parcel of ground and the purchaser. The brush that you see is rather sparse, it is sagebrush and some other varieties of plant life.

This particular area has a good deal of halogeton which is poisonous.

That is one of the paved roads. Ordinary vehicles probably could not enter upon this land. We are in a four-wheel drive vehicle in this film. This is a tributary of the Humboldt River.

Senator WILLIAMS. How close is the nearest town to this vast open area?

Mr. MCBRIDE. This is about 15 to 18 miles from the city of Elko, Nev.

Senator WILLIAMS. How large a city is that?

Mr. MCBRIDE. Population of about 7,000, I believe.

Senator WILLIAMS. How many acres were part of this land scheme?

Mr. MCBRIDE. I think this particular land promotion had been 30,000 acres.

Senator WILLIAMS. Were they selling by installment contract?

Mr. MCBRIDE. He obtained contracts worth about a quarter of a million dollars, 10 percent down.

Senator WILLIAMS. What was the downpayment?

Mr. MCBRIDE. He received, I think, somewhere between $60,000 and $75,000 down.

Senator WILLIAMS. How was he selling it, by the acre?

Mr. MCBRIDE. By the acre, yes.

Senator WILLIAMS. How much an acre?

Mr. MCBRIDE. I think it was in about 20- to 40-acre units. He was selling them for approximately $5,000 for such a unit.

Senator WILLIAMS. $5,000 for a 40-acre unit? He was convicted?

Mr. MCBRIDE. Yes, he was convicted and I think received a 4½-year sentence. He was also directed by the court to repay all of the persons who had given money as a downpayment.

Senator WILLIAMS. What is the nature of the State law in this area? Is it full disclosure legislation or of the fair, just, and equitable type? Can you fill us in a little on that?

Mr. MCBRIDE. Yes, the full disclosure type has to do with the registration, the issuing of the public report wherein the subdivider has to list all of the actual facts concerned with his land. The authority or the State government then issues what we call a public report which must be handed to every would-be purchaser before he signs a contract.

Senator WILLIAMS. With reference to that public report, does the State regulatory agency evaluate the disclosure?

Mr. MCBRIDE. Yes, they usually send an investigator out onto the land and determine if the facts reported by the subdivider are true. They then issue a public report which the subdivider must hand over to the would-be purchaser.

The other type, the fair, just, and equitable, is more or less the securities approach. The State authority determines if the offering is actually worth the price involved, and so forth. The fair, just, and equitable approach actually is a fairly new one. The State of Cali-

fornia, I think, was the first State to use this type. I think our friend from California, Commissioner Gordon, can give you a much fuller description of that law.

Senator WILLIAMS. You say you are reviewing one proposal submitted to you dealing with the subject of Federal legislation. That is the full disclosure approach, is it not?

Mr. MCBRIDE. Yes, this proposal actually was based, I think, on two types of things. One was the NALLO pattern law which is the full disclosure law and the escrow provisions, I believe, in the California act. They were more or less meshed to go into the proposed Federal legislation.

Senator WILLIAMS. How many States do have either full disclosure or fair, just, and equitable laws?

Mr. MCBRIDE. Our last report showed somewhere around 15 States that have better-than-average laws on this subject, either full disclosure or the fair, just, and equitable. Unfortunately, however, my State of Nevada is not one of those.

Senator WILLIAMS. What States, primarily, are for the area we are looking into, the subdivision land that is directed primarily to people who are buying out for retirement home sites?

Mr. MCBRIDE. I think the promotions, and so forth, are aimed at the heavy metropolitan areas. I think that is their greatest point today.

Senator WILLIAMS. What States?

Mr. MCBRIDE. Primarily the same States that we have had in the past, Florida, New Mexico, Nevada, Arizona, I think, or some in Colorado perhaps, primarily the same ones that we have had for the past several years.

Senator WILLIAMS. Well, it's a tremendous mail-order business, isn't it?

Mr. MCBRIDE. I think it is. I think it is probably one of the biggest mail-order businesses.

Senator WILLIAMS. Do you have a summary of the various State laws?

Mr. MCBRIDE. Yes, I have a list prepared by Commissioner Talley of Arizona of which he lists the States that have the full disclosure or the fair, just, and equitable laws. For example, Arizona with full disclosure; California with both full disclosure and fair, just, and equitable; Colorado with a licensing statute the developer must be certified; Florida with their new installment land sales act; Hawaii with full disclosure; Kansas has a securities act provision; Maine is a fair, just, and equitable administered by their securities division; Michigan requires a statement of policy.

Senator WILLIAMS. Could you give that to us for the record?

Mr. MCBRIDE. Yes, certainly. Minnesota has full disclosure, Montana has inquiry information.

(The information referred to follows:)

Name	Have law	Type
Alabama	No	
Alaska	No	
Arizona	Yes	Full disclosure.
Arkansas	No	
British Columbia	Yes	Full disclosure and permit system.
California	Yes	Full disclosure and fair, just, and equitable theory.
Colorado	Yes	Licensing statute—developer must be certified.
Connecticut	No	
Delaware		(No reply.)
Florida	Yes	Installment land sales act.
Georgia	No	
Hawaii	Yes	Full disclosure.
Idaho	No	
Illinois	No	
Indiana	No	
Iowa	No	
Kansas	No	Securities Act provision.
Kentucky	No	
Louisiana	No	
Maine	Yes	Administered by security division on fair, just, and equitable theory.
Maryland	No	
Massachusetts	No	
Michigan	No	Statement of policy requested.
Minnesota	Yes	Full disclosure.
Mississippi	No	
Missouri	No	
Montana	Yes	Inquiry information.
Nebraska	Yes	Permit system.
Nevada	No	
New Hampshire	No	
New Jersey	Yes	Full disclosure.
New Mexico	Yes	Do.
New York	Yes	Do.
North Carolina	Yes	Ordinance approved plan.
North Dakota	No	
Ohio	Yes	Security, fair, just, and equitable theory.
Oklahoma		(No reply.)
Ontario	Yes	Full disclosure.
Oregon	Yes	Full disclosure and permit system.
Pennsylvania		(No reply.)
Rhode Island	No	
South Carolina	No	
South Dakota	No	
Tennessee	Yes	Security division.
Texas	No	
Utah	Yes	Full disclosure and permit system.
Vermont	Yes	Securities commission regulation.
Virginia	No	Local control.
Washington	No	
West Virginia	Yes	Securities commission regulation.
Wisconsin	Yes	Fair, just, and equitable theory.
Wyoming	No	

Senator WILLIAMS. What does this mean to the fellow who picks up his newspaper in Newark and sees a big ad, $5 down and $5 a month land, in a full disclosure State. He doesn't have any full disclosure. All he knows is what he sees in the ad.

Mr. MCBRIDE. That is true. This is one of the problems: How he obtains that public report before he signs the contract. Since we don't have this type of law in Nevada, I am not too much of an authority on it. I don't know how it works. I think some of our other NALLO members that are here will be able to explain exactly how that works.

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

Mr. W. Dan Bell from the Rocky Mountain Better Business Bureau all the way from Denver, Colo. You had to travel a long way to be helpful to us. We are very grateful.

Mr. Bell, we are delighted that you are with us. I see you have a statement.

STATEMENT OF W. DAN BELL, PRESIDENT AND GENERAL MANAGER, DENVER AREA BETTER BUSINESS BUREAU

Mr. BELL. Thank you, Senator. Ladies and gentlemen, history, verified by the often overlapping and cloudy titles on record in many recorders offices, tells us that land promotions in the West are not new. In fact, the records indicate that as early as 1870 land promoters were luring immigrants from Russia, Germany, and other countries with promises of rich farm lands, stoutly built cabins and other blandishments which often were found to be nonexistent. Land speculation was rampant during the Gold Rush, fabulous sums being paid for urban sites in once-booming areas that are now just ghost towns.

Today's fraudulent land promoter has a much different atmosphere in which to work. He has the means of communication—newspaper, radio, TV, direct mail, and gatherings of people—by which he can quickly reach large numbers of the population. He has easy credit facilities, which make it easy to secure agreement to purchase. The maze of overlapping jurisdictions, antiquated laws, conflicting interests, indecision all combine to enable him to operate his scheme with more than an even chance that he will escape penalties of law. Added to all of this is a growing segment of the public who believe they can get something for nothing.

Aggressive, nationwide promotion of Colorado land for home and recreational sites began in 1954 when a Florida promoter optioned large areas of mountain land and began a widespread direct mail "bait" advertising barrage to lure prospective purchasers to the site. As the cash success of his promotion became evident, some salesmen spun off from this promotion to form their own developments, and the mountains and the mails were littered with advertising of cabin sites. Today, the great majority of these original promotions are deteriorated areas, or have reverted back to their natural state, and thousands of people who eagerly paid for community recreational living in the mountains have given up hope of either recovering their money or seeing their dream come true.

Concerned about the great number of complaints, and knowing from past experience what to expect in the future, the better business bureau initiated a series of meetings attended by district attorneys, State real estate brokers board, State planning office, health departments, county commissioners, real estate trade organizations, mediums, and others, and this stimulated some pressures against the promotions. Effective publicity, especially that given by the Denver Post, resulted in the drying up of the market. Proposals of controlling laws were made to the State legislature in 1958 and 1960, but conflicting interests resulted in no action being taken.

In 1961, land promoters recognized Colorado as a "sleeper State with a great potential," and within a matter of weeks 12 subdivisions were offering "free lots" in State fairs, garden, home, and auto shows, the World's Fair in Seattle, and other public events throughout the Nation. The public was invited to "register" for a drawing, and everyone who did so "won" a lot, for which they had to pay $39 or $49 for "closing costs," title, and so forth. At opening night of the Texas State Fair in Dallas, 7,000 people registered for and "won" "free" lots offered by one Colorado promotion. By mail and direct

salesmen, "winners" were advised of their good fortune, and offered the opportunity to buy additional lots at prices ranging from $395 upward.

Far from being a "sleeper State," Colorado bustled with a wide variety of "wildcat" real estate promotions, including some with intriguing names. These included: Moonshine Mesa, Fallout Heaven, Cool Valley Estates, Alpine Village, Sportsman's Valley, Future Land, Golden Arrow Valley, Estates of the World, Aspen Acres, Land Equities, Rio Grande Estates, Mineral Hot Springs, Bonded Land Development, Colorado Lakeshore, Paradise Valley, Uranium Acres, and others.

The better business bureau, in 1962, was flooded with over 5,000 requests for information from all over the Nation, to whom it issued reports. BBB fed information to mediums throughout the area, and the resulting publicity did much to deter the promotions. A special warning bulletin was sent to the management of all major fairs and public events throughout the Nation.

Senator WILLIAMS. How about the newspapers? Did you have anything from them?

Mr. BELL. Yes, sir. There was an exceptional amount. During the 6-month period four full pages of publicity came out in the local area. Those meetings stimulated a great deal of publicity. I have some cards which might show you the areas in which those promotions have occurred in the State and the type of procedure that is used which starts with the little card you sign at the fair or at the World's Fair or wherever the development is promoted. It says: "Congratulations, you have won," and then the follow-up. If you don't send in your money for the free lot, then a follow-up so that you might be encouraged a second time. Then the letter which tells the information about the proposition as a means of getting you to buy the adjacent lot to the free lot you have won and then a letter transmitting the title. In this particular case, these promoters ran the gamut. They sold over 2,000 acres divided into four and five plots per acre. The final results were people writing to them and mail being returned, "Moved, left no forwarding address."

These promoters moved around so fast that nobody could actually catch up to them and they moved into Albuquerque and down into Texas still selling these properties or taking money for them.

Senator WILLIAMS. Did they have title to these properties?

Mr. BELL. They did on the first subdivision. Then they moved up the pike a ways to the second subdivision. By that time there were so many people after them they simply moved around and for the little amount of money they were getting per lot, $39 per lot, nobody wanted to get involved in prosecution. We had a very hard time finding enough people to make complaints. People don't want to get involved in a civil suit or prosecution for such a small sum of money.

A 23,000-acre development in Park County offering 5-acre retirement and recreational sites advertised worldwide, "Europeans are hungry for an opportunity to invest in American real estate" and reportedly financed by Denver and Honolulu investors with more than $600,000 of their money, defaulted on the payment for the land

and was repossessed by the seller. Following is an excerpt from one of the letters among the complaints in BBB files:

I am a teacher in Hawaii and for some time have been looking for a nice place to retire in later years. When I saw the advertisements in a Honolulu paper of the "Estates of the World" I felt that it would be an ideal place. I made a trip there in July and selected a beautiful site. I planned on building a log cabin on it in the near future and spending my vacation there. The purchase price of the 5-acre plot was $1,999. The downpayment was $249. The monthly payments $20. I have made prompt and regular payment ever since the purchase. My last check sent in October was returned with the notation "Box closed."

Following the abandonment of the Denver headquarters of this promotion, advertising and promotion of this property occurred in California, though at the time no transfer of title appeared of record in Park County. Post Office inspectors are currently investigating this promotion.

The lure of "mineral hot springs" including therapeutic baths, swimming pool and drinking water, stimulated much interest by elderly people in a land promotion located in Saguache County. Here, the promoters offered the owner of the deteriorated property of 600 acres the unusual price of $100,000. While the contract was still being negotiated, the promoters conducted an active "free lot" campaign emphasizing the health facilities of the location, grandiose plans for a mobile home development, recreational facilities, et cetera. When the check for the downpayment bounced, the seller withdrew from the contract. The promoters then optioned property 2 miles away for which they paid $12 an acre, but continued to describe their development as being the original site, and sold lots 50 x 100 for $695. The actual land they sold was nothing more than raw desert—no roads, no survey stakes—nothing. It remains in its natural state today. A sidelight on this promotion was that two of the principals, man and wife, traded to a 76-year-old widow four of these practically worthless lots for the equity she had in her house in Denver, on an agreement that if they couldn't provide clear title to the lots they would have to pay rent on her house. Title was not forthcoming, and the rental checks they gave her bounced. She had to withdraw from her savings to make mortgage payments and employ a lawyer to evict them.

One promoter contracted to buy for $100,000 a 400-acre site located in a draw which customarily filled with 4 feet of water in the spring. He paid $500 down on the contract and both lived and operated his office in a house trailer on the site. A heavy barrage of advertising resulted in the sale of practically all of his homesites in a short period, and he decamped from the State in his trailer one night, failing to pay for the property, and, of course, failing to deliver titles to purchasers. They are still trying to locate him.

"Bait" offers of homesites are a specialty of some promoters. An operator from Texas has sent literally thousands of letters reading "You have been selected to receive a homesite for $95. This is offered in lieu of advertising," and so forth. The respondent finds that the $95 lot is only 20 feet wide and located in a gully in which it would be impossible to build. But, by selecting a site at $1,500 or more, a $95 discount will be given. Five different BBB shoppers endeavored to obtain the $95 advertised lot without success. A Florida promoter used this technique to sell cabin sites in the mountains. He abandoned

all three of his developments, all of which are now deteriorated and have become mountain "slums."

A promotion in Park County, Colo., was conducted by two men formerly engaged in the home improvement business, one of whom is on the FHA precautionary list. Theirs was a "free lot" promotion in surrounding States; the free lot costing $39.50 was 30 x 100 feet in size. Since county restrictions require 6,000 square feet minimum land area, winners of the free lot had to buy at least one additional lot for $395 in order to make use of their good fortune. This land had no access rights, and purchasers were refused entry by private owners of adjoining property. The promoters presented to the county clerk and recorded a plat on which was written:

> The lots as described herein do not constitute building sites. The county is not to maintain roadways. This drawing is not to be construed as being based on a field survey nor an actual survey.

While the plat was not accepted by the county commissioners, the promoters were able to tell prospective purchasers that "their plat was on file at the county clerk's office."

Once the promoters have acquired their "sucker lists" of "free lot" winners, they often will conduct "reload" schemes. Since the "free" lot is usually too small on which to build, or will not meet local restrictions, the "winner" is faced with buying one or two adjoining lots for several hundred dollars each. Another trick is to make it known to "winners" that the property they have "won" is undesirable, and offer sites in other developments for an additional "transfer fee." The development of a "club" in which membership fees are charged, is another "reload" scheme. One promoter, under the name of various "fidelity" companies, has been following up the land promoter with mail to all purchasers offering an "abstract of title" for $39.50, which is nothing more than a mass printed record description of the total property. However, recipients are led to believe that they are required to purchase the abstract to retain title to their property. No doubt the "sucker lists" obtained by land promoters will be in use for many years to come.

The past personal history of many of the promoters of "wildcat" wasteland developments indicates the reason the promotions are fraught with deceptions and misrepresentations. One instigator of a large-scale promotion was an attorney who was previously barred from the securities business by SEC. At least two promoters are former home improvement racketeers whose names are contained in the FHA restricted list. Two others have been previously subject to arrests for con games. Several others are identified in BBB files as having learned the business in other States where their promotions were the subject of criticism.

The promoters usually offer the original landowner slightly more than the assessed value of the land. If valued at $12 an acre, they may offer $14 or $15 so their option purchase terms will be more palatable to the seller of the land. They may contract to buy several thousand acres, but on conditions wherein title is released as they pay for it in sections. Thus their initial actual cash investment is relatively small. By dividing the property up into lots 50 by 100 or even slightly larger, they can crowd five to seven sites into an acre. By "free" lotting two and selling the adjoining three lots, they can expect an average of

$1,500 to $2,000 an acre for land valued at $12. Such surveys as are performed are usually sectional and not per site, and if roadwork is done it is usually just a bulldozer scraping the surface dirt. Thus the greater costs are sales and advertising. Based on 2,000 titles of record in one promotion in southern Colorado, the promoter may have realized between $750,000 and $1,000,000 in sales of scrubland in 18 months of operation. We estimate that the total of wildcat promotions in Colorado during this period would approximate $5 million in sales.

Representations as to improvements and facilities are generally vague and usually are built on the recreational facilities, climate, and beauties of nature. Pictures of skiing, fishing, wildlife, and scenic beauty are liberally used as though these were on or adjacent to the property, when in fact they are many miles away. Drinking water is described as "easy to get" or that "artesian wells abound in the area." This can hardly be expected to be true on land classified as "wasteland" or "poor grazing land." References to community "clubhouses," development of "lakes," and so forth, remain unfulfilled promises. "Roads" become impassable quagmires when it rains, snows, or thaws.

As a result of depredation of land use by many of these promotions, titles of hundreds of thousands of acres have been placed in jeopardy. In the areas where no actual physical development occurred, the various claims to title by many persons in various States who hold contracts or have paid money for specified lots, much of which is not yet of record, will cloud the properties for years to come, and will deter future development. In those areas partially developed, but abandoned by the developers, shacks, huts, and deterioration of property discourage proper development. And county governments are faced with mounting costs involved in the growing tax delinquencies that occur.

In 1962, BBB again sponsored a large meeting of representatives of governmental agencies, including the district attorneys, post office inspection service, real estate brokers board, planning commission, State land board, county commissioners, chambers of commerce, State legislature, FHA, mortgage, title, real estate, homebuilders' associations. It was agreed at that meeting that a joint effort to obtain State legislation should be carried out. Accordingly, BBB selected a committee of representatives of the Attorney General's office, district attorney, homebuilders, real estate developers, county commissioners, title companies, and the better business bureau. After 12 meetings of this committee, during which the conflict of interest between real estate brokers, homebuilding subdividers, and the county commissioners was continually in evidence, a licensing law was reluctantly agreed upon. However, when the legislature met, the diverse interests each introduced different proposals, and the result was the passage of a watered-down version that fails to meet the needs of the public.

Meanwhile, efforts to gain prosecution by district attorneys of those promoters actually engaged in fraudulent representations met with the response that the complexity of jurisdiction plus the inadequacy of State fraud laws negated the possibility of successful prosecution. Publicity still remains the most effective weapon against misrepresentation.

It has been said many times by people in high places that only fools buy land sight unseen. If this is so, then we are here today mainly

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concerned with protecting fools from themselves. Actually our concern is for the trusting people who believe in the honesty of advertising, in the integrity of business, and who trustingly respond to the offerings made to them. Without this trust and belief of the public, advertising and selling would be a worthless endeavor. Thus we are primarily concerned with those who abuse the public trust by cheating, lying, and swindling.

Our first recommendation, then, would be a reexamination of present laws on both the Federal and local level to determine whether they are being effectively applied, and that the agencies charged under these laws with protecting the public be stimulated and encouraged to use the tools already available in the way of legal processes.

Our second recommendation would be to develop a means by which the self-regulatory process within business can be made more effective by the active participation of government. The concept under which the National Association of Securities Dealers operates as a self-regulatory group within the securities business, but having the line-backing support of the SEC, might well be applied to all business by designating the better business bureaus and other voluntary self-regulatory agencies as self-policing groups in partnership with the Federal Trade Commission, whose law could be amended to provide the necessary teeth to implement the program. In this respect, the mechanical structure of the former NRA might be studied for development of the idea.

In spite of the enormous problems that wildcat land promotions create for all concerned, we cannot blindly recommend Federal controls that will unnecessarily discourage honest speculative land development. At the Federal level, present fraud laws may need amending and strengthening to more effectively deter cheating and swindling. More effort may be needed toward encouraging the States to improve their protective devices. More education of the public may be needed, and certainly more financial strength should be given to better business bureaus to enable them to perform their function.

In closing, I suggest to you that the problem of phony real estate promotions today is the problem of some other business activity tomorrow, for history of our laws shows that rigid controls simply drive the crooks from one endeavor to another.

Thank you, sir.

Senator WILLIAMS. That is a rather discouraging closing.

Mr. BELL. You can legislate against sin, but you can't prevent it.

Senator WILLIAMS. Do you recommend we leave it where they are and not move them on?

Mr. BELL. Senator, I think we have so many agencies and laws and everything now that if we could just make them more effective, it seems to me we would cover about every problem we have. It seems to me we are piling up more and more overlapping agencies so that they create an area for the crooks to operate.

Senator WILLIAMS. You mention the method of registration of the securities industry. This is bottomed on self-discipline really?

Mr. BELL. Yes, sir.

Senator WILLIAMS. And the industry itself is its own policeman?

Mr. BELL. Yes, sir.

Senator WILLIAMS. The SEC is the repository of the full disclosure of securities to be offered; right? I thought that you were suggesting that we consider this approach to these areas.

Mr. BELL. I am suggesting that, No. 1, our present laws and our present means of getting at the crooks, the gyps, the people who deceive people, that these certainly need attention both on the Federal and State level. But to control the area that is not covered by direct fraud and so forth, I am suggesting that self-regulation be encouraged. Whether it can actually be implemented depends on the means. But I think there are plenty of legitimate real estate people in each of these communities who can be utilized for this self-regulatory purpose rather than to pile on more laws and this sort of thing. You see you have this in other areas that you are going to get into, burial plans, and matrimonial bureaus, and all sorts of things that affect the elderly. Schemes today are primarily directed at the elderly or at the young. People your age they don't go after so much. You are too smart. So if we are going to have a new law and a new control for each of these things, we are going to have a lot of problems.

On the other hand, ordinarily, we have horizontal laws that cover the sin, that cover the fraud and do it effectively. Then the other areas should be covered in some sort of self-regulatory process, I believe.

Senator WILLIAMS. Have you ever known of one of these clearly fraudulent land sales schemes that was advertised in a reputable newspaper?

Mr. BELL. Oh, yes. Now if you ask whether the newspaper knew it was fraudulent—we had one case of the Denver Post carrying an ad on an Oregon proposition. Two days later it came out in a large news story and quoted some commissioner or someone in Oregon saying this was fraudulent. So they carried the ad, but they also negated it with this fraud statement.

Senator WILLIAMS. That certainly protected their purity, didn't it?

Mr. BELL. I am sure they didn't know at the time they took the ad, which would be probably several days before the statement was made by this person.

Senator WILLIAMS. Well, he can have some sympathy with the newspaper. In Newark, N.J., they have the offer of an ad for land in Arizona. They can't afford to send someone to Arizona.

Mr. BELL. That is right. And many newspapers do check with us, I know, to determine whether Colorado offerings are what we believe to be fair and right and so forth.

Senator WILLIAMS. I rode in this morning with the owner of a couple of newspapers. I asked him about this, and he said one criterion that he uses in determining whether to accept the ad is the reputation of the agency placing the ad. He was offered some land in exchange for advertising. The agency was questionable and therefore he didn't take the advertising and he didn't get the land. But the better business bureaus are located in how many communities in the country?

Mr. BELL. In the United States there are about 112 or 114. There are 5 in Canada, and there are 8 or 10 in foreign countries.

Senator WILLIAMS. You are suggesting that bureaus could be used in a self-policing or self-disciplining manner?

Mr. BELL. I suggest that in the same basis as is the National Association of Security Dealers operating in the field of securities, that the bureaus could be used in that same manner.

Senator WILLIAMS. The difference here is that the National Association of Security Dealers includes most of those who are part of the self-regulation.

Mr. BELL. Yes.

Senator WILLIAMS. Whereas the BBB does not enjoy the membership of these people you are trying to reach.

Mr. BELL. There is a reason why NASD has that membership, too.

Senator NEUBERGER (now presiding). I believe that is all. Thank you very much.

We now hear testimony from a panel of State witnesses: Mr. Milton Gordon, of California, real estate commissioner; my own commissioner, Mr. Robert J. Jensen, from Oregon; and Mr. Koske, from the Colorado Real Estate Commission in Denver.

It is a pleasure for me to welcome Bob Jensen, former colleague of mine in the Oregon Legislature. Our State is taking quite a prominent lead in this whole area of investigation of land frauds. Welcome to the other gentlemen. Have you decided how you want to present your testimony?

Mr. GORDON. Madam Chairman, I am Milton Gordon, of California. If I may submit a statement on behalf of Gov. Pat Brown and myself as the real estate commissioner.

Following is the statement of Gov. Pat Brown, of California:

STATEMENT OF GOV. PAT BROWN OF CALIFORNIA, AS PRESENTED BY MILTON GORDON, REAL ESTATE COMMISSIONER

I have asked Milton G. Gordon, administrator of the California Business and Commerce Agency, to appear before this committee with a detailed presentation in behalf of California. I would like to emphasize in this separate statement, however, that California has demonstrated that the elderly can be protected against the mail-order, sight unseen, sales of worthless land. The laws we enacted last year have dried up this vicious practice in our State. The laws are effective. California's population includes a significant percentage of America's elderly, most of them living on extremely limited budgets. Unlike many investors, their savings are too small, their potential for starting over too limited to permit them to recoup losses. Yet up to a few years ago they were investing millions of dollars a year in worthless or even nonexistant mortgages and deeds of trust through firms which specialized in that type of promotion. My administration moved to stamp out those fraudulent promotions only to face a new scheme, the mail-order land sale. The mail-order business which offers subdivisions sight unseen often are geared specifically to the elderly who are thinking in terms of retirement or long-range investment. But too many found their dream retirement communities to be nothing but vast expanses of desert without roads, water, electricity, and other usual facilities. At my request, subdivision statutes were strengthened in the 1963 session of the California Legislature to give California's real estate commissioner new powers for effective regulation of such sales.

At the same time and with the support of the real estate industry in California, we established the real estate recovery fund. Now an aggrieved party who secures a court judgment against a real estate licensee on the basis of fraud, misrepresentation, or deceit, and who finds that he is unable to collect, may petition the real estate commissioner for an amount up to $10,000 to satisfy that judgment. This recovery fund is financed by the real estate brokers and salesmen themselves through their license fees. But the most effective way to deal with mail-order fraud is to prevent it and our new law is doing just that by requiring out-of-State promoters to qualify for a permit before they can offer property to potential California buyers. Eighty-five percent of the schemes offered for approval have been disqualified by the State of California since

the law went into effect last September 20. If every State in the Union would put such a law into effect, there would be no problem for this committee to study.

California's real estate and subdivision laws are recognized as the most comprehensive of any State in the Union. We are proud that many other States, and even jurisdictions in foreign lands, have used California law as a model. Under my administration this law has been improved and expanded.

The California division of real estate has on many occasions counseled and advised our sister States on matters affecting real estate development and marketing. We have aided the Federal authorities in the prosecution of those charged with mail fraud. This cooperation shall continue in the future.

The office of the Governor and my real estate commissioner are ready to assist this committee in whatever way possible.

This concludes, Madam Chairman, the statement of Gov. Pat Brown to the committee.

If I may, with the Chair and the committee's permission, I will read a statement on my own behalf as real estate commissioner.

Senator NEUBERGER. We would like to hear you.

STATEMENT OF MILTON G. GORDON, ADMINISTRATOR, BUSINESS AND COMMERCE AGENCY, STATE OF CALIFORNIA, AND REAL ESTATE COMMISSIONER, STATE OF CALIFORNIA

Mr. GORDON. Madam Chairman and members of this committee, I am honored to appear before this committee to present some of California's experience with mail-order land sales and the problems which this type of real estate promotion has generated.

As of July 1, 1964, we estimate that California will have a population of 18,272,000, of which 8.5 percent or 1,560,000 will be men and women 65 or older.

The geography and climate of our State have induced many people from other areas to settle within our borders. People of retirement age, newly arrived and native, provide a lucrative market for real estate developers and agents. Recent figures indicate that there are 348 retirement villages, apartment buildings, and retirement hotels situated in California. A survey of 200 mobile home parks reveals that 95 percent of their residents are over age 50.

I would like to outline the role of the California real estate commissioner in our State's housing picture.

Under California law, the real estate commissioner is given jurisdiction over any new subdivisions offered for sale. This applies not only to the conventional subdivisions of land surfaces but also to new community apartment and condominium offerings. Not until a new project has been fully investigated by the commissioner's office will a subdivision public report be issued and not until this report has been issued can the subdivider or developer enter into contracts with purchasers. The public report is a full disclosure document, and the prospective purchaser must be given an opportunity to read it before making an earnest money payment or otherwise entering into an agreement for purchase or lease. It is the job of the commissioner's office to investigate and report on the project in every detail to see that the purchaser is informed as to what he is getting. In addition, the commissioner's office must see that the purchaser can get what the project developer has promised. Most of the retirement villages, apartment buildings, and retirement hotels have had public reports issued prior to sale or lease of ground improvements or space.

Governor Brown has been alert to protect the buying public from fraud or misrepresentation in the offering of improved or unimproved developments in the State. Real estate development is a business which has burgeoned into vast proportions with an average of 3,000 subdivisions filed with the California real estate commissioner's office each year. The Governor has not hesitated to request the legislature for new laws regulating subdivision offerings and, generally, industry has supported regulation deemed necessary to close loopholes in the law which could be exploited by the unscrupulous.

I have mentioned that most of the retirement projects had public reports issued before they could launch their selling or leasing programs. Under California law, there is one exception to this general rule. That is, where the interest conveyed to the purchaser is in the form of stock with right of occupancy of a specified unit. This is then a security and under these conditions the corporations commissioner assumes jurisdiction. If he is satisfied that the offering is fair, just, and equitable, he will issue a permit which allows the developers to sell. Some of the largest retirement villages—one already housing some 17,000 persons and another which is projected to house about 25,000 people—come under the corporate security law. These projects are generally organized as a cooperative housing corporation for the purpose of constructing, owning, and operating a housing project, the permanent occupancy of which is restricted to members owning shares in the corporation. Often, the projects are financed under section 213 of title II of the National Housing Act.

The California real estate commissioner has jurisdiction over subdivided lands beyond the boundaries of our State when offered for sale to California residents. Interstate marketing of land parcels has taken on tremendous proportions in recent years. Judging from the volume of out-of-State tract offerings filed with my office, it is fair to conclude that California offers a most fertile market for land located anywhere in the country, and even beyond the borders of the United States. One reason, perhaps, is that the California public may well have been conditioned to the idea that investment in any kind of land will return handsome profits. Another reason is the high price of presently usable land in California, which makes prices of some of the out-of-State offerings seem most attractive by comparison. This, despite the fact that the land might not be usable and there is no economic demand for it other than that created by extravagant advertising, and sales promotions outlining present and future values. These techniques can create for a period of time an artificial market for lots and speculative subdivisions. Buyers, when they want to resell, often find there is little or no market for the parcel at the price they paid for it.

Many offerings of remote lands are pitched to the sales appeal of investing for the future, and providing a site for a carefree retirement life. This approach has a strong appeal to the elderly citizen and to those approaching the retirement age. Unfortunately, there are no figures available to show how many elderly residents of California have succumbed to glowing advertising promises of enhanced equities or gracious retirement living in geographic locations where these promises cannot possibly be fulfilled during their lifetime.

Our records reveal the interstate marketing of lands is a relatively recent phenomenon. Prior to 1958–59, there were practically no filings of out-of-State subdivisions in California. In 1958–59, however, the real estate commissioner issued subdivisions reports on 21 subdivisions which were then offered for sale to residents of California. They included tracts located in Arizona, Florida, Hawaii, Nevada, and New Mexico. In the following year, 41 tracts were filed and approved. To date, starting with fiscal 1958–59, reports on 329 out-of-State tracts have been issued by the California real estate commissioner's office. These tracts comprised almost 500,000 acres, divided into 180,000 parcels. Interstate marketing of land is big business, with sales running into millions of dollars, with many purchasers buying on faith alone. One of our investigations disclosed that purchasers who had bought from the fancy brochures were disillusioned when they visited the property. We issued a desist-and-refrain order, stopping sales, and also filed an administrative action against a number of real estate licensees whom we accused of misrepresenting the property. After 33 full days of hearings, the longest in the history of the division of real estate, I signed an order revoking 13 licenses. This order is now being appealed by the licensees in the California courts.

Alerted to the volume and nature of this business, mostly of the mail order type, and by the dangers of blind buying encouraged by extravagant advertisements, Governor Brown, State Attorney General Stanley Mosk, and legislative leaders took action in 1963 to apply more stringent controls on the marketing of out-of-State properties. As of September 20, 1963, the law was changed to place out-of-State offerings in the category of securities. Aimed directly at the long-distance, sight unseen marketing of out-of-State subdivision parcels, to Californians, the law states the legislature "finds that this type of investment requires the protection and supervision of laws designed to protect security investors." This means the California real estate commissioner is not limited to issuing a "full disclosure" report on an out-of-State subdivision offered for sale in California, but is empowered to determine whether the offering would be "fair, just, and equitable." Our experience with the law so far, and with the regulations which define misleading advertising, has been good. The new law and regulations afford the public wide protections not previously enjoyed.

My staff constantly reviews all magazines and periodicals for advertising which offers lots and homes for sale to California residents. If the seller or promoter has not filed for the California real estate commissioner's public report, we write to him, advising of the State's requirements. If the developer ignores the communication or refuses to comply, I, as real estate commissioner, issue a desist-and-refrain order. In the last year, approximately 150 such orders have been issued. Their effectiveness ends, however, at the California border.

While on the matter of advertising, Iwould like to point out that part of Governor Brown's legislative program in 1963 was legislation giving the real estate commissioner authority to proceed against "misleading" advertising. Prior to September 20, 1963, the real estate commissioner's authority extended only to action against "false" advertising.

While my agency is charged primarily with the protection of California's citizens, we have never hesitated to use our good offices on behalf of any citizen in the United States.

We frequently receive correspondence from prospective or actual purchasers of California real estate who reside in other parts of the country. These communications are handled effectively and with dispatch.

As Governor Brown has outlined to you in his statement, my agency stands ready to cooperate in every way with any other State jurisdiction and with this committee.

Senator NEUBERGER. Mr. Gordon, did you have any difficulty getting this law enacted in the California Legislature?

Mr. GORDON. Senator Neuberger, I think that there is always a resistance to increased regulation on the part of any government jurisdiction, whether at the State level or at the Federal level. These new regulatory acts were sorely needed in the State of California. The Governor of our State told me to proceed with all vigor and all dispatch to see that these laws were enacted by the State legislature.

The Governor himself took an active part in encouraging legislative leaders to look favorably upon this legislation. If I were to tell you that there was no opposition or resistance to it, I would not be accurate. There was. But it was effectively overcome with facts and figures, and with the sound logic presented to the members of the California Legislature. But, without the effective leadership of California's chief executive, I don't think these laws could have been put on these books.

Senator NEUBERGER. We have some members here who may not respond to logic.

Your law seems so effective, and so comprehensive, one couldn't imagine any member of a legislative body who would resist it. I would think the real estate organization itself would be especially active in having a law like this passed, because it protects the legitimate real estate operators. I would hope none of them was among the group that offered resistance. It would be against their own good interest, I would think.

I don't understand one thing you read in Governor Brown's statement; that is the real estate recovery fund. Does that mean if somebody is gypped he could get his money back?

Mr. GORDON. It can mean that, Senator. Let me try explaining it very briefly, because it is rather involved. This was part of Governor Brown's legislative program. If a citizen of California, or of any State for that matter, is aggrieved by a real estate licensee of the State of California and secures a judgment on the basis of fraud, misrepresentation, or deceit against the real estate licensee, and if the real estate licensee should prove insolvent after the aggrieved party has attempted to collect on the judgment rendered against the licensee, then the aggrieved party may petition the California Real Estate Commissioner for an amount up to $10,000 to satisfy any judgment. Every real estate licensee in the State of California is insured or indemnified up to a maximum of $20,000. This fund is financed by the real estate licensees themselves out of their license fees. We are starting the fund with $600,000. And I might say, Senator, that this law had not only the support and backing of the real estate industry but they joined

with me in jointly sponsoring this legislation in the California State Legislature on behalf of the Governor.

Senator NEUBERGER. Have you had any experience with prosecuting under mail fraud for advertising?

Mr. GORDON. Yes, ma'am, we have. We have cooperated with the Federal authorities in three cases and to the best of my knowledge I think two of those cases were successfully prosecuted. We did cooperate with the postal authorities in a recent indictment of the Gamble Ranch people in the State of Nevada. The case which I alluded to in my prepared statement that concerned the revocation of 13 real estate licenses was in the sale of the Gamble Ranch properties in Nevada.

Senator NEUBERGER. What would you do about the fellow who offers the free lot? Hasn't he a right to offer a free lot?

Mr. GORDON. As was pointed out earlier by the representative of the Better Business Bureau from the Rocky Mountain States, most of the people in the real estate business are ethical and honest. But, as in any other field of economic endeavor, it is a small minority that operates on the periphery of what is legal and what is right. They are the ones that give the bad image to the business. I think that the free lot approach certainly can be a very legitimate enterprise. Unfortunately, it has been abused in most cases. We haven't had too great a problem in California because of our stringent laws and regulations.

As I pointed out in my prepared statement, if every other State in the Union had laws like California then this committee probably would not be holding hearings this morning. But in the absence of these laws in the other States of the Nation, I think that consideration should be given to legislation at the Federal level. Although, I might say it is my own personal belief, that if these matters could be treated at the local State level, it would be a much healthier and a more effective approach.

Senator WILLIAMS (again presiding). I would like to have a little better understanding of how you reach these interstate operations. If the subdivision is in California and the sales are interstate through the mails or advertising, this subdivider has to file with you, as commissioner, and then you analyze his claim and compare it with what he has and then you issue a public report. Is that it?

Mr. GORDON. Yes, sir. If the land is located in California, we make a complete investigation of the offering. The report issued on in-State lands is essentially a full disclosure document. In 1963, at the request of the Governor, the legislature amended the law so that the real estate commissioner of the State of California now has the power on in-State subdivisions to make a determination that the land can be used for that purpose for which, in effect, the subdivider offers it.

For example, if a subdivider were to offer land in the State of California to California residents and represent it as resort property, good for recreational sports, particularly water sports and if we find that the water is 20 miles away, we will not let them offer that land in the State of California to residents of the State of California as a recreational offering. Now we feel that with our in-State subdivision laws we have all the power that would come under the concept of the fair, just, and equitable approach, short of making a determination

of whether the price is fair, just, and equitable. On out-of-State lands in California, it is the responsibility of the real estate commissioner to determine that the price is fair, just, and equitable. But on in-State lands that economic determination is not given to the real estate commissioner.

Senator WILLIAMS. How does this public report become effective where the California lands are being advertised for sale to people in New Jersey?

Mr. GORDON. If California is the situs State, and, if a California developer is advertising in New Jersey, he cannot offer that land, that parcel, to a resident of the State of New Jersey until he has submitted the real estate commissioner's public report to the resident of the State of New Jersey. Do I make myself clear?

Senator WILLIAMS. Yes. But I still don't see this: When the sale is prompted by a newspaper ad, the man sends his money, and he hasn't any report?

Mr. GORDON. No, but the ad will generally state, "Before you buy, you must receive the real estate commissioner's public report." If we find out about those ads, in a New Jersey newspaper, and if that advertising is misleading, we will issue a desist and refrain order against the California developer stopping his sales all over the country.

Senator WILLIAMS. I agree with Mrs. Neuberger, it seems to me that yours is a State that has cut through the confusion and you have full legislative protection here for buyers in California and outside. Do you reach these developers in other States who are direct mailing or advertising in California?

Mr. GORDON. Before they can offer their lands for sale to the residents of the State of California, they must get a permit from the real estate commissioner. That is true since September 20, 1963. Since that date, the California real estate commissioner must make a determination, for example, if the land were located in the State of New Jersey, that that offering to the residents of the State of California is fair, just, and equitable. We send an appraiser to the State of New Jersey to bring back a report to the California division of real estate. If we find that the land is not in line with current market prices, we will deny the permit. And I would say that since our law went into effect September 20, 1963, there has been a drop approaching 85 percent in offerings of out-of-State lands to residents of the State of California.

Senator WILLIAMS. The fraudulent schemer located in some other State, if he doesn't comply, how do you reach him?

Mr. GORDON. This is a tough problem.

Senator WILLIAMS. He doesn't set up an office and say, "Here I am. Serve me with the papers."

Mr. GORDON. This is a tough problem. But this is what Governor Brown did in the last legislative session. We have increased the penalty for a violation of California's real estate laws from a misdemeanor to a felony. The court is empowered to determine whether it is a felony. One of the reasons we did that is because we felt it would be easier for us to get extradition of violators from other States, if it were a felony charge. Also, Mr. Chairman, it is a little easier for us to get the cooperation of district attorneys in the State of California if they are dealing with a felony violation rather than a misdemeanor.

Senator WILLIAMS. Has there been any case where you sought extradition?

Mr. GORDON. Yes; there was one, but the U.S. Government got him before we did.

Senator WILLIAMS. That part of your State law hasn't been tested as a constitutional question; has it?

Mr. GORDON. The fair, just, and equitable?

Senator WILLIAMS. As it applies to the out of State?

Mr. GORDON. No, sir; it has not. However, since 1913, the California securities law has embodied this fair, just, and equitable approach. As an off-the-top-of-my-head opinion Senator, it seems very remote that the California Supreme Court would rule adversely in any test of this statute in the light of California's experience with its corporate securities law.

Senator WILLIAMS. How many States have laws equally comprehensive?

Mr. GORDON. To the best of my knowledge, there is no other State in the Union. Perhaps Mr. Koske and Commissioner Jensen could elaborate more on that, but to the best of my knowledge there is no other State. We are very proud that so many other States of the Union and even jurisdictions as far away as the crown colony of Hong Kong have copied California's law.

Senator WILLIAMS. How about my State, New Jersey?

Mr. GORDON. New Jersey is one of the States that has a, I believe, a full disclosure law.

I don't think it is as strong or as comprehensive as California's law.

Senator WILLIAMS. I don't believe we reach the out-of-State subdivisions that are being sold through the mail or advertising within the borders of the State as you do.

I am very grateful to you, Commissioner.

Mr. GORDON. Thank you. Mr. Chairman, I have a statement by Herbert E. Wenig, assistant attorney general of California and copies of our subdivision reports both in-State and out of State and also a brochure that we printed up on real estate subdivisions. These brochures are circulated in banks, savings and loan institutions, escrow companies, title companies, and even realtors offices. This pamphlet warns on the hazard of buying sight unseen.

Senator WILLIAMS. Excellent. I am particularly interested in seeing the report and the format you use on that. How many reports have you issued, Commissioner?

Mr. GORDON. We issue approximately 3,000 reports a year. We have issued a little over 300 reports on out-of-State subdivisions since 1958. Since the new law went into effect on September 20, 1963, I would say we have issued maybe 15 or 20 out-of-State permits.

(The statement and material referred to above follow:)

(Text continues on p. 51.)

STATEMENT OF HERBERT E. WENIG, ASSISTANT ATTORNEY GENERAL, STATE OF CALIFORNIA

As the assistant attorney general in charge of the investment frauds unit and business law section of the California attorney general's office, I have long been concerned with interstate land frauds. Consequently, I was eagerly anticipating appearing before this committee in response to its invitation. I regret that conflicting engagements prevent my appearance. However, California has been represented here by our real estate commissioner, Mr. Milton Gordon, who has

described to you how California, as both a situs and investor State, is endeavoring to deal with land sales promotions, especially as they may affect the older citizens. At the hearings before this committee last January on interstate land frauds, a number of witneses appeared who referred to the National Conference on Interstate Land Sales, sponsored by California Attorney General Mosk, and held in San Francisco in October 1962. Representatives from some 33 States attended. The calling of that conference indicates our concern with the fraudulent and improvident sale of subdivision lots by mail order. The materials from the conference have been supplied to this committee. The background of that conference somewhat sets the stage for what has developed in California and other States, since that conference serves to indicate what problems are ahead. California's history and experience may well represent what other States are now and will be experiencing.

California has witnessed a series of land promotions—indeed, some people think that the promotion never stops. A national magazine article, "The Boom of the Eighties," describes the land promotions of that decade in our State—the promises, projections, and the resulting ghost towns. Even today, 75 years later, when population pressures and suburbanization are beginning to reach some of the ghost town areas, it is difficult to develop the tax-deeded acreage because of scattered ownership of the lots which were sold. California's response to the recurrent speculation and improvident premature land subdivision was the enactment of its subdivision law requiring a public report fully disclosing all pertinent facts to a prospective purchaser and a concomitant subdivision map act enabling counties and cities to enforce local ordinances calling for the installation of improvements prior to sale.

The phenomenal promotion during the past 5 years of out-of-State mail-order installment sales of undeveloped subdivision lots has brought about the following developments since last January, when your committee held its hearing:

1. The California Assembly Interim Committee on Governmental Efficiency and Economy concluded in its report to the legislature in 1963:

"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."

When subdivision land is being nationally offered as an investment to the small investor, the assembly committee pointed 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. Our legislature has already recognized, through the enactment of blue sky laws, insurance regulatory statutes, and other laws, that there are certain investment transactions where it is so difficult for the individual to protect himself, that the State must intervene."

The 1963 California Legislature thereupon, first dealing with the out-of-State land sales, enacted the legislation which our real estate commissioner described in detail to you on Monday. This statute, in short, treats the sale of out-of-State subdivision land as the sale of a real estate security and requires the seller, as in the case of the sale of other securities in California, to obtain a permit based upon a finding that the offering is fair, just, and equitable. From the standpoint of the California purchaser, this statute provides protection based upon an inspection of the land, independent appraisals, the escrowing of purchase money, assurance of the ability of the developer to complete improvements which must be adequate for the purpose for which the lots are being offered, and a determination that the contract of sale is fair and that the developer will be able to deliver clear title upon completion of installment payments.

Professor William D. Warren of the School of Law, University of California, made a special study of the legal aspects of subdivision sales for our National Conference on Interstate Land Sales. Of the permit concept, he wrote:

"No other plan gives regulatory agencies the flexibility needed to deal with the ever-changing multitude of evils surrounding this economic activity. * * * [E]ffective regulation of the sales of promotional subdivision land calls for an opinion from a State agency that the proposed sale of the land is fair, just, and equitable."

California thus joins three other States, Ohio, Tennessee, and Maine, in applying this concept to out-of-State land sales. Special treatment of out-of-State land sales is justified because the California purchaser by mail on a $10-down basis seldom inspects the land and the situs State may not and often does not impose controls such as California does at the local level to insure installation of ade-

quate utilities. Furthermore, the laws of the other State may not adequately protect the installment buyer against blanket encumbrances, mechanics' liens, and dissipation of purchase money.

2. As a reflection of this national problem, our public report law was strengthened. While this committee has heard that other States should adopt a subdivision law similar to the one which we had; namely, a full disclosure statute, in California we have gone beyond that. As stated by the legislative committee report just quoted, a mere disclosure law providing for a public report does not sufficiently protect the buyer against fraud and inequities. In our experience, there is no assurance that the buyer in the first place gets the report or, if he gets it, that it can offset the blandishments of the four-color brochures and the statements of the zealous salesmen.

I wish to emphasize at this point: Even if there is full disclosure, the sale of undeveloped lots in a premature and remote subdivision for use as homesites or for investment is inherently fraudulent. Once the promoter sells the lots, the scattered ownership and diverse wishes of lot owners make concerted self-help most difficult. All the risks of creating a livable homesite by the development of an adequate water supply and the installation of streets, sewers, and other utilities rest upon the individual buyers. The problem is accentuated by the remoteness of the subdivision.

The 1963 California Legislature added to the supervised disclosure-of-facts requirement the affirmative provision that the real estate commissioner could deny the issuance of a public report where there was inability to deliver title upon completion of payments, inability to demonstrate that adequate financial arrangements had been made for all offsite improvements, inability to demonstrate that financial arrangements had been made for community recreational or other facilities, or failure to make a showing that the parcels can be used for the purpose for which they are offered. Agreements to provide for the management or other services pertaining to common facilities must comply with regulations of the commissioner. Regulation to insure fairness and feasibility of the management contract for the operation of common facilities is of increasing importance because of the growing number of community living projects, especially for retirement communities. For example, a subdivider offering subdivision lots as homesites must have installed or have financial assurances to intall the minimum homesite facilities, such as roads, streets, and utilities.

3. Our advertising statute was strengthened so that it includes advertisements which tend to deceive.

4. The National Association of District Attorneys set up a special committee to deal with land frauds to facilitate cooperation between the district attorneys of the situs and investor counties.

5. A number of States have enacted public report statutes, about eight at the last count; and other States like New York and Florida have strengthened their subdivision advertising laws.

6. The real estate commissioners of the various States (NALLO) have endorsed a public report statute.

7. The Post Office Department and the U.S. Attorney General have obtained a number of indictments and convictions under the mail fraud statute for fraudulent land sales in a number of Western States. The Department has set up effective liaison with the attorneys general of the various States.

8. Our Western States are beginning to realize the inadvisability of allowing their range and desert lands to be cut up into small parcels and offered as homesites without requiring the land developers to install water, sewage, adequate roads, drainage, fire protection, and utilities. They realize that in permitting the sale of undeveloped, remote subdivisions they are borrowing trouble for their health and welfare agencies, for their taxing authorities, and raising obstacles to the sound growth of their cities and counties. The sale of lots to persons of small means scattered throughout many States and counties, many of whom will remain absentee investors, prevents cooperative action to bring in water, utilities, and other improvements. In California we have found that the premature subdivision of undeveloped land has blocked normal growth of areas and imposed numerous difficulties upon local communities. These premature and dead subdivisions will lie in the path of orderly development.

9. The Western Governors' Conference, meeting last year at Phoenix, Ariz., adopted a resolution calling upon their legislatures to enact legislation or to amend existing legislation to provide that the offering of subdivision land be made upon a just and equitable basis and that purchasers be fully informed about all pertinent facts concerning their purchases.

10. The National Association of Attorneys General, meeting in Seattle last July, adopted a resolution to develop means of cooperation between the investor and situs States.

11. A phase of the interstate land sales problem which requires further emphasis is the plight, generally throughout the United States, of the land contract buyer. At our national conference, it was apparent that in most States the purchaser of land upon an installment contract is sadly in need of protection. Prof. William Warren, whose special study I have already mentioned, concludes:

"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. * * * The position of the land-contract buyer in some, if not most, States of the Union is scandalous."

In most cases the contract of sale by dictate of the subdivider may not be recorded; hence, there is no assurance that the promoter will be able to deliver clear title. The developer may fail to devote installment payments to the discharge of existing encumbrances on the land. He may even place additional encumbrances on lots being sold, which may not be paid off when the contract payments are completed. The lots may suffer mechanics' liens for work ordered by the land developer. The bankruptcy of the promoter, as the contract seller, can present additional complications. Only three of our Western States have provisions for the release of lots from blanket encumbrances.

As this committee is concerned with problems of the elder citizen, the plight of the contract buyer deserves special attention, for many of the appeals are to people on the basis that they will have a retirement home or a lot waiting for them. They can easily secure this on small installment payments. The question is: When it comes time to retire to the sunny areas of the West and Southwest, will the seller be able to deliver clear title?

RETIREMENT COMMUNITIES

As Commissioner Gordon stated, there are nearly 350 of these retirement villages or adult communities in California alone. When your subcommittee was in California recently, under the chairmanship of Senator Frank Moss, it heard some of the problems concerning these subdivisions. They may be listed as follows:

1. The increased cost of health and medical plans after the sale of the community interest or the negotiation of a long lease.
2. Inadequate funding of clinical care.
3. Inequitable management control by the promoter, including excessive management fees.
4. Inadequate financing for projected recreational facilities such as swimming pools, golf courses, etc.
5. Inadequate funding of repair and maintenance costs.
6. Excessive amounts of prepaid rent.
7. Management control or developer control of community development.
8. Inequitable charges for funeral and burial expense.
9. Inadequate supervision of medical plans by State authorities.

One word of caution, however: retirement subdivisions and senior citizens villages are fulfilling the needs of many of our senior citizens by offering them a healthful, productive, and convivial life during the twilight years. In California, as well as other States, responsible developers are building this type of retirement facility in a manner not requiring regulation. However, when the demand is high and funds are readily available through the sale of businesses and homes by persons going into retirement, or through Government aid, there are attractive opportunities for the fraudulent as well as the inefficient developer.

RECOMMENDATIONS

After the testimony is heard, the question remains, what can or should the Federal Government do about the interstate sale of land. The control of land sales is essentially a matter of local concern for the situs States, their counties and cities, and also for the investor States who desire to protect their citizens in accordance with their laws pertaining to the sale of land. However, there is little point in urging the States to protect the land purchaser when the seller, perhaps in a third State, is selling the land through the mails and by advertisements in nationally distributed periodicals. California, as has been de-

scribed to you, now has adequate laws to protect its citizens not only from outright fraud, but also from inherently fraudulent and grossly unfair sales of out-of-State land. But California and the rest of the States are helpless in most cases to reach the out-of-State mail order defrauder and law evader. Our real estate commissioner issues cease-and-desist orders in many instances to no avail. There are two obstacles to the effective protection of the citizens of a State; (1) obtaining jurisdiction in the local courts, and (2) enforcing a State injunctive order against the out-of-State mail order seller in the State where the fraudulent or illegal seller has his principal place of business.

With the ever-increasing amount of interstate business through the use of the U.S. mails, the right to engage in interstate commerce should not include the right to send fraudulent solicitations into a State or violate the protective statutes of a State.

I suggest a statute which would make it a crime to use interstate commerce to sell out-of-State land in a State contrary to the laws of that State. One precedent is the statute which makes it a Federal offense to transport liquor into a State contrary to State law. Such a statute would protect States like California which have adequate laws to protect land purchasers, but which have great difficulties in enforcing these laws against the out-of-State seller. Injunctive relief in the Federal courts should be made available either in the district where the seller resides, or where the sales are taking place.

Another proposal—when there is continued mail order selling to persons in a particular State, State regulatory authorities may secure constructive service upon the interstate fraudulent or illegal seller, and then be authorized to enforce a State court injunctive order in the Federal court of the district where the seller has his principal place of business, or the States could be permitted to bring a direct action in the Federal court district where the seller "resides" to obtain preventive relief.

Finally, as proposed to you by the General Council of the Post Office Department, the mail fraud statutes should be amended to enable the Post Office Department to issue stop orders upon a showing that a scheme is deceptive and misleading and to make it clear that injunction may be obtained upon the misleading and fraudulent nature of the scheme itself without having to establish the intent of the seller. The amendment might also authorize stop orders and injunctions to prevent the mails being used to sell or negotiate sales in violation of the laws of a State.

The testimony before this committee supports the concept that a State should be able to protect its citizens from the depredations of the mail order seller. Lack of means to enforce the State law against the out-of-State mail order seller is the principal problem. The mail order coupon should not be a ticket giving the out-of-State seller a free ride over the laws of a State regulating land sales to persons within the State.

Until Congress enacts effective legislation, many of the evils becoming evident to this committee will continue. It is a sad commentary on our Federal-State system that a State must stand helpless at its borders against the defiers of its laws and the despoilers of its people.

BEFORE THE DEPARTMENT OF INVESTMENT, DIVISION OF REAL ESTATE OF THE STATE OF CALIFORNIA

(Milton G. Gordon, real estate commissioner)

FINAL SUBDIVISION PUBLIC REPORT—FILE NO. 24421

In the matter of the application of Volk-McLain Communities, Inc., a California corporation, for a final subdivision public report on tract No. 29023, Los Angeles County, Calif.

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 a material change.

APRIL 29, 1964.

SPECIAL NOTE

This project is a cooperative venture of the type referred to as a condominium with common area or facilities, which will be operated by a board of governors. The provisions for management include the right to levy assessments against you for maintenance of the common areas and other purposes. In case the management is not to your satisfaction, you may have no recourse.

Location and size: On Rockvale Avenue, Fifth Street and other streets in the City of Azusa, Los Angeles County.

Approximately 10.4 acres, consisting of 20 buildings and containing 160 units and 320 carports.

Interest to be conveyed: The purchaser will receive an undivided fractional fee interest as tenant in common in the underlying land, together with a fee title to a specified unit.

Title: Title is subject, among other things, to: Easements affecting certain areas for utility, pipeline, or other purposes. These easements as they affect individual lots may be determined by an examination of the tract map.

Zoning: The property is to be sold for residential purposes.

Restrictions: Restrictions were recorded April 14, 1964, as Document No. 4826, and amended April 21, 1964, as Document No. 4871, Official Records of the Los Angeles County Recorder.

The plan of management and operation of the condominium project, among others, includes the following provisions:

The project shall be managed by the developer until the first annual election meeting which shall be held on the third Tuesday of February 1965 or not later than 90 days after 50 percent of the condominiums have been sold, whichever shall first occur, at which time a board of governors shall be elected by the owners.

Owners shall be notified of the place, date, and hour of any meeting of owners and, in the case of a special meeting, the notice shall set forth the general nature of the business to be transacted. Such notice shall be sent to owners at least 15 days before the meeting.

At any meeting, the owner's voting rights shall be allocated on the basis of the proportionate value that each condominium bears to the total value of all the condominiums and owners shall be entitled to cumulative voting on election or removal of members of the board of governors.

At least a majority of the voting power shall prevail at all meetings, and the presence, in person or by proxy, of owners holding a majority of the total votes shall constitute a quorum for the transaction of business.

The provisions of any documents relating to management and operation of the project may not be amended without the vote or written approval of 75 percent of the ownership.

Owners or members shall be assessed in the proportion that the value of their condominium bears to the total value of all of the condominiums, to meet expenditures and reserves authorized in connection with the management and operation of the project. It is estimated that the charges for the first year will range from $17.29 to $21.90 per month, depending on the percent of ownership of each purchaser. Default in the payment of such assessment may become a lien upon the defaulting owner's unit. Assessments charged to unsold units shall be the debt of the subdivider.

The board of governors, among other things, shall have power to:

Enforce the provisions of the declaration of restrictions;

Contract and/or pay for fire, casualty, liability, and other insurance and bonding of its members, maintenance, gardening, utilities, materials, supplies, services, and personnel necessary for the operation of the project, taxes and assessments which may become a lien on the entire project or the common area, and reconstruction of portions of the project which are to be rebuilt after damage or destruction;

Delegate its powers to others;

Enter, or authorize a representative to enter, any unit, when necessary, in connection with its responsibilities for management or maintenance.

The accounts of the board of governors shall be subject to an annual independent audit, a copy of which shall be delivered to each owner within 30 days after completion.

Conditions of partition, in the event of total or partial destruction, are included in the declaration of restrictions.

The board of governors shall have the authority to sell the entire project, for the benefit of all, upon election not to rebuild.

Owners interest in the common area may not be severed from other interests conveyed.

In determining the proportionate value of each condominium unit for the purpose of assessing members or establishing proportionate representation for voting purposes, the value of each condominium unit will be based on the original selling price, taken at the nearest $1,000 figure.

Purchase money handling will be as follows: All funds received from each purchaser will be impounded in an escrow depository at Glendale Federal Savings & Loan Association, 100 South First Street, Arcadia, Calif., until construction of the project including all buildings, community facilities, recreational facilities or other common facilities within the common areas is completed, notices of completion have been filed, applicable lien periods have expired, a release is obtained from any blanket encumbrance applying to this subdiviison and the legal title is delivered to the purchaser and a title insurance company can issue a title insurance policy which does not disclose mechanic's or material liens. (Ref. secs. 11013, 11013.2(a), Business and Professions Code.)

NOTE.—A blanket encumbrance is one which affects more than one parcel of subdivided land; it can concern money or matters of agreement.

Filled ground: The subdivider's engineer reports that:

Certain areas are to contain filled ground to a maximum depth of 4.4 feet, and are to be properly compacted for intended use under the supervision of a State licensed engineer or firm.

Flood and drainage: Los Angeles County Flood Control District advises:

"It is our opinion that upon the completion of the grading of the property and construction of drainage facilities as shown on the revised plans, the property will be reasonably free from flood hazard."

Water: Water will be supplied by the city of Azusa.

Fire protection: City of Azusa.

Electricity: Electricity will be supplied by the city of Azusa.

Gas: Gas will be supplied by the Southern Counties Gas Co.

Telephone: Telephone service will be supplied by the General Telephone Co.

Sewage disposal: Sewers will be installed by the subdivider.

Streets and roads: Streets within this subdivision have been offered for dedication, and have been accepted by the city for public use and maintenance.

Public transportation: Consists of M.T.A. bus service on Foothill Boulevard.

Public school districts which service this subdivision: The elementary, junior high school, and high schools are in the Azusa Unified School District.

Note: Purchasers should contact the local school board if they desire information regarding school facilities and bus service.

Shopping facilities: Shopping facilities are approximately 4 blocks from the subdivision located at Foothill Center.

BEFORE THE BUSINESS AND COMMERCE AGENCY, DEPARTMENT OF INVESTMENT, DIVISION OF REAL ESTATE, STATE OF CALIFORNIA

Milton G. Gordon, real estate commissioner

AMENDED SUBDIVISION PUBLIC REPORT AND PERMIT—FILE NO. 22791 LA

In the matter of the application of Golden Valley Development Co., Inc., for a permit authorizing the sale of securities consisting of lots in the subdivision, Toltec/Arizona Valley, unit 3, parcel 3, Pinal County, Ariz.

This permit does not constitute a recommendation or endorsement of the securities permitted to be issued, but is permissive only.

Prospective purchasers are urged to visit and inspect the property before entering into any binding agreement to purchase. The purchaser should ascertain for himself that the property meets his personal requirements and expectations. Misunderstandings more easily arise as to the desirability of the property when this is not done.

Prospective purchasers should also consider that the market for resale may not include the availability of promotional stimulus such as is provided by the subdivider's organization. Therefore, recovery of even the initial purchase price may be questionable until or unless the project is sold out and there is substantial population growth.

Golden Valley Development Co., Inc., a California corporation, proposes to issue real property securities consisting of lots located in Toltec/Arizona

Valley, parcel No. 3 of unit No. 3, near the crossroads of Shedd and Tonto, approximately 2 miles north of Eloy, Pinal County, Ariz., according to the following plan:

Applicant owns real property in parcel No. 3 of unit 3, consisting of approximately 160 acres divided into 366 lots. In addition, the applicant owns and is subdividing in parcel 2 of unit 3 another 160 acres which are divided into 367 lots, which permit and public report is issued concurrently with this herein permit. Applicant also has under option or otherwise committed for development and sale, a total of 9,000 acres at this general site.

Applicant proposes to sell the property for cash or upon an installment contract of sale with a minimum of $10 as a downpayment and the balance being paid at the rate of $30 per month, until the entire balance of the purchase price has been paid, including interest at the rate of 6 percent per annum on the unpaid balance. If a larger downpayment is made, the balance of the purchase price will be paid at the rate of 2 percent per month of the gross unpaid balance, including interest at the rate of 6 percent per annum on said unpaid balance.

The installment sales contract provides, among other provisions, that upon compliance with all the terms of the sales contract, seller will deed the described property to the purchaser, warranting against acts of the seller only, free and clear of all liens and encumbrances, except taxes and assessments chargeable against said property, easements for public utility as shown on the plat of said property, rights-of-way for canals, laterals, reservoirs and ditches, reservations, and patents and in deeds from prior grantors and all easements, rights-of-way, encumbrances, covenants, conditions, and restrictions, as may appear of record and except any restrictions, liens, easements, and encumbrances which may be caused by or through any act or fault of said purchaser or anyone deriving an interest in said property or through said purchaser.

It is further provided in said installment contract of sale that purchaser may not transfer or assign any rights under the contract, unless accomplished by such instruments as shall be required by Phoenix Title & Trust Co., in an escrow established at their home office at 114 West Adams Street, Phoenix, Ariz., and until the regular fees and costs of the said title company, including charges for title and escrow have been fully paid, and instruments approved by and deposited with said Phoenix Title & Trust Co. home office.

The property is being sold for residential use.

Purchasers' rights under the agreement may be construed in accordance with the laws of the State of Arizona.

Title is vested in the Phoenix Title & Trust Co., an Arizona corporation, as trustee.

Title to said property is subject to reservations contained in patents from the United States, as follows:

"Subject to any vested and approved water for mining, agricultural, manufacturing, or other purposes and rights to ditches or reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and there is reserved in the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States."

The property is included within the boundaries of a hospital district and within the boundaries of an electrical district, which districts are municipal corporations.

Title is also subject to public utility easements which affect various lots in this subdivision.

A declaration of restrictions has been filed which affects this subdivision. The provisions of this declaration, among others, are as follows:

(*a*) No structure or major improvement to an existing structure shall be commenced or erected on any of said lots until the plans and specifications to be used have been approved in writing by the control committee.

(*b*) All structures on said lots shall be of new construction and no building shall be moved from any other location onto said lots.

(*c*) No lot shall be resubdivided smaller than shown on Toltec/Arizona Valley Unit 3, except:

(1) Two or more lots may be used as one building site, and

(2) Except a portion of a lot may be sold to an adjacent lot owner, after which time said lot and portion of a lot purchased, shall be for the purpose of these restrictions, considered as one lot.

(*d*) No lot shall be used for residential purposes prior to the installation of water flush toilets in all bathrooms.

(*e*) All toilets shall be inside allowed structures, and until sewage is available, all bathrooms, toilets, or sanitary conveniences shall be connected to septic tanks, cesspools, or drainage fields, constructed according to Pinal County Health Department specifications.

(*f*) Other provisions concerning required square footage for single-family dwellings, duplexes, multiplexes, commercial property and ratio between the building and lot surface.

The trust agreement provides, among other things, that the trustee shall not encumber by a blanket encumbrance any property which has been subdivided, approved by the real estate commissioner of the State of California, and offered for sale.

The trust agreement may not be revoked during the time when any agreements or contracts of sale of lots in this subdivision shall be in effect and for 3 years after the term of the longest such agreement or contract.

Title to all property sold by a contract of sale in this subdivision shall remain with the trustee until such contract of sale has been paid in full by the contract buyer or until the rights of the contract buyer have been properly terminated, either by written agreement or until such contract vendee shall have defaulted and their rights under such contract of sale shall have been forfeited.

The first beneficiary in said trust agreement has obligated himself to recognize and be bound by any contract of sale executed by trustee, even though second beneficiary may be in default thereunder, and trustee will deliver its aforementioned warranty deed conveying any lot concerned free and clear of any trust obligations and of any recorded mortgages or liens securing any obligations of prior owners.

All weather streets and public roads within this subdivision have been dedicated for public use and are owned by the public, under the jurisdiction of the Pinal County Board of Supervisors.

Construction of these roads is to be completed no later than November 20, 1965, and if not completed by that date for any reason whatsoever, purchasers may receive a refund in full upon demand from their impounded accounts.

However, these streets and public roads are not built to county standards, and will not be maintained by the county.

The J. T. Jordan Engineering, Inc., states that to widen the pavement to Pinal County standards will cost approximately $0.30 per linear front foot. Installation of required roll type standard concrete curbing will cost approximately $1.10 per lineal foot at present costs. If purchasers desire to bring roads up to county standards, the cost will be borne by such purchasers.

Until such time as these roads are accepted by the county for maintenance, the maintenance of these public streets and roads within this subdivision will be the responsibility of the purchasers. It is estimated that the maintenance cost will be approximately $250 per mile per annum.

Prospective purchasers should consider the possible difficulties which may be encountered in securing cooperative efforts on the part of a large number of owners, some of whom may be absentee landowners, to improve or maintain these roads.

There is no regular fire protection for this subdivision.

Water will be installed to each lot in this tract by the Toltec Water Co., an Arizona public utility, at no cost to the lot purchaser. The construction of the public utilities water system will be completed no later than November 1965, and if not completed by that date for any reason whatsoever, lot purchasers may receive a refund in full upon demand from their impounded accounts.

There is no regular sewage disposal system to this tract. The use of a septic tank has been approved by Pinal County Health Department. The cost of installation of the septic tank system will be borne by the lot purchaser.

Electrical service will be furnished by the Arizona Public Service Co. Their closest electrical distribution line is located along the northern boundary of this tract. The distance from this line to the farthest lot in the subdivision is approximately 2,600 feet. The company will extend its lines for permanent customer service, free of charge, under certain conditions, up to 1,000 feet. It will extend up to 5,000 feet for permanent customer service, under certain conditions, providing customer or customers will agree to pay $0.75 per foot of distribution line and $0.25 per foot for service line, plus $45 per service pole.

Natural gas service to this tract will be furnished by the Southwest Gas Corp. Their nearest existing facilities are also along the northern boundary of this tract, and the farthest lot in this subdivision from these facilities is approximately the same as that of the electricity. This corporation will extend its mains for customer service, 225 feet, free of charge. Any excess footage will be at the

cost of the lot purchaser at the rate of $1.25 per foot. In addition, the lateral lines and connection costs will be borne by the purchaser.

There is no telephone service to this tract. The Mountain States Telephone & Telegraph Co., Tucson, Ariz., states it will service this tract when "new homes in Toltec have been occupied and we receive firm orders." Normal connection fees will be borne by the lot purchaser. In addition thereto, there may be extension line costs until a population sufficient to justify free extension is built up.

Purchasers should contact the electrical, telephone, and gas companies as to extension costs, availability, and service charges before purchasing.

Subdivider's engineer has stated that no flood hazard exists on this tract.

The junior high and high schools are located at Eloy, Ariz., approximately 2 miles distant from the tract. The elementary school is nearby, within walking distance. School bus service is available to all schools. Shopping facilities are also located at Eloy.

Golden Valley Development Co., Inc., is hereby authorized to sell its securities consisting of lots in Toltec/Arizona Valley, parcel No. 3 of unit 3, for not more than the consideration and in the manner and on the basis set forth in its application filed with the real estate commissioner of the State of California on October 31, 1963, together with the forms and documents submitted therewith and subsequently submitted prior to the issuance of this permit.

This permit is issued upon each of the following conditions:

1. That no changes be made in the offering until prior consent of the real estate commissioner shall first be obtained.

2. That all purchasers' funds or an amount equal thereto, be impounded in Phoenix Title & Trust Co., Title and Trust Building, Phoenix, Ariz., in accordance with sections 11013.1 and 11013.4(f) of the California Business and Professions Code and Commissioner's Regulation 2814 of title 10, California Administrative Code, until the following conditions have been met:

(*a*) All property shall be free and clear of all liens and encumbrances other than assessment bonds or current property taxes.

(*b*) Title shall be vested in the Phoenix Title & Trust Co. as trustee.

(*c*) A sales contract shall be executed and delivered to the purchaser, which, by its terms, shall provide that the seller agrees that, subsequent to the date of the contract, he will not encumber the real property without the written consent of the contract buyer.

(*d*) A trust agreement shall be executed by and between the subdivider and corporate trustee, which, in part, shall provide that the title to the real property which is subject to the contract of sale shall remain with the corporate trustee until the contract vendee has performed all the terms and conditions of his contract, or until the contract vendor has submitted an appropriate certificate under penalty of perjury that the contract vendee has breached the terms and conditions of his contract or has defaulted thereunder; and

(*e*) All purchasers' funds, or said equal amount, shall also be impounded until (1) installation of a public utility water system; (2) paving of all roads with a proper bituminous road mix; (3) surveying and staking of individual lots; and until such time as J. T. Jordan Engineering, Inc., certifies to Phoenix Title & Trust Co. that such has been completed; and

(*f*) In the event that such improvements are not completed by November 20, 1965, individual lot purchasers may receive a refund in full upon demand from their impounded accounts.

3. That a true copy of this permit and public report, and a copy of the declaration of reservations, shall be given to each prospective purchaser prior to signing the contract of sale (agreement for sale of real property), and prior to accepting any funds from the prospective purchaser.

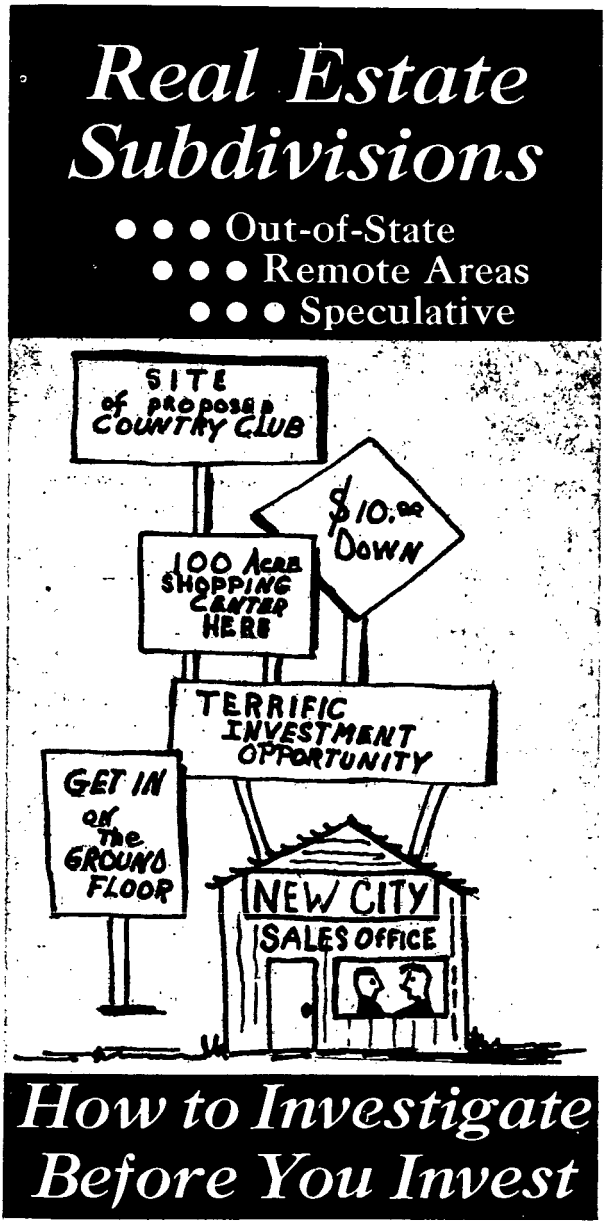
4. That applicant and its agents shall comply in all respects with the provisions of article 8 (commencing with sec. 10249 of ch. 3 of pt. I, division 4, of the California Business and Professions Code), and regulations adopted by the real estate commissioner, as added by Statutes 1963, chapter 1819.

5. That unless revoked or suspended or renewed upon application filed on or before the date of expiration specified in this condition, all authority to offer to sell or to sell securities under this permit shall terminate and expire on November 5, 1964. (Six months from date of permit, or upon a material change.) All other paragraphs and/or conditions of this permit, if any, shall remain in full force and effect until revoked, suspended, or amended by order of the commissioner.

6. That applicant shall file, ten (10) days prior to use, true copies of all advertising and promotional material, and that applicant shall not use any such mate-

rial, in any way after the commissioner gives notice in writing that such material contains any statement that is false or misleading or omits to state material information that is necessary to make the statement therein complete and accurate.

(S) MILTON G. GORDON,
Real Estate Commissioner.



EDMUND G. BROWN
GOVERNOR OF CALIFORNIA

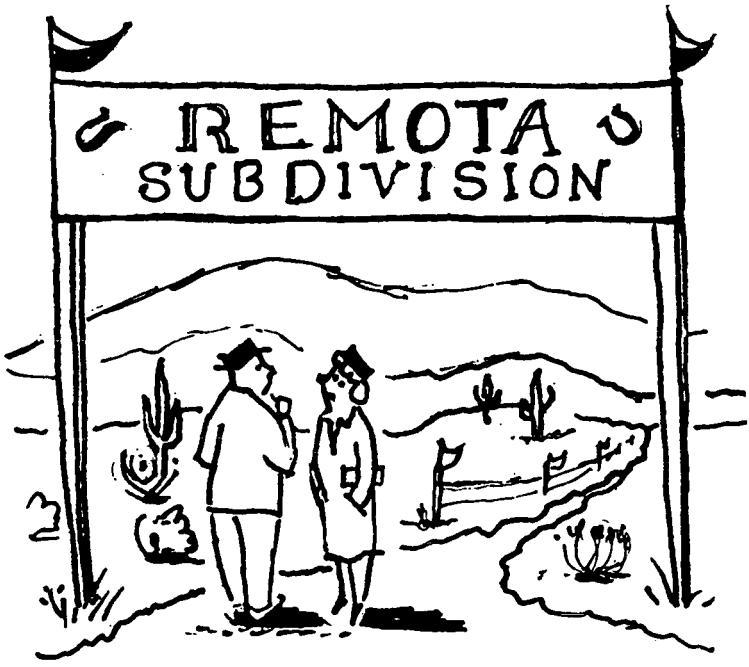
MILTON G. GORDON
COMMISSIONER
REAL ESTATE COMMISSIONER

SO YOU'RE GOING TO BUY A LOT?

The problems raised by the marketing in California of huge land developments to inexperienced buyers who accept colorful brochures and dramatic multicolored display advertisements at their face value have emphasized the need for some concise but readily usable guide to commonsense in land buying. This brochure is meant to help meet that need by pointing out ways buyers can protect themselves.

Because of California's tremendous growth and spectacular real estate development, the public may well have been conditioned to the idea that investment in land—any kind of land—will return handsome profits.

These "investment opportunities" are most often pointed toward the nonprofessional investors, people generally of modest means, people who are worried about inflation, concerned with their future, and who therefore feel impelled to "get in" on some kind of an investment so as to share in the general prosperity



"But, Howard, if 5,000 lots have been sold, where is everybody?"

LOTS FOR INVESTMENT

Extravagant advertising and self-serving opinions of present and future values can create an artificial market for lots in speculative subdivisions. The buyer of such parcels, wishing to resell, may find there is little or no market for his individual parcel at the price he paid for it.

Prospective buyers of such lots should remember that the purchase of land for which there is not an apparent present need or use can be 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.

"I figure if we can average 87 mph we can get to the shopping center in 59 minutes."

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 to exaggerated descriptions, misrepresentations, and deceptions, and may lead to major dissatisfaction when finally the property is viewed.

FACTS TO DETERMINE WHEN PURCHASING A LOT

The promoter and his subdivision—Check on both

Consult the local better business bureau, chamber of commerce, your local banker, and real estate brokers in the area on the merit of the offering.

Subdivision public report—Get it and read it

Get the California real estate commissioner's subdivision public report on any current offerings of in- or out-of-State subdivision lands. The subdivider or his agent is required to obtain this report before offering subdivision lots for sale, and to give you a copy of the report before taking your money.

The public report gives facts about the land and tells what arrangements, if any, the subdivider has made for installation of roads, water, sewage disposal, et cetera. In addition, the public report reflects a verified statement by the subdivider or his agent as to the method of handling the purchaser's deposit money; that is, placing in an escrow or trust account.

Advertising of developments—Don't buy blind

If there are advertised or pictured improvements, such as marinas, parks, beaches, golf courses, clubhouses, shopping centers, churches, schools, medical facilities, 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 advertised improvements will be completed? What proof is offered besides someone's word?

Improvements—Projected or real?

What improvements have been installed to date? Paved streets? Sidewalks? Street lights? Public sewers? Are there water mains or must individual wells be dug? How much will a well cost? 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 who will pay for them? Who will be responsible for maintenance of improvements, utilities, etc.? Is this set forth in writing?

Value of land in area—Check it out

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?

Financing—Read the small print too

Many subdividers use a "contract of sale" form when selling on an "easy payment plan." Under such a contract it is a relatively easy matter for the seller to declare a forfeiture of payments already made, should the seller feel there has been a breach of any of the contract terms by the purchaser.

If the contract is not recorded (and usually it cannot be recorded unless the seller's signature has been properly acknowledged before a notary public), there can be no constructive notice of public record of your "equitable" interest. Even with a recorded contract, the position of the buyer may be weaker than if he had a deed and made payments on a trust deed.

Unless you clearly understand the conditions of purchase, it would be well to seek the advice of an attorney before you sign.

Zoning—Does the land suit your purpose?

What are the local zoning restrictions, and what protection do they offer? Are there any restrictive or protective covenants? What are their terms? Just because a parcel of land may permit a certain use doesn't necessarily mean there is an economic need for it. Look around the area and get local professional opinion.

". . . and you also get free memberships in the 'planned' yacht club, 'proposed' golf club and 'projected' recreation club."

Finally, investigate thoroughly before you sign anything. Only you can really save yourself from losing your money in unwise investments. Get all the facts. Then—if it is still a good deal—go ahead.

STATE OF CALIFORNIA,
DIVISION OF REAL ESTATE,
OFFICE OF THE COMMISSIONER,
May 28, 1964.

Re special districts.

SUBCOMMITTEE ON FRAUDS AND MISREPRESENTATIONS AFFECTING THE ELDERLY,
Senate Office Building, Washington, D.C.:

Attached to this letter is a copy of a statement I delivered to the California Assembly Committee on Municipal and County Government in January of this year. I also attach a copy of a preliminary research project by San Jose State College into the various types of special districts subdivision financing which is common in California today.

Our concern lies, primarily, in the potential area of abuse which can develop.

Historically, subdividers use their own funds or those from a group or syndicate to finance the off-site improvements in subdivisions. There is a rapidly growing tendency to finance these improvements by the formation of special districts and the issuance of bonds.

Since these are known in the trade as "municipals," and have certain tax advantages, the purchase of such bonds by small investors is considerably more attractive than many other types of real estate mortgage financing.

If, however, these bonds are issued in connection with highly speculative land developments the risk factor involved may be far beyond the merits of their tax-exempt status and the general respectability of the bond market.

These are bonds issued by private individuals, in a sense, even though the special district formed has the aura of a governmental entity. Some of these special districts are formed by the vote of as few as 5 or 10 people living in the locality—often the subdivider, his relatives and staff.

To date we have not experienced any substantial defaults because of over promotion, but there is a growing feeling in this State that adequate regulation of the issuance and sale of such bonds suggest the need for further legislation.

From the standpoint of your committee, it is worthy of note that the investors are often located in States other than the State where the subdivision is located, and may not be aware of the regulation or lack of regulation which may exist in the situs State.

I appreciated the opportunity to appear before Senator Williams' committee and to discuss California's role in the out-of-State subdivision picture. The Governor and his administration in California stands ready to cooperate with you in any further inquiries the committee may wish to undertake.

Sincerely,

MILTON G. GORDON, *Commissioner.*

STATEMENT OF MILTON G. GORDON, ADMINISTRATOR, BUSINESS AND COMMERCE AGENCY, TO THE ASSEMBLY COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

During the 1963 legislative session, as real estate commissioner, I supported bills which would tighten controls on the use of tax-exempt bonds to assist land development. I especially renew that support in view of the additional subdivision controls which were enacted into law during the 1963 session and which gave the real estate commissioner specific grounds on which he could deny the issuance of a public report. I extend my thanks to those of you on this committee who were especially active in sponsoring this legislation.

New subdivision controls require a subdivider to demonstrate that adequate financial arrangements have been made for all off-site improvements included in the offering.

I think, if we look at land development as a three-stage operation and examine the usual financing for each stage, we can see the incentive for some financial assistance to the subdivider for the off-site improvements. The first step in the land development is the acquisition of the property; the second, the development of the off-site improvements; and the third, the construction of residences.

The acquisition is often financed by the original owner, by taking back a trust deed, and often subordinating this trust deed to any construction loans. The third stage, of construction, is financed by support of Veterans' Administration or FHA guaranteed loans, savings and loan conventional loans, or mortgages by banks or private lenders.

The off-site improvements, however, are the most difficult for the subdivider to finance and he therefore often resorts to tax-exempt bonds to assist him in the development of such improvements.

It is my opinion that such financing can be healthy to the building industry and the economy of the State of California provided there are proper controls to safeguards not only the bond investors, but also the holders of any subsequent encumbrances.

Since the real estate law is basically a disclosure statute, I am especially concerned since the price of a lot normally does not show the bonded indebtedness, and it is important that the buyer should know of this, particularly in these days when the total monthly payments are especially important to the homebuyer.

At the present time, we accept a copy of the bond or contract with the local governing body as evidence of the financial ability of the subdivider that arrangements have been made for off-site improvements.

We made a survey of 275 recent filings in the division of real estate and found that only 22 used some form of special districts or tax-exempt bonds. It has been our observation, however, that an increasing number of large land developments are using community services districts and other forms of tax-exempt bonds to finance off-site improvements.

I am sure your committee will want to consider the question of limiting by law the total amount of indebtedness which such districts can incur. Another question is whether those districts which do not have the benefits of adequate financial supervision should have available to them the facilities of the California Districts Securities Commission for certification of proposed bonds or other types of indebtedness.

At this point I would like to call upon Mr. T. P. Stivers, executive secretary of districts securities commission, for a more detailed discussion.

USE OF SPECIAL IMPROVEMENT DISTRICTS IN THE DEVELOPMENT OF LAND

(By Robert W. Travis, professor)

FINAL REPORT IN FULFILLMENT OF INTERAGENCY AGREEMENT 193, DATED SEPTEMBER 26, 1962—SUBMITTED TO MILTON G. GORDON, REAL ESTATE COMMISSIONER, STATE OF CALIFORNIA

(By Real Estate Research Bureau, Division of Business, San Jose State College, May 17, 1963)

INTRODUCTION

Bonded indebtedness is one of the economic facts of life that must be faced today by all levels of government if the ever-increasing demands for services and facilities are to be met. Governments, like most of their citizens, find only one solution to the problem of financing the satisfaction of current needs—that is to borrow against future income.

Some measure of the extent to which this practice is being followed may be ascertained from the governmental debt outstanding in 1960. In that year, the outstanding debt of all governments in the United States was $356,286 million. The division between the three major levels of government was: Federal, $286,331 million; State, $18,543 million; and local, $51,412 million.[1] Included in the latter amount was the outstanding debt of city governments—$23,178 million.[2] As a matter of comparison, the outstanding debt of the State of California at that time was $1,928,705,000.[3]

While it may be certain that the total amount of Government indebtedness has increased since 1960, the exact amount of the present outstanding debt is not known. However, a clue may be found in the increase of the Federal debt to $304 billion as of December 1962,[4] and the increase in the debt of the State of California to $2,700,700,000 as of July 1962[5]—increases of approximately 5 percent and 40 percent, respectively.

Some $28,234 million of the local debt mentioned above was that of county governments, and, in turn, part of that debt was created by the special districts formed to supply a variety of services to the citizenry. As Alan Cranston, State controller of California, has stated:

"The formation of special districts to provide solutions to special problems has become a part of the tradition of strong local government in California. Special districts historically have been formed to provide a variety of services which a

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[1] Anonymous, "Statistical Abstract of the United States: 1962" (Washington: U.S. Government Printing Office, 1962), table 550, p. 420.
[2] Ibid., table 559, p. 430.
[3] Bert A. Betts, "The California Bonding Picture: 1963" (Sacramento: California State Printing Office, 1963), p. 2.
[4] Anonymous, Federal Reserve Bulletin, vol. 49, No. 3 (March 1963), "Total Debt, by Type of Security," p. 362.
[5] Betts, loc. cit.

given group of citizens have decided they could better obtain through joint effort rather than individual action." [6]

The validity of his statement may be ascertained from the existence of 3,178 special districts, excluding school districts and irrigation districts, in California as of June 30, 1961.[7] A very ancient statistic, one from 1957, would indicate that his words, also, had general application across the Nation, for in that year there were 14,424 similar special districts in the United States.[8]

While there is no way to estimate the debt-creating role of special districts throughout the country, very accurate reports are available for the districts located in California. At the close of the 1960–61 fiscal year, the State's special districts had an outstanding, long-term indebtedness of $1,177,223,623.[9] This represented an increase of 14.2 percent from the previous year's indebtedness of $1,030,648,660. During the same period of time the number of districts increased by slightly less than 2 percent, from 3,123 to 3,178 districts.[10]

In view of the fact that the various codes or the general laws of the State of California currently contain 167 authorizations by which special districts may be created, the districts tend to be rather nonhomogeneous.[11] However, one common thread running through all is that the respective indebtedness is an obligation of the entire district as such rather than being a specific lien for a certain sum on each individual property within the district. Because of this, the debt is retired by an ad valorem tax on real property in approximately 74 percent of the districts; in the remainder, either levies on an acreage basis with no dollar value attached, levies on citrus trees, charges for services, or other sources of revenue provide the funds for debt retirement.[12]

There is still another form of bonded indebtedness that arises at the local level of government—one that is not an official government debt—yet, one about which there seems to be a growing concern because of the possibility, first, that it may be confused with such debt by some of the investing public and, second, that it may be subject to misuse in certain instances. Reference is made to the bonds issued by either "special improvement districts" or "special assessment districts."

Actually, there are strong differences between the bonds of these districts and the bonds of the "special districts" discussed above. In the case of the latter, the debt is an obligation of the district and there is a general use of the power to tax as a method of debt repayment; while, in the case of "special improvement" or "special assessment" districts, the debt is a specific lien for a designated amount on each property located within the district and the district as such has no debt obligation. Also an ad valorem tax is not used to pay off the indebtedness, rather a special assessment is levied against each property. A third factor that could be mentioned as a distinguishing characteristic is an apparent lack of continuing supervision by the originating agency or body once the physical project for which the district was created has been achieved, despite the fact that the debt may be outstanding for several years.

PURPOSE OF THE REPORT

These characteristics—absence of continuing supervision, lack of direct influence on local real property tax rates, and exclusion from tabulations of the bonded indebtedness of various governmental or semigovernmental units—mean that data concerning "special improvement districts" is neither reported to nor

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[6] Alan Cranston, Annual Report of Financial Transactions Concerning Special Districts of California: Fiscal Year 1959–60 (Sacramento: California State Printing Office, 1961), p. iii.

[7] Alan Cranston, Annual Report of Financial Transactions Concerning Special Districts of California: Fiscal Year 1960–61 (Sacramento: California State Printing Office, 1962), p. ix.

[8] "Statistical Abstract of the United States: 1962," op. cit., table 542, p. 413.

[9] Cranston, op. cit., p. iii.
This indebtedness was "incurred through the sale of bonds, both general obligation and revenue, sale of time warrants, and other forms of borrowing whose final maturity date extends over a period of more than 2 years, and proceeds of loans from the U.S. Government either in the form of money or indebtedness for works constructed by the Federal Government for the district." Ibid., p. xii.

[10] "Excluded from this total are the various zones and subdistricts reflected in this report as they are merely subdivisions of a special district although they may carry on an independent operation or report financial transactions which apply to them only. The boards of supervisors of the various counties are the governing bodies for 1,161 districts; boards composed of elected or appointed members are the governing bodies of 2,004 districts. Also included in the total of districts are 13 maintenance areas which are operated by the State of California." Ibid., p. ix.

[11] Ibid.

[12] Ibid., p. x.

collected by any State agency on an organized basis, if at all. The results are an almost complete lack of information with respect to the number of such districts, the rate at which they are being created, the extent of their indebtedness, and the statutory patterns that have been followed in both their formation and the issuance of bonds.

Because of the general lack of knowledge concerning "special improvement districts," as well as a growing concern in some quarters about the extent of their activities, the State division of real estate decided to sponsor a pilot study to establish some preliminary path of investigation and to outline the broader aspects of the problem. The purpose of this report then is to review the procedure followed in making the study and report on the limited results that were achieved.

PROCEDURE

Since it was a pilot study, the initial problem encountered was that of procedure. This involved a delineation of the problem, determination of the type of information to be sought, development of sources of information, and establishment of suitable terminology. Such factors usually are fairly well formalized before any attempt is made to gather data in the field. However, due to a lack of published material that could be reviewed for possible clues as to the most profitable course of action, it was necessary to begin the field research with little more than a nebulous idea of what was being sought. The problem was compounded by the relative short period of time that could be devoted to working in the field.

Terminology

Therefore, it was decided to interview as many people as possible, both in and out of government and both pro and con on the subject, in an effort to establish a basis for the further development of the study. As the interviews proceeded, it became increasingly obvious that terminology was going to be a stumbling block. Not only were the districts under study referred to by several different names but there was confusion of these districts with the better known "special districts." As a solution, the two most commonly encountered names were chosen as titles for the subject districts—"special assessment districts" and "special improvement districts." Unfortunately, there were still some instances in which the confusion of these districts with "special districts" persisted.

The major difficulties arising from the failure to distinguish between the two types of districts were that certain data was received which did not apply to "special improvement districts," while certain faults were attributed to them which, more correctly, should have been associated with "special districts." The latter was particularly true in the case of the "special districts" known as community service districts, which are established under the community service district act, and municipal improvement districts, which are created by special acts of the legislature.

Delineation of study

In moving to settle the question of terminology, one phase of the delineation of the problem was accomplished. It stemmed from the simple observation that "special districts" were of a higher political order than "special improvement districts," that is, they had the power, in most instances, to create "special improvement districts," a power that did not work in reverse order. This meant that, in addition to the counties and cities in the State, there were over 3,000 "special districts" which could possibly originate "special improvement districts."

Since it would have been an impossible task to try and cover all of them, the area of study was reduced to those districts created by county boards of supervisors. In order to further identify the districts being examined, an additional restriction concerning physical location was added.[13] As a result, the study was limited to "special improvement districts" which were, one, created by county boards of supervisors and, two, located in unincorporated areas of the counties.

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[13] The restriction of the study to districts located in the unincorporated areas of counties was included in an effort to achieve a somewhat uniform response to requests for information. Some counties handle the accounting for "special improvement district" bonds for all or part of the cities and "special districts" within their boundaries; others do not. Therefore, without this qualification, reports for some counties might have included data that reports from others did not without there being any means of distinguishing one from the other.

The next phase in the delineation of the problem was to decide which of the legislative acts pertaining to "special assessment" activities should be included in the study. However, this did not prove to be too great a task because almost everyone interviewed referred only to the following three acts: The improvement act of 1911, providing for both the levying of an assessment and the issuance of bonds; the municipal improvement act of 1913, providing for the levying of an assessment only; and the improvement bond act of 1915, providing only for the issuance of bonds.

The final step was to decide upon the aspects of "special improvement districts" that should be included in the study. While the report could have been made more interesting with an emphasis on the problems and misuses of the districts, it was believed that this subject had been covered adequately in the hearings of the assembly interim committee on municipal and county government and in the investigations of the Attorney General's office, particularly, when a public report was scheduled to be made of the committee's findings.[14] Besides, such an avenue of inquiry would have required powers far beyond those available to this study.

Therefore, the decision was made to direct the investigation toward the more prosaic task of accumulating as much data as possible on, first, the number of "special improvements districts," second, the legislative acts involved, third, the dollar amount of bonds issued, and fourth, the outstanding bonded indebtedness. Then, once the information had been obtained, it could be studied for possible patterns or trends of development.

Sources of information

Once the above-mentioned problems had been solved to some extent, one remained: Where could the desired information be obtained? Again, the initial field interviews furnished clues to the possible answers. One was to commence with the county officials responsible for collecting the special assessments and/or paying the bondholders. There were two such officials—the county controller, who was responsible for the bonds issued under the provisions of the "Improvement Bond Act of 1915," and the county treasurer, who was responsible for the bonds issued under the provisions of the "Improvement Act of 1911." Another was the county board of supervisors which created the "special improvement districts."

With respect to the latter, the discovery was made quickly that creating the districts was as far as it went. Once the resolution establishing the district had passed, all further interest in the district apparently disappeared. Neither records as to the amount of the bond issue, its sale, and its later history, nor cumulative records of the number of districts, the total dollar amount of bonds issued, and other such data were maintained by the board.

Attention was then turned to the offices of the controller and the treasurer which proved to be more rewarding. Their bond registers, or "spread books," contained detailed accounts of the assessments against each property that had not had its assessment paid in cash and the history of the payments for each property. However, the treatment of the bond debt on an individual property basis, as was perfectly correct, led to complications. In most instances, this system attached no importance to either the original total amount of the bond issue, the total outstanding indebtedness as of anniversary dates, or to the act under which the assessment was levied. So, the items of information most desired for the study were not available from the most easily accessible records.

When this situation was mentioned to one person being interviewed, he suggested that the most complete record of the formation of "special improvement districts" and the issuance of their bonds could be found in the files of the few attorneys and underwriting houses that more or less monopolized this field of endeavor. Because such files are strictly private in nature, the validity of this observation was never tested. However, in talking to several of these specialists, it was readily discernible that they knew much more about the technicalities of forming the districts and issuing special assessment bonds than did any government official encountered during the course of the study.

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[14] The committee held hearings in Sacramento on June 18 and 19, 1962, and in Los Angeles on Sept. 24 and 25, 1962. A "Transcript of Proceedings" for the June meeting was made available for this study; the transcript for the September meeting was not. The transcript of the June hearings contains a report on some of the findings of the Attorney General's office.

Late in the research period another lead on a possible source of information, one having to do with the number of districts formed in each county, was received but there was not time to follow it up. Reference is made to the county engineer's office and the possibility that all "special improvement district" projects must be reported at some stage of their development to that office. There was, also, a faint suggestion that the information might be forwarded to an unidentified State agency; but, again, time did not allow further pursuit of the idea.

LEGISLATIVE ACTS

As was mentioned above, three legislative acts dominated the activity of "special improvement districts" and there appeared to be some confusion concerning the exact nature of each. Part of the confusion arose from a failure to recognize the fact that two distinct and separate steps are involved. The first is the creation of the district, the authorization of the project, and the levying of the special assessment lien; the second is the issuance of the bonds. Each requires a different legal sanction.

Another reason for the confusion was a failure to distinguish between the functions performed by each act. Two of the acts, the Improvement Act of 1911 and the Municipal Improvement Act of 1913, are procedural acts, that is, they deal with the establishment of the district and related matters; and two of the acts, the Improvement Act of 1911 and the Improvement Bond Act of 1915, govern the issuance of bonds. Only the Improvement Act of 1911 contains provisions for both steps.

Improvement Act of 1911

Perhaps, because of its dual role, the Improvement Act of 1911 should be discussed first so that it may serve as a point of comparison for the other two acts. And, since a "special improvement district" must exist before bonds can be issued, it would seem proper to review the procedural aspects of the act first.

Procedure.—In brief, the procedure is as follows. A petition signed by interested property owners is submitted to the appropriate legislative body, which, in turn, passes a resolution of intention to form the district. Next, a hearing, to which every property owner within the proposed district is invited, is held to determine whether or not the proposed project should be undertaken. If a majority of the property owners do not object, the legislative body calls for bids on the project. The successful bidder then performs the work. After the project is completed, an assessment list is prepared to distribute the cost to the several properties on the basis of benefits received. A second hearing is held to give the property owners an opportunity to approve the assessment fee, the correctness of the work, and the spreading of the assessment over the properties concerned. Once confirmation is received, the assessment is recorded and becomes a lien on the properties. Finally, the contractor is "paid." He receives a package composed of the assessments, a diagram of the properties benefited, and a warrant. The latter is his authority to collect the assessment from each property owner. If the property owners do not pay their assessments within 30 days, the contractor is issued bonds for the unpaid balance.

Several characteristics peculiar to the act may be identified from the procedure outlined above. First, the property owners are asked to approve the project on the basis of estimated total costs without an identification of the specific assessment against each property.

Second, the contractor does not receive any pay for his work until after he has completed the job. In fact, he has to reimburse the contracting entity for any expenses it has incurred in creating the district. Such an arrangement means that the contractor has to either finance himself or arrange for outside financing by either contracting to sell his assessments (actually the bonds) to an underwriting house or by borrowing from a financial institution. Should he not have to resort to financial aid from an underwriter, he is free to either keep the bonds or to sell them, as he may choose.

Third, the assessment is not levied against the subject properties until after the work is completed and approved, which could be many months, possibly even more than a year, after the project contract was signed. As a result, the property owner does not have to pay interest on a debt until the lapse of the 30-day cash payment period following the date the assessment becomes a lien. If he should pay cash within the prescribed period, there would be no interest charge.

Fourth, the legislative body is not involved in the payment of any money to the contractor unless it has either agreed to pay some portion of the cost of the project or it has reserved the right to purchase the bonds from the contractor. Rather, the debt is between the contractor and each property owner. The assessment gives him, in effect, a first mortgage lien on each property within the district and it is his responsibility to collect the debt.

Finally, the bonds which are issued represent the balance of the unpaid assessments. If the contractor disposes of the bonds, the subsequent bondholders assume the same relationship with the property owners as had existed between them and the contractor. The bonds may be issued under the provisions of either this act or those of the Improvement Bond Act of 1915.

Bond provisions.—Each bond issued pursuant to the provisions of this act is for the amount of the unpaid assessment against a specific property [15] and, since the bonded indebtedness is on a parity with taxes, it becomes a first lien on the property. The particular property which is the security behind a bond is described in the bond in the same manner as though it were a deed of trust. The bonds carry coupons for the semiannual payment of interest and the annual payment on principal. The latter are usually for equal installments.

Since the bond is a contract between the bondholder and the property owner, there is neither obligation nor liability upon the entity that created the "special improvement district." It does act as an agent, though, in paying the bond coupons providing funds are available.

Should funds not be available for coupon payments because of the delinquency of the property owner, the bondholder's remedies are against only the subject property. There is no personal liability on the part of the property owner since he did not sign a promissory note. Should there be a delinquency, the bondholder may either move directly against the property in a foreclosure action, using the entity as his agent in the action, or try to negotiate an alternate payment plan with the delinquent property owner.

Municipal Improvement Act of 1913

This is a procedural act and is concerned with the creation of special improvement districts, authorization of projects, and levying of assessment liens. There are no provisions for the issuance of bonds, except that it authorizes the use of either 1911 or 1915 bonds.

The procedure is quite different from that of the Improvement Act of 1911 and a somewhat idealized version of it is given below. A proposed project is started by an engineer estimating the total cost of the work involved and allocating the cost among the properties to be included in the district. On the basis of this allocation the assessments and assessment diagram are prepared. Then, after proper notice has been given to the property owners concerned, a hearing is held to decide upon the propriety of both the proposed project and the estimated assessments. If the hearing results in approval, the lien of assessment is recorded and attaches at that time. Property owners are given 30 days in which to pay all or part of their assessments in cash. If they are not paid by the end of that period, bonds are issued and sold at either a public or private sale, as the legislative body may choose. Meanwhile, bids have been sought so that a contract may be entered into as soon as the bonds are sold. Work is begun on the project and the contractor receives his pay in installments as the work progresses.

In examining the characteristics identified in the above outline, several differences between this act and the Improvement Act of 1911 are readily apparent. First, property owners are asked to approve the project on the basis of an estimate of what their assessments will be rather than simply on an estimate of total cost. As a matter of fact, if bids have been secured prior to the hearing, the estimated assessments may be adjusted during the process of the hearing to the actual costs represented by the bids.

Second, funds to pay for the project are collected before the work starts. Therefore, the contracting entity makes cash progress payments to the contractor during the course of construction, which relieves him of the problem of having to finance his operations.

Third, the contracting entity undertakes both the cash collection from the property owners and the sale of bonds for the unpaid balance instead of leaving these tasks to the contractor. Instead of a no cash transaction between the con-

[15] Usually the minimum amount for which a bond is issued is $50; however, if the project involves a domestic water supply, the minimum amount may be reduced to $25.

tracting entity and the contractor, as in the case of the Improvement Act of 1911, it is an all cash operation.

Fourth, the assessment is levied against the properties before work on the project is started. As a result, the property owners who do not pay their assessments in cash must commence paying interest after the 30-day payment period has elapsed and the bonds are issued, which, possibly, could be before work on the project has started.

Finally, the bonds which are issued represent the balance of the unpaid assessments and are a first lien on the subject properties. As in the case of the Improvement Act of 1911, the debter-creditor relationship is between the owners of the subject properties and the bondholders.

A comment should be made at this point about two aspects of the procedure acts that are not apparent from the above outlines. First, the Improvement Act of 1911 contains a specific list of the improvements that may be made under its provisions, while the Municipal Improvement Act of 1913 does not specify what improvements may be made. Instead, it provides for any improvement of a local nature, including those allowed under the 1911 act.

Second, the Municipal Improvement Act of 1913 may be used for either the construction of new improvements or the acquisition of existing ones; the Improvement Act of 1911, with but slight exception, is limited to new construction. According to some observers, the power to acquire existing improvements through the special assessment process is a possible source of trouble.

This is particularly true when the provisions are interpreted to apply to the acquisition of an existing improvement that has not yet been constructed. Such an action is supported by an assumption that the local entity would acquire the improvement were it in existence; therefore, bonds may be issued and the proceeds used to pay for an improvement which has yet to be constructed. Thus, the vendor is able to finance the construction of an improvement that he already has sold with the proceeds from the sale.

Improvement Bond Act of 1915

The first thing that should be made clear is that bonds may be issued under the provisions of this act for projects authorized under either of the two procedural acts—Improvement Act of 1911 and Municipal Improvement Act of 1913. In either case, the procedure leading up to the issuance of the bonds would be the same for both 1911 and 1915 bonds. All cities and counties, generally speaking, have a free choice as to which type of bond they issue, while special districts are limited to the specific type of bond authorized for their use by the legislation or statute, under which the particular special district was created.

About the only similarity between 1915 and 1911 bonds is that their security is the lien on the properties within the special improvement district that have not had their assessments paid. In both instances, there is a specific lien against each property, but, in the case of the Improvement Bond Act of 1915, individual bonds are not issued for the debt of each property. Instead, all unpaid assessments are combined and serial bonds in uniform amounts are issued against the total debt. The bonds, in turn, are secured by the total amount of unpaid assessments.

Property owners are required to make annual payments on their special assessment obligations. The payments, which are collected as a part of the yearly tax bill, are deposited in the redemption fund that is used to meet bond amortization and interest payments. If the redemption fund should not be adequate to meet the annual debt payment, the local entity is obligated to make up the deficit. Funds for this purpose may come from either the general fund of the entity or from the levy of a tax of not more than 10 mills. In either case, the local entity then proceeds against the delinquent property in the same manner as for nonpayment of taxes.

The entity that issued the bonds stands between the bondholder and the property owner. Thus, the bondholder cannot move directly against the property, as in the case of 1911 bonds, but must depend upon the ability and willingness of the local entity to cure any deficit in the redemption fund. While the local entity does not have a direct liability for the bond debt, the middleman position leaves it with a contingent liability.

REQUEST FOR INFORMATION

Once the decision was made to seek information about special improvement districts located in unincorporated areas, created by either the Improvement Act of 1911 or the Municipal Improvement Act of 1913, and with outstanding bonds issued under the provisions of either the former act or the Improvement Bond Act of 1915, the next step was to contact each county in the State. A letter was sent to the controller or controller-auditor of each county informing him of the nature of the project and requesting the following information for each district within his county that met the stipulated qualifications:

(*a*) Name of the district.
(*b*) General purpose for which the district was created (paving, sewer, etc.).
(*c*) Act under which the project was implemented and the lien created.
(*d*) Act under which the bonds were issued.
(*e*) Date the bonds were issued.
(*f*) Original principal amount of bonds authorized and/or issued.
(*g*) Term of years.
(*h*) Outstanding principal amount as of June 30, 1962.

The letters were sent out with full realization that the request would entail a great amount of time and effort on the part of most recipients because the information would have to be secured from several sources. Therefore, a standard reply form was not included in the belief that a response would be encouraged if the respondent were free to arrange the data in a manner that would facilitate his search of the records.

As a result, the replies took a variety of forms; however, most of them did report the information in the same order as it had been requested in the original letter. In addition, the nature of data contained in the replies varied. Some were most complete; others were not. A few contained data pertaining to special districts rather than special improvement districts; others contained both.

When a reply was received, the information was transferred to a standard form to facilitate tabulating and analysis. This operation served, also, as an initial check on the extent and correctness of the answers. However, when a reply was considered to be either incomplete or incorrect, no attempt was made to contact the respondent for additional information because of, first, the pressure of time and, second, and more importantly, a strong belief that such a request would fall on deaf ears. For the same reasons no attempt was made to contact a second time the 14 counties that did not reply to the original request:

Apline	Marin	Santa Barbara
Amador	Napa	Solano
Colusa	Orange	Sutter
Contra Costa	Placer	Yolo
Kern	Plumas	

A reply, in some form, was received from the following 44 counties:

Alameda	Mariposa	San Mateo
Butte	Mendocino	Santa Clara
Calaveras	Merced	Santa Cruz
Del Norte	Modoc	Shasta
El Dorado	Mono	Sierra
Fresno	Monterey	Siskiyou
Glenn	Nevada	Sonoma
Humboldt	Riverside	Stanislaus
Imperial	Sacramento	Tehama
Inyo	San Benito	Trinity
Kings	San Bernardino	Tulare
Lake	San Diego	Tuolumne
Lassen	San Francisco	Ventura
Los Angeles	San Joaquin	Yuba
Madera	San Luis Obispo	

and the remainder of the report is based on the information contained in their replies.

TABLE 1.—*Number of special improvement districts created in unincorporated areas by 31 California counties for the period 1947–62* [1] *by county and legislative act provision*

County	Improvement Act of 1911	Municipal Improvement Act of 1913	Unidentified	Total
Alameda	2	1		3
Butte	8			8
Calaveras		2	1	3
El Dorado	1	16		17
Fresno	54		5	59
Humboldt		1		1
Imperial		12		12
Inyo	1			1
Kings		5		5
Lassen	1			1
Los Angeles	437	104		541
Madera		3		3
Mendocino	1		1	2
Merced			4	4
Monterey	1	14		15
Nevada	1			1
Riverside	11			11
Sacramento	384			384
San Bernardino	9	1		10
San Diego	94			94
San Joaquin	5	22		27
San Luis Obispo	4			4
San Mateo	43	19		62
Santa Clara	8			8
Santa Cruz		28		28
Shasta	7			7
Sonoma	7	12		19
Stanislaus			2	2
Trinity	1			1
Tuolumne		1		1
Yuba		1	1	2
Total	1,080	242	14	1,336

[1] Through June 30, 1962.

Source: County controllers, controller-auditors, and treasurers.

INFORMATION RECEIVED

Twelve of the 44 replying counties reported there were no "special improvement districts" located in the unincorporated areas within their boundaries:

Del Norte	Mono	Siskiyou
Glenn	San Benito	Tehama
Mariposa	San Francisco	Tulare
Modoc	Sierra	Ventura

One, Lake County, reported two districts without outstanding bonds. The remaining 31 counties reported a total of 1,336 "special improvement districts" with bonds outstanding as of June 30, 1962.

As indicated in Table No. 1, the range in number of districts per county was from 1 to 541, with over one-half of the counties, 59.4 percent, reporting the presence of 10 or less districts. Seventy-five percent of the counties reported having 20 or less districts, while the remaining 25 percent (7 counties) listed from 27 to 541 districts each.

The concentration of counties in the "20 or less" category indicated that the majority of "special improvement districts" were located in a limited number of counties, which was correct. Seven counties contained 89.5 percent of all districts reported and two, Los Angeles and Sacramento, accounted for 69.2 percent of the total.

Table No. 1 indicates, also, the distribution of districts according to the legislative act used in their formation. The Improvement Act of 1911 was by far the more important of the two acts, being used for 1,080, or 80.8 percent, of the districts while the Municipal Improvement Act of 1913 accounted for only 242

districts, or 18.1 percent. The remaining 14 districts, representing 1.1 percent of the total, were classified as "unidentified" because it was not possible to determine which act had been used in their creation.

The replies indicated that 1947 was the earliest year of origin for "special improvement districts" with bonds outstanding on June 30, 1962. The distribution of districts by year of formation for that year through June 30, 1962, is shown in Table No. 2. As can be seen, there was no annual pattern with respect to the formation of districts and no one year dominated the period.

TABLE 2.—*Number of special improvement districts created in unincorporated areas by 44 California counties for the period 1947–62 by year and legislative act provisions*

Year	Improvement Act of 1911	Municipal Improvement Act of 1913	Unidentified	Total	Percent
1947	10	1		11	0.8
1948	21	2	1	24	1.8
1949	11	4		15	1.2
1950	9	7	1	17	1.3
1951	12	7		19	1.4
1952	20	7		27	2.0
1953	79	10	1	90	6.7
1954	79	8	2	89	6.7
1955	97	28		125	9.4
1956	118	28		146	10.9
1957	39	3		42	3.1
1958	74	16	1	91	6.8
1959	147	20	2	169	12.7
1960	102	35	1	138	10.3
1961	123	39		162	12.1
1962 [1]	85	26		111	8.3
No date	54	1	5	60	4.5
Total	1,080	242	14	1,336	100.0

[1] Through June 30, 1962.

Source: County controllers, controller-auditors, and treasurers.

Only 4 years—1956, 1959, 1960, and 1961—experienced a formation of districts that accounted for 10 percent or more of the total number of districts formed during the entire period. Even within the 4 years the variance was slight, ranging from a low of 10.3 percent to a high of 12.7 percent. Together they represented 46 percent of the total number of districts formed.

As could be expected, the "1911 Act" was used more each year than was the "1913 Act." The only year in which the latter moved above the "20 percent bracket" was 1950, when it accounted for 41 percent of the 17 districts formed.

Since the study was concerned with "special improvement districts" with bonds outstanding on June 30, 1962, it followed that there should be a bond issue for each district and that the number of bond issues should equal the number of districts—1,336. As shown in table No. 3, this was a correct assumption.

Bonds issued under the provisions of the Improvement Act of 1911 dominated this area even more than had the districts created under its provisions, accounting for 1,115, or 83.4 percent, of the bond issues. Bonds issued under the provisions of the Improvement Bond Act of 1915 were far behind with 196, or 14.7 percent, of the bond issues. The remaining 25 issues, representing 1.9 percent of the total, were classified as "unidentified" because it was not possible to determine which act they were issued under.

Table No. 3 indicates, also, the number of bond issues by type of authorization for each year from 1947 through June 30, 1962. There is no need to comment on the distribution by year since it is the same as that for the number of districts per year mentioned above.

TABLE 3.—*Number of special assessment bond issues for special improvement districts in unincorporated areas by 44 California counties for the period 1947–62 by year and legislative act provision*

Year	Improvement Act of 1911	Improvement Bond Act of 1915	Unidentified	Total	Percent
1947	10	1		11	0.8
1948	21	2	1	24	1.8
1949	9	6		15	1.2
1950	8	8	1	17	1.3
1951	10	3	6	19	1.4
1952	19	7	1	27	2.0
1953	78	10	2	90	6.7
1954	79	7	3	89	6.7
1955	98	21	6	125	9.4
1956	116	28	2	146	10.9
1957	38	3	1	42	3.1
1958	75	16		91	6.8
1959	147	21	1	169	12.7
1960	115	23		138	10.3
1961	146	16		162	12.1
1962 [1]	92	19		111	8.3
No date	54	5	1	60	4.5
Total	1,115	196	25	1,336	100.0

[1] Through June 30, 1962.

Source: County controllers, controller-auditors, and treasurers.

As could be expected, there were more "1911" bond issues each year than "1915's" except for 1950, when both categories had eight issues each. Other than that and the year 1949, when 40 percent of the 15 bond issues were "1915's," bond issues created under the provisions of the Improvement Bond Act of 1915 represented less than 20 percent of each year's activity.

When the dollar amount of original bond debt was considered, as shown in Table No. 4, the gap between "1911" and "1915" bond issues narrowed somewhat.[16] Of the $61,289,894.09 in bonds issued during the 15½-year period, 64.7 percent, or $39,653,619.28, were issued under the provisions of the Improvement Act of 1911 and 22 percent, or $13,514,763.25, were issued pursuant to the regulations of the Improvement Bond Act of 1915. However, this ratio could be either increased or decreased with a proper allocation of the 13.3 percent of total bond principal, $8,121,511.56, which had to be classified as "unidentified" because it was not possible to identify the act under which 25 bond issues were made.

Table No. 4 indicates, also, the dollar volume of bonds issued each year from 1947 through June 30, 1962. The contributions to the total bond principal of 13½ of the years fell within a percentage bracket with a very narrow range of from less than one-tenth of 1 percent to 5.1 percent. Altogether these years accounted for only 27.9 percent of the total debt. If the precentage attributed to the first 6 months of 1962 is subtracted, the dollar amount of bonds issued during the first 13 years represented less than 25 percent of the total bond debt originated during the 1947–62 period.

[16] Table No. 4 represents the bond issuing activities of 43 counties instead of 44 counties, as was the case in tables Nos. 2 and 3. Fresno County, whose 59 districts were included in each of those tables, did not report the dollar amount of its bond issues. Therefore, it is not represented in table No. 4.

TABLE 4.—*Dollar amount of special assessment bond issues for special improvement districts in unincorporated areas by 43 California counties for the period 1947–62 by year and legislative act provisions*

Year	Improvement Act of 1911	Improvement Bond Act of 1915	Unidentified	Total	Percent
1947		$20,353.50		$20,353.50	(1)
1948		38,954.17	$12,140.10	51,094.27	(1)
1949		300,259.02		300,259.02	0.5
1950	$19,736.00	1,022,615.26	91,063.80	1,133,415.06	1.8
1951	103,471.00	71,035.94	264,509.45	439,016.39	.7
1952	452,710.71	990,860.44	60,039.00	1,503,610.15	2.4
1953	1,783,188.47	383,937.90	216,426.57	2,383,552.94	3.9
1954	468,845.29	57,069.00	166,189.19	692,103.48	1.1
1955	317,135.33	49,501.50	377,590.50	744,227.33	1.2
1956	423,993.20	1,221,566.53	10,505.50	1,656,065.23	2.7
1957	1,755,323.35	128,775.00	19,654.50	1,903,752.85	3.1
1958	665,854.41	303,285.70		969,140.11	1.6
1959	1,754,313.49	446,242.01	34,847.15	2,235,402.65	3.6
1960	6,264,881.00	311,132.20		6,576,013.20	10.7
1961	7,109,782.83	6,992,936.66		14,102,719.49	23.1
1962 [2]	1,995,459.67	1,124,486.42		3,119,946.09	5.1
No date	16,538,924.53	51,752.00	6,868,545.80	23,459,222.33	38.5
Total	39,653,619.28	13,514,763.25	8,121,511.56	61,289,894.09	100.0

[1] Less than 1/10 of 1 percent.
[2] Through June 30, 1962.

Source: County controllers, controller-auditors, and treasurers.

The most active years, then, for the creation of bonded indebtedness were 1960, 1961, and the first half of 1962. During this 2½-year period 38.9 percent of the bond debt was incurred. Again, the percentage distribution would be subject to change if it were possible to allocate 38.3 percent of the bond debt to the proper years. However, this could not be done because it was not possible to identify the year or years in which over $23 million in bond debt was created.

The determination of the outstanding bonded indebtedness of "special improvement districts" as of June 30, 1962, proved to be most difficult. Because of the work involved in obtaining an accurate amount, some countries reported only an estimate while others did not make even an estimate. Therefore, it was necessary to construct outstanding balances in the latter cases by assuming that a uniform amount of principal would be repaid each year that a bond issue was outstanding. Using such derived amounts when necessary and estimated and actual amounts when available, the outstanding bonded indebtedness on June 30, 1962, of the 1,336 "special improvement districts" was estimated to be $50.2 million.

CONCLUDING COMMENTS

The limited scope of the study precluded the drawing of formal conclusions and the stating of equally formal recommendations as is generally the custom. Rather, the closing remarks will be limited to several observations and questions.

One question would be: How representative of the statewide "special improvement district" situation is the data contained in the study? Insofar as the number of districts is concerned, it probably represents a very conservative picture. For example, Santa Clara County reported only 8 districts had been created by its board of supervisors; yet, 8 "special districts" in the county had established an additional 39 "special improvement districts" and 9 of the county's 16 incorporated cities had created 177 more districts. If such a ratio between reported and nonreported districts applied to the other counties considered in this report, there would be approximately 38,000 districts in these counties alone—a most unlikely situation. Instead, a more reasonable estimate would be that there are between 4,000 and 6,000 "special improvement districts" with an outstanding bonded debt of between $100 and $150 million, in the State.

There is a strong possibility, also, that a complete inventory of districts would change the ratio between "1911" and "1913" districts and "1911" and "1915" bonds that was developed in the study. For example, the 216 additional districts in Santa Clara County represented a completely different bond act ratio than

was the case for the 44 counties studied. Eighty-two percent of their bonds were issued under the provisions of the "1915 bond act" and only 18 percent under the provisions of the "1911 act."

On the basis of the problems involved in securing data for the pilot study, it would appear to be an almost impossible task to secure a complete and detailed inventory of all "special improvement districts" in the State for study unless the reporting of such information to a State agency was mandatory. In lieu of this, the most promising future study would be one that concentrated on a sample composed of the counties with the greatest number of districts. Each county selected as a part of the sample should be studied by some person, group, or agency that was completely familiar with the local area.

Another question would be: Why did the pilot study not report on the extent to which "special improvement districts" are used to finance off-site improvements in new subdivisions? The basic problem was that the records, as presently maintained, are not concerned with such information and the officials responsible for keeping current records are not the officials that created the districts. They have either no interest or very little interest in the factors which led to the establishment of a particular district.

Therefore, the original records pertaining to the creation of each district must be searched and these records are usually not in the same location as the current records. Even then, there is no black-and-white statement that a district pertained to only one subdivision. This must be deduced from either the number of names on the original petition, if any, or from the special assessment list that is the basis for the bond issue. In the latter case, the only clue is that the great majority of the properties have the owner listed as unknown if it is a new subdivision. Perhaps, if a given researcher were familiar enough with a local area, he could determine from the name given to a district whether or not it represented one new subdivision.

It would seem that a first step in exercising greater control over "special improvement districts" would be to require a more detailed record in the office of the official responsible for maintaining the current records and some form of comprehensive annual statement on the financial status of each district. In view of this, the question could be asked: What is the reason behind having "1911" bonds handled by the county treasurer and "1915" bonds handled by the county controller; does it serve a practical purpose today?

For that matter, what is the necessity of having several different statutes under which "special improvement districts" may be created and bonds issued? The purpose of such districts is to facilitate the installation of needed improvements in a given physical area and to provide a means by which property owners may spread the cost of the improvement over a period of time if they so desire. Would not one act to cover the creation of the districts and the issuance of bonds be sufficient? The present situation in California appears to maximize the possibility of confusion which, in turn, provides a more convenient cover for possible misuses of the districts and/or their bond issuing powers.

All in all, the pilot study ends with more questions to be answered then it started out to answer. It would seem that the picture of "special improvement districts" presented here could be compared to an iceberg—the observer sees only a small portion of it; the major part of its bulk remains hidden from view.

(Text continued from p. 23.)

Senator WILLIAMS. Thank you.

Mr. Jensen.

STATEMENT OF ROBERT J. JENSEN, OREGON REAL ESTATE COMMISSIONER, SALEM, OREG.

Mr. JENSEN. Mr. Chairman, Senator Neuberger, members of the committee. The State of Oregon is honored and appreciates being asked to appear before your committee in relation to subdivision land sales. In 1961, in June, the real estate department became aware of the sale of large parcels of land to out-of-State buyers. A hurried investigation gave us information the majority of these purchases were for

the purpose of subdivision promotion and mainly to buyers outside the State of Oregon. Since the Oregon Legislature had recently adjourned, we felt additional investigation should be made in order to prepare legislation involving subdivision controls for the 1963 legislature. Whereas, Mr. Chairman, your committee is particularly concerned with the abuse of the elderly in relation to subdivision promotions, we also determined these sales were also pointed toward the oversea serviceman receptive to the purchase of land on which to retire and who was afraid land prices would substantially rise before he could come home. And it was also pointed toward the laborer or white-collar worker of modest means afraid of inflation and dreaming of a bonanza through investment. We determined the success of the majority of these land speculators was due to three points: (1) The distance between the purchaser and the land offered for sale, the selling of land sight unseen; (2) the sales, the sales contract triggered to everyone's pocketbook with downpayments and monthly payments as low as $5 per lot or parcel; and (3) the advertising inducing purchasing by misleading and untrue statements and verbal promises that were not kept. In 1962, with the approval of our Governor, we began preparation of a subdivision control law. Because of the hard-hitting publicity and editorials of the news media of our State, particularly the newspapers, and of the support of the Better Business Bureau, Federal, State, and county officials and many members of the real estate industry, and an understanding legislature, Oregon today has a subdivision control law in the protection of the public and the legitimate land developer. In all respect and in all sincerity, Mr. Chairman, I believe that I can tell you that the people of our State, particularly the legitimate land developers and the real estate industry, would be opposed to total Federal legislation. We feel we have an effective and adequate subdivision law in the protection of the public, except in probably two areas.

In my opinion, no law yet conceived can give absolute protection to the public. Federal legislation would be well received in the area of Federal control over national advertising where it concerned magazines, television, radios, and national newspapers. We are hopeful that some means can be determined where the violation of the laws of one State by a developer in another State would allow the violating developer in the State in which he has his development to be prosecuted by that State. Whether that can be done or not, I do not know, Mr. Chairman. But I do believe that it behooves each State to, as quickly as possible, initiate a subdivision control law on the order of the State of California or the State of Oregon. Now I am a great respecter of Commissioner Gordon and of the State of California. However, I cannot, at this moment, agree on the fair, just, and equitable part of his law. I feel that any person purchasing a piece of property, say as an example, for $100 an acre, who can find a buyer for $500 an acre, where he tells that person the truth about that property and that piece of property is worth $500 to the prospective purchaser, I believe that purchaser should be allowed to purchase the property. I may come to a different opinion altogether on this idea, but at the moment I do believe there is a certain element of caveat emptor—let the buyer beware. And if I have the opportunity to purchase a piece

of land at a low price and through my honest ingenuity I have a chance to sell that property at a good price, I believe that is my right.

Senator WILLIAMS. As an example, you have in Oregon desert areas; don't you?

Mr. JENSEN. Yes, sir.

Senator WILLIAMS. And if a developer disclosed the fact that this is desert country, suggests that as a speculative proposition it might later have greater value than it has now, this would be, in your judgment, the kind of fair disclosure that would be permitted?

Mr. JENSEN. Yes, sir. We have the same as California, Senator. We have the full disclosure act, along with the added teeth of escrow. We have the public report that must be issued to each prospective purchaser and that purchaser is given information as to the vicinity of the project, the possibility of water, the rainfall, the temperature, the height above sea level, the schools—where the schools are located, whether they are 10 miles away or 100 miles away. And we do have some that are 9 miles away, I can assure you, from the project—the roads and so forth. We are able to give all this information to the prospective purchaser and we feel that he should read this and he must sign that he has received it. Then, if he wants to be gullible, we feel that is his own problem.

Senator WILLIAMS. You do not have anything comparable to the fair, just, and equitable provisions of the California law that reach the out-of-State operator?

Mr. JENSEN. No, sir. But when a developer outside of our State wishes to sell property within our State, they must pay the expenses of one of my representatives of my State department to oversee that project, check with all of the local authorities, whether it be State, Federal, county, or city officials to determine what is available to the prospective purchaser and a public report is issued.

Senator WILLIAMS. And your investigator makes an on-site inspection?

Mr. JENSEN. Yes, sir.

Senator WILLIAMS. Has there been general compliance with this by out-of-State operators?

Mr. JENSEN. We have had very little trouble, Senator. I am rather amazed at this. Of course, we have not had our law as long as California has, but the majority of these people have complied strictly with our request. When they have advertised in our State or sent brochures into the State, we have notified them that there is a law and they must comply with it and they have complied. I have been pleasantly surprised. I might say that the newspapers of our State, on the average, will not handle any advertising unless it is approved by the real estate department. They have given us tremendous support.

Senator WILLIAMS. That is one of the keys, I think, to enforcement, the full cooperation of the media and particularly the newspapers.

Senator NEUBERGER. Mr. Jensen, on this application, a special note, you say, "Many regulated finance companies will not loan money." And then the next one I don't understand: "The contract to be used prohibits purchasers recording of the contract of sale."

Mr. JENSEN. This is correct, Senator. In many of the contracts, the sellers of the real estate developments put a clause in their contract that the purchaser may not record his contract until the final payment has been made or that he has had consent of the selling developer. This is for the purpose if the purchaser does not fulfill his obligation in full, in paying out the contract, the developer has a little better opportunity and easier opportunity and less expensive opportunity of getting that land back again. But we notice, in our public report, the prospective purchaser—that that clause is in there so that he knows what he is getting into.

Senator NEUBERGER. What is happening in Christmas Valley? Is anybody living there?

Mr. JENSEN. Yes. It is not developing, I believe, as the developer would like, but there are people living there. In my opinion, Senator, and it is solely my opinion, I believe that most of these types of lands have been bought for speculation, not to live in, that they are hopeful that within 5 years the lands will have increased 5 to 10 times. If you have a moment, I will read you a letter I have received. It is addressed to me,

> Dear Commissioner: My aging parents sent me this enclosed advertisement and asked me to look into it. They would sell their property in Southern California and buy some of these acres with the idea of making 5 to 10 times their purchase price in a few years on which they would be able to retire comfortably. Is there any chance at all that this is possible, or would they lose their money?

Of course, I wrote this lady and I told her it would be very foolish for her parents to purchase this land without first seeing it and determining whether it was what they wanted.

Senator NEUBERGER. You didn't try to advise her beyond that she should see it?

Mr. JENSEN. This letter was written, Senator, before the subdivision law went into effect. Had it been in effect, I would have sent her a public report.

Senator NEUBERGER. And that would have shown the distance from schools, water, and all that sort of thing?

Mr. JENSEN. Right, doctors, hospitals, shopping.

Senator NEUBERGER. I was so amused in that brochure that evidently the land developer sent out made Oregon appear to be the beautiful State that it was. "Water skiing. Take your choice. Oregon has thousands of lakes on which thousands of people ski every year." Which is quite true, but they are quite remote from this area.

Mr. JENSEN. Since the law, if the developer is going to use a lake, he must put in the brochure the distance from that project to the lake. If the purchaser feels that they want to drive that far, again, that is their business, but they should know how far that lake is from the project.

Senator NEUBERGER. This is kind of an unfair picture. "When deer season opens, all work stops and everyone goes hunting." But the point that bothered me most is, you said that you didn't believe we should have laws that go as far as California's at the Federal level, except the Federal laws should provide for advertising control.

Mr. JENSEN. I am saying outside the State of Oregon, now, Senator. I am saying that where magazines cross our borders, there should be some control over them. Because there is no law—even California's law and I think Commissioner Gordon will agree with me—we can't stop it nor can we stop national television or national radio. And I think where misinformation or fraudulent or misleading advertising is put over these media, that some Federal control should be there to help us. The newspapers will assist us in Oregon. I have no problem in Oregon. The magazines that are printed in Oregon, I have no problem with, because they cooperate with me. And I have a very strong advertising section in that law that ties them tooth and nail that they can't do anything as long as they are in the State of Oregon.

Senator NEUBERGER. But if this is good for Oregon, why isn't it good for the whole Nation?

Mr. JENSEN. I think it is excellent. I think our law is a fine law. Commissioner Gordon has the fair, just and equitable. I cannot, at this moment, feel that it should be a part of the Oregon law. I feel there should be a certain element of caveat emptor to apply. And I again say, if I have the ability to purchase a piece of land at a reasonable price and turn around through my ingenuity, being honest about it, and induce you that it is worth twice or three times as much, that should be between you and me.

Senator NEUBERGER. Let's say it doesn't go as far as the California law, it is just in between. Wouldn't it be just as good for Washington and Idaho and Nevada?

Mr. JENSEN. Absolutely. I feel we have an excellent law.

Senator NEUBERGER. Because we seem to believe in this principle, that is, the purpose of the SEC, to protect the public. They can't possibly have all the information. We don't hesitate to try to give the public a great deal of advice in other areas. The FTC, of course, is set up to regulate some of this advertising. Suppose this developer offered genuinely a free parcel of land, no strings attached?

Mr. JENSEN. No charges?

Senator NEUBERGER. I suppose you would have to have a filing charge of some kind.

Mr. JENSEN. Senator, I was cognizant of this free offering of a lot; you won it at a county fair, or a State fair, and everybody won. So, in order to protect the people in our State, I put in: "Sale or lease includes every disposition, transfer, offer, or attempt to dispose of or transfer land in a subdivision or in interest, or estate therein, by a subdivider or his agent, including the offering of such property as a prize or gift on a monetary charge, or consideration for whatever purpose is required by the subdivider or his agent."

Now, if he wants to give it away free and clear, I don't care about that. But, if he is going to use the gimmick of 2 weeks after the fair is over he sends them a registered letter and says, "You just won a lot and it is free to you, but it will cost $49.37 or $50 to go through the paper work and issue you a deed," then I say that is a gimmick. Because most of the land costs $20 an acre, and they are giving a quarter of an acre. So, the cost is $5 a lot to begin with, but they are making a nice profit.

Senator NEUBERGER. Isn't this within the scope of the Federal Trade Commission and comes under misleading advertising, if they offer it free and then charge?

Senator WILLIAMS. How do you deal with the "free lot with charges"?

Mr. JENSEN. We give them a cease and desist.

Senator WILLIAMS. Have you run into that situation?

Mr. JENSEN. Not since we have gotten this law through. They have not bothered us one little bit.

Senator NEUBERGER. Where are all these people going?

Mr. JENSEN. They are moving into the States, and advertising in the States, Senator, where there is no law; and that is why I say that it behooves these States to get going and get a law. If they don't have a subdivision development, at least get a law to protect the citizens.

Senator WILLIAMS. Do you feel there has been any result in the industry, considering the discussions we have had and the hearings that we have had for better than a year?

Mr. JENSEN. I think I can tell you this, Senator, in all sincerity: that these people knowing of these hearings has had some effect. And with the gradual increase of State laws it has had an effect. I haven't had a complaint on a subdivider in 3 weeks to a month; whereas, before the law, I used to have complaints continually.

(Samples of advertising, and information referred to, follow:)

(Text continues on p. 70.)

FACTS

LYLE L. JANZ • PRESIDENT

Published on 10th & 25th of Each Month by the

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"WHO'S WHO" - NOT TO MENTION - WHAT, WHEN AND WHY!

Once more, as has periodically been the case over many years past, Oregon business executives are receiving mailings from "R.O. Norman, Book Publisher," asking them to OK proof for their personal write-up, which supposedly will appear in the 1962-1963 edition of Who's Who. And more particularly these recipients are asked to remit $18.50 advance payment for a copy of this as yet unpublished book.

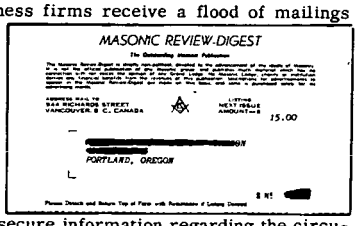
Norman's on-again-off-again Who's Who ventures have been subject of voluminous complaints to the BBB for 25 years or more. Presently, this confused picture has been further complicated by the advent of still another, seemingly phantom would be Who's Who publisher known as J and R Publications, which used the address 1231 N.W. Hoyt St., Portland. Reports are that J and R Publications, represented by one J.R. Randolph has collected advance payments of $18.50 from those who anticipated being written up in this "Who's Who."

A visit to the Hoyt Street address develops the information that this location is that of a moving and storage concern that also rents office space. The building management advises that some months ago Rube Norman, accompanied by an unidentified individual discussed renting office space for J and R Publications, but the deal was never completed and mail addressed to J and R Publications is returned marked "unknown". J. R. Randolph, purportedly identified with J and R Publications could be one Jack Randolph, long unfavorably known to BBB files as a professional advertising promoter, salesman of roofing and siding, etc. (Or again, who knows - maybe J and R stands for Jack and Rube!)

Those receiving "Who's Who" mailings from either Norman -or the seemingly mythical J and R Publications are urged to secure a complete report from the Bureau prior to making a committment.

MASONIC REVIEW DIGEST AGAIN CIRCULARIZING LOCAL FIRMS

Approximately every six months, Portland business firms receive a flood of mailings from the Masonic Review Digest, Vancouver, B. C., in the form of unauthorized billings which seek to collect for so-called listings.


MASONIC REVIEW-DIGEST

The Outstanding Masonic Publication

944 RICHARDS STREET
VANCOUVER 2, B. C., CANADA

AMOUNT—$ 15.00

[redacted]

PORTLAND, OREGON

[redacted]

According to information from the BBB of Vancouver, the publication was established in 1920. It is privately owned; all funds received go to the Masonic Review - Digest and no portion goes to any Masonic Order or Lodge.

Some years ago the Vancouver BBB attempted to secure information regarding the circulation. In reply they were advised as follows: "The figure of our paid circulation, as stated previously, is not given to Better Business Bureaus, or similar organizations." At various times the envelopes which the invoices have been mailed have born marks of other cities, but a Vancouver return address. Currently the invoices are being mailed from Mesa, Arizona.

While the home address of this publication is shown as 198 West Hastings Street, Vancouver, B. C., it is noted that present mails are post marked Phoenix, Arizona.

PORTLAND BETTER BUSINESS BUREAU "FACTS" September 25, 1962

ARID OREGON SAGEBRUSH LAND

From as far west as Hawaii, as far east as New York, and points north and south are coming the inquiries from those who have read the colorful advertising of the Harney County Land Development Corp., with the offer of acreage in "Bountiful Lake Valley Oregon" ambitiously described in the advertising as: "The Greatest New investment Opportunity in the West!"

Lake Valley is just one of the innumberable land promotions in many sections of the country, that are currently being offered "senior citizens," sports enthusiasts, those seeking vacation retreats, or the investment minded hoping for increased land values. True enough, some of these offerings are well planned, competently managed projects that may very well prove to be desirable investments. Unfortunately, others are of questionable merit being offered by high powered, unrealistic and often exaggerated claims and descriptions.

Lake Valley, in newspaper advertisments that have appeared throughout the country, is heralded as: "One of the last great unspoiled areas of the west — A Paradise for Sportsmen — for healthful outdoor living! Hunt! Fish! Swim! Find new happiness in this sun-drenched wonderland where your investment dollar buys unlimited pleasure!"

One acre tracts may be bought for $395 — $5 down — $5 monthly, including 6% interest. The land, according to qualified sources from the area, was formerly used for cattle grazing and has a cash value of $5.60 per acre on the assessor's roles. The Harney County assesor's records also indicate that the assessed value is 25% of the appraised value and that the land was purchased by the Harney County Land Development Corporation in 1961 for $20 per acre.

Oregon Real Estate Commissioner, Robert Jensen, Arnold Gagnet, chief of the real estate department's investigation staff, and Joe Bianco, staff writer, The Oregonian have recently visited this property and Bianco's series of articles that followed this inspection tour disclose interesting information that should be considered by those contemplating purchases in this "undeveloped - development."

Jensen points out, for example, that Lake Valley is located along the northern stretches of Harney Lake and consists mostly of dry alkaline soil and some water. It is about 4,100 feet above sea level.

Sportsmen, anticipating this as a "paradise" could be more than a little disappointed to find that the touted hunting and fishing are to be

OFFERED AS "SPORTSMAN'S PARADISE!"

found no less than 30 to 50 miles from the Lake Valley promotion. The streams in the immediate area of Lake Valley are dry most of the year. Commissioner Jensen states that while there may be 300 days of sunshine, as claimed, the advertising omits explaining that the nights are cold and temperatures dip to freezing every month of the year. The average mean temperature for the year is 41.

As to wildlife in the area, Jensen says that there are antelope and deer in the nearby hills, but in the sagebrush, which makes up most of the vegetation in Lake Valley, most of the wildlife is confined to lizards and snakes.

The availibility of water is of prime interest to those who would purchase property in the region. Rainfall is short, an average of 9.35 inches annually. The only other available water supply would be from wells. Tract buyers, of course, would have to provide their own wells, and at this time there is no adequate information on just how much water there is under ground.

Upon his return from this first hand visit to this property, Commissioner Jensen said, "Without a state subdivision law we are powerless. Landowners can take all sorts of liberties in planning their advertising copy."

In view of the above statement, it is interesting to compare the photographs on the right hand side of this layout which were taken when the real estate commissioner's party visited the Lake Valley property, with the reproduction on the left which appeared in the Lake Valley asverdisting brochure.

The directors of Harney County Land Development Corp., are shown as Edward Condon, Arlington Heights, Illinois; Milton M. Epstein and D. F. Koolish, the latter two of Chicago. David Koolish, according to Chicago information, is identified as one of the principals controlling four direct mailing firms located in the Chicago area. He is one of the four Chicago executives indicated on charges or making "kickbacks" on contracts for soliciting funds for the Sister Kenney Foundation. He was subpoened before the Federal Grand Jury in Minneapolis in September 1961, and reportedly "took the Fifth Amendment" when asked to testify before the Grand Jury. Milton Epstein, the Chicago BBB also advises, is identified as an accountant for these unordered merchandise mailers. He also was subpoened to appear in the Sister Kenney solicitations investigation and it is understood that he too pleaded the Fifth Amendment.

Photos Courtesy of The Oregonian

LONG DISTANCE AD PITCH BRINGS INQUIRIES

6:30 A. M. may be a bit early in the day to start selling advertising - particularly in unknown publications — at least this appears to be the reaction of some of the firms that have made inquiry about National Fraternal Year Book, of Chicago.

Apparently this publication is doing selling by long distance, but some of the telephone solicitors are unaware of the three hour time differential - much to the discomfort of the sleepy eyed prospects. One nursing home operator says he was called at this early hour, urged to buy a $90 ad, but when he declined was offered the same space for $65. The sales person implied the publication to be sponsored by a long list of fraternal and civic organizations.

This is a privately owned publication and has no known sponsorship by fraternal, religious or civic groups.

SPECIALTY ADVERTISING FAKER NOW ACTIVE IN BAY AREA

The current bulletin of the Oakland BBB reports that Arthur Franklin McGillis, long time advertising promoter who has made something of a specialty of collecting in advance for advertising that never appears, is now operating in the Oakland vicinity.

Oakland says McGillis is now using the alias Harry Burke and true to form has been collecting in advance for advertising space that is unlikely to ever achieve distribution.

McGillis has been known to our complaint files since 1949 and over the years has promoted various advertising specialities which invariably proved subject of complaint from would be advertisers.

FACTS
Published on 10th & 25th of Each Month by the
PORTLAND BETTER BUSINESS BUREAU
613 CORBETT BLDG. - PORTLAND 4, OREGON

Second Class Postage Paid
at Portland, Oregon

LAND DEVELOPER'S GUIDE

Published by the

EDUCATION DIVISION
OREGON REAL ESTATE DEPARTMENT

ROBERT J. JENSEN
Commissioner

WILLIAM E. HEALY
Editor

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LAND DEVELOPER'S GUIDE

INTRODUCTION

Under the Constitution of the United States, all real property located within the boundaries of the original Thirteen Colonies became the property of the state when the colony became a state. This left no public land within the boundaries of the original colonies.

As additional land was acquired by the government it was necessary to prepare for settlement tracts, which were known as "public lands." These public lands had to be divided up into suitable parcels for sale and homesteading.

This was the cornerstone of American freedom—the *right* to private ownership of land by every citizen.

Through a Committee, the Continental Congress attempted to devise a system of land measurements with units 10 miles square. This proposal did not meet with wide acceptance.

In 1785, Thomas Jefferson suggested to the Congress that the unit of measurement be a block of land six miles square, now known as a "township," and that the units be further divided into sections one mile square.

On the basis of this unit of measurement our present system of land description, the "Rectangular System," was adopted 20 years later. It is now possible to divide up parcels of land or combine them at will. We do, of course, frequently describe the boundary of a tract of land by the colonial method of metes and bounds, or the 20th Century short-cut of lot and block or recorded plat method.

In seeking a system of land measurement the Continental Congress was paving the way for land development, and land development quite generally means the creation of a "subdivision."

Since the 1963 session of the Oregon Legislature, regulation of subdivisions by agencies of government extends into four fields.

Depending upon the progress of the subdivision or its nature, the regulatory bodies are the city or county authorities in which it is located, the Real Estate Commissioner, or the Corporation Commissioner.

The subdivider contemplating the partitioning of a parcel of Oregon land for the purpose of transfer of ownership or building development is concerned with four chapters of Oregon law, and frequently a county subdivision ordinance.

Because he will first want to know the proper governmental agency having jurisdiction over his land, the subdivider may briefly examine ORS Chapter 215, the enabling statute for "County Planning; Zoning Districts," or Chapter 227, the companion law providing for "City Planning and Zoning."

His next step will be a close examination of Chapter 92, titled "Plats and Subdivisions," which is the "subdivision law" of Oregon. In many areas he will find the county has adopted a subdivision ordinance containing applicable provisions from Chapters 92, 215 or 227.

In Oregon, 16 of the 36 counties have adopted subdivision ordinances, and five others are taking preliminary steps toward such regulation. Most of the major cities have ordinances regulating the development of land.

Counties having subdivision ordinances are: Clackamas, Coos, Crook, Deschutes, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Marion, Multnomah, Polk, Wasco, Washington and Yamhill. Clatsop, Lake, Malheur, Hood River and Linn counties are considering adoption of such an ordinance.

There are, unfortunately, some administrative hurdles to be overcome in local regulation of subdivisions. Some local ordinances are not enforced impartially, and the veto power of the elective governing body, a city council, county commission, or county court, frequently leaves a land developer at a dead-end.

The subdivider is not concerned with Chapter 624, cited as the "Oregon Subdivision Control Law," until such a time as he plans to offer the subdivided lands for sale or lease. However, an early examination of this law, administered by the Real Estate Commissioner, will reveal that much of the required paper work will have been done in earlier compliance with the other laws.

Compliance with the laws by the land developer is much more simple than it appears. Definitions in the various statutes generally fit together and point to a simple course of procedure.

A tract of land may be surveyed and staked into several tracts, but this does not constitute a subdivision. A "subdivision" is created only when the purpose of the partitioning is for the "transfer of ownership or building development" or for "sale or lease" of the subdivided lands. No distinction is made as to whether this purpose of disposal be immediate or future.

Under Chapter 92, county and city governments have sought to accomplish the orderly development of the land within the jurisdiction of such county or city, and to promote the public health, safety and general welfare of the county or city.

Under Chapter 624, the Legislature sought to accomplish regulation of the promotion and sale of subdivided lands.

A nationwide exposé—in newspapers, by television and radio—of fraudulent tactics in the sale of remote or desert land undoubtedly contributed to passage of the latter law.

In its preamble, the Act states it is intended to protect the public from fraud, deceit and misrepresentation in offerings of tracts of marginal or submarginal lands in this and other states.

Although apparently intended as a shelter for the individual who "buys before he looks," the Act applies to every individual offering subdivided lands for sale or lease.

During the early years of this century thousands of individuals, some failures in other lines of work, and some successful in other frauds, preyed upon the gullibility of the American public in the sale of so-called "building lots."

Frequently quoting George Washington, who was,

in truth, a land developer, the land shark operated in a circus atmosphere—tents, pink lemonade, free rides and pretty girls.

As a deterrent to this we got Chapter 92. Forty years later the same ballyoo, substituting the airplane for the model-T, has given us Chapter 624.

Mass merchandising has come to the land market —and to the states with an abundance of low cost land.

Because it is low cost, this land must be remote —located where there is an absence of commercial, industrial and residential areas. And because they live within the jurisdiction of this remote land, the legitimate local subdivider bears the weight of legislation.

In the past six years our neighbor, the California real estate commissioner has issued public reports on 667,854 acres of subdivided land. 313,692 acres were outside the state.

The typical parcel, usually desert land, averages 2.16 acres. This land is hot and dry, has no fire protection, no sewage disposal, no road maintenance, no water service or any other utility service, no public transportation, including school buses, is available; it is 12 miles or more from a junior high school, senior high school or grammar school; and it is 12 miles or more from the nearest shopping center.

The cost of this land, plus improvements and plus promotional expense, averages $157 per acre; and the selling price is $731 per acre—an increase in appreciation of 366 per cent.

On the other side of the coin we read of a husband and wife school janitor team who recently sold an apparently worthless farm for $1 million.

From a few hundred dollars an acre, that old farm, overnight, has become the $15,000 an acre site of Clear Lake City, Texas, the home of the astronauts.

The Manned Space Center chose this spot on the prairie south of Houston to house the attempt to place men on the moon at a cost of $150 million. Private capital is spending an additional $500 million to create a city of 55,000 homes.

An indication that an end to land development regulation has not yet been reached comes from California. The most populous state in the nation has for many years had the same subdivision regulations as those now in Oregon. The 1963 Legislature extended the control law to give subdivided land the same test as that applied to securities.

Permits to sell subdivided land in California will not be issued until the real estate commissioner has satisfied himself that the price asked is "fair, just and equitable." This means no watered promotional costs or unreasonable charges can be included in the selling price. If a developer buys $10 an acre desert grazing land and sells it in California as residential property for $199 an acre the commissioner has the power to rule the sale is not "fair, just and equitable."

An excellent suggestion for the uninitiated subdivider was contained in a recent editorial in the Redmond Spokesman. Commenting upon apparent confusion resulting from misunderstandings of new legislation, the editor wrote:

"The procedure to be followed in getting approval is quite complicated and time-consuming. Gist of the matter is that if you plan to subdivide property, the smartest and easiest way to handle the preliminaries is to see a good attorney and real estate broker.

"Most of Oregon's subdivisions—those underway and those in the planning stages—are fine developments, and there's really no problem, other than red tape, if you get qualified advice and help from those who know how to handle the matter."

This is excellent advice, although the editor might have included "a good surveyor" in his list of those who know how to handle the matter.

In most every field of human endeavor we find experts, but when it comes to land developers or the subdividing of land there are presently few experts. Owners of tracts of land are looking for this expert, and it behooves all interested in real property to become well informed on the mechanics of subdividing.

THE FIRST STEP

Learn first what your county or city requires. Compliance with the Subdivision Control Law is almost automatic if you are in good standing under Chapter 92.

In the absence of another name we will call Chapter 92 the "Plat and Map Act." The intent of this Act and of the Subdivision Control Law are spelled out in the laws themselves, and appear to give the counties and cities prior jurisdiction in the creation of subdivisions, and the Real Estate Commissioner authority over the sale of lots or parcels in such subdivisions.

While there is some slight difference in the definitions contained in each Act, those found in the "Plat and Map Act" are generally applicable to both.

"Plat" includes a final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

"Subdivision" means either an act of subdividing land or a tract of land subdivided or partitioned for the purpose of transferring ownership or building development.

"Subdivide land" means to partition a parcel of land into four or more parcels of less than five acres each for the purpose of transfer of ownership or building development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership as shown on the tax roll for the year preceding the partitioning.

This latter definition in Chapter 92, does not apply to the division of agricultural land into tracts of five or more acres if it is to be used for agricultural purposes, provided, such division does not involve any new roads or streets or the widening of any existing thoroughfare.

It should be noted that the Subdivision Control Act does not include this exclusion of agricultural land.

While discussing agricultural land it might be wise to call attention to Chapter 577, Oregon Laws of 1963, the so-called "green-belt law."

This law requires land zoned for farm use and, upon application of the owner, land used but not zoned for farm use, to be assessed at value for farm

use and not at value for potential use. It requires a tax recapture at potential use value when unzoned land is diverted from farm use.

Before starting a land development program the prudent developer will first contact a competent land surveyor. We should be familiar with an Oregon statute that reads "the county surveyor shall within 10 days, when called upon, survey any tract of land or town lot lying in his county, at the expense of the person demanding the same, if his legal fees are first tendered."

It may come as a surprise to many to learn that "subdivision" also includes certain types of multi-family structures. Some types of apartments or adjoining single family dwellings are known in many parts of the nation as "vertical" or "horizontal" subdivisions, and under Oregon law require certain governmental approval. These are discussed following the requirements for approval under the "Plat and Map Act" and the "Oregon Subdivision Control Law."

PLAT AND MAP PROCEDURE

Chapter 92 contains a number of requirements for plats, most of which are also to be included in the information filed with the Real Estate Commissioner in the "Preliminary Notice of Intention" under Chapter 624.

Before any subdivision of land can be made the owner or his agent must make an application in writing to the nearest planning agency in the county, or if there is no such agency then to the county court. A tentative map of the proposed subdivision is submitted to the planning commission or to the governing body of the county. The approval of the tentative map, however, does not constitute a final approval of the plat for recording.

Since the law requires the final survey for a plat to be made by a licensed surveyor, time can be saved by having the surveyor make the tentative map showing proposed streets, drainage and topography. After securing approval of the local planning commission or governing body the surveyor can proceed to survey and stake the area.

If the land being subdivided is within the jurisdiction of any city in Oregon which has a planning commission the plat for the subdivision must be approved by the planning commission. If there is no planning commission, then by the governing body of the city.

Where a county has no planning commission, land within six miles of the corporate limits of a city is under the jurisdiction of the city for the purpose of giving approval to plans or plats.

No sales or offers to sell shall be made until the approved plat has been recorded in the office of the appropriate county recording officer.

Requirements of Survey and Plat of Subdivision

The plat of a subdivision cannot be recorded until all the requirements for the survey and final map have been met. The requirements are as follows:

a. The survey for the plat of the subdivision must be of such accuracy that the error of closure not exceed one foot in 4,000 feet.
b. That the survey and plat of the subdivision be made by a surveyor who is a registered engineer or a licensed land surveyor.
c. The plat of the subdivision must be of such a scale that survey and mathematical information and other details can be easily obtained from it. All of the streets must be named. Each block must be lettered or numbered and all the lots numbered. The length and width of all lots must be clearly shown.
d. The locations and descriptions of all monuments must be carefully shown on the plats and the boundary lines and distances must be clearly shown.

Marking of Certain Points of Plats With Monuments

The initial point of all plats shall be marked with a monument. These monuments may be of stone, concrete or galvanized iron. If they are of stone or concrete they must be not less than 6 inches by 6 inches by 24 inches. If of galvanized iron they must be at least 2 inches in diameter and 3 feet long. The monument must be set or driven 6 inches below the surface of the ground. The location of the monument must be defined with reference to some known corner established by the United States survey.

The intersections of all streets, avenues, and public highways and the exterior boundaries, if the boundary changes direction, must be marked by monuments. These monuments may be of stone, concrete, galvanized iron pipe, iron or steel rods. If stone or concrete is used they must be at least 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used they must be at least 1 inch in diameter and 30 inches long. If iron or steel rods are used they must be at least 5/8 of an inch in diameter and 30 inches long.

At all corners, with the exception of cemetery lots, the corner must be marked with monuments either of galvanized iron pipe of not less than one-half inch in diameter or iron or steel rods of not less than one-half inch in diameter and two feet long.

Points must be plainly and permanently marked upon monuments so that measurements may be taken to them within one-tenth of a foot.

Recording of Plat—Surveyor's Affidavit

In order to record a plat or diagram showing the location of land in any county in Oregon it is necessary to have attached an affidavit of the surveyor who made the survey. This affidavit states that the surveyor made a correct survey of the land and marked it with monuments as prescribed by law. It also identifies the initial point of the survey and the type of monument used to designate the point. It further locates the point in reference to a corner established by a United States survey or two or more objects for identifying its location.

Preparation of Plat

The law states that all plats, diagrams or drawings showing the subdivision of land or the dedication of streets, alleys, avenues, roads, public parks, squares, or writings in connection with such subdivision that is offered for recording must be in black India ink

on good quality drawing paper, 18 inches by 24 inches with three inches of muslin on one end for binding purposes. The plat and drawings, together with the affidavit of the surveyor, must be of such size that it can be placed on one sheet of paper and no part of it be nearer than one inch to any edge of the sheet. All of the plat, diagram or drawing must be on one side of the sheet, but the dedication and other written material may be on the other side.

Names of Plats

The law provides that no name of a plat to a town or an addition to a town shall have a name the same as, similar to, or pronounced the same as any other town or addition in the same county. However, the words "town," "city," "place," "court," "addition" or similar words may be used. If the plat is contiguous to an existing plat or is platted by the same person the name may be continued. If it is platted by another person the name may be used only if the written consent of the original platter is obtained and recorded. All plats must continue the block numbers of the plat originally filed if it is adjacent to it.

Requirements for Approval of a Plat

It is necessary to obtain the approval of the city engineer or city surveyor to record a plat which is within the corporate limits of a city or town. If the city or town does not have an engineer or surveyor it is necessary to obtain the approval of the county surveyor. All plats must also have the approval of the county assessor and the county court where the property is located. Before a plat is approved the following requirements must be met:

a. The streets and alleys must be laid out to conform with the adjoining recorded plats as to width, general direction and all other respects.
b. They must also be dedicated to the public use without reservation or restrictions of any kind.
c. The name of the plat must satisfy the requirements indicated above.
d. All taxes and assessments must be paid.

Before approving the plat the county surveyor must check the survey and computations to see if they comply with the law and the requirements of the planning commission or governing authority. For this service the county surveyor may charge the subdivider a fee not to exceed $25.

Land In Irrigation Districts

A proposal to subdivide land which lies within an irrigation district must be presented to the board of directors of the irrigation district for approval before the land can be platted. No approval of the governing body of the county may be made, or a plat recorded, unless the approval of the board of directors of the irrigation district is given in writing. However, an appeal from the action of the board of directors may be made to the circuit court in the county where the land is located.

Filing and Recording Plats

The final map of a subdivision when it has been approved as required by the law is recorded by the county recording officer in the county where the property is located. The date of the filing and other necessary information is recorded on the map and it is bound with other maps of like character in a book designated as "Record of Town Plats."

The person filing such a plat must also supply an exact copy or photo copy to the county recording officer and one to the county surveyor if he requests it. The copy supplied to the recording officer is certified by him to be an exact copy of the original and is then filed, without folding, in the archives of the county.

With the final map the subdivider must also file a tracing of the final map. The surveyor who made the final map must certify that this tracing is an exact copy of the final map. The subdivider must also furnish one copy of the tracing to the county assessor and to the county surveyor.

Donation Markings on a Plat

Every donation or grant of property to the public or to a religious society as noted on a plat shall be considered to be a general warranty to the donee or grantee for his use for the purposes intended by the donor or grantor.

Penalties

Violation of any of the provisions heretofore outlined is punishable, if convicted, by a fine of not less than $50 nor more than $500, or by imprisonment in the county jail for not less than 25 days nor more than 50 days, or both.

SUBDIVISION CONTROL LAW PROCEDURE

With the recording of the plat, usually required prior to the first day of the seventh month following the date of final approval, the subdivider has completed his obligation under the statutes pertaining to the *creation* of a subdivision.

Now, when he offers the subdivided lands *for sale or lease* the subdivider becomes subject to the requirements of Chapter 624. His first step is the filing with the Real Estate Commissioner of a "Preliminary Notice of Intention," which is his notification of an intent to sell or lease. The form for this notice is furnished by the Real Estate Department. Most of the information to be supplied has been acquired in the earlier steps.

The subdivision control law does not apply to the sale or leasing of apartments, offices, stores or similar space within an apartment building, industrial or commercial building, cooperative apartment or condominiums.

Notice of Intention

Before any subdivided lands in another state are offered for sale or lease in Oregon, or before any subdivided lands within the state are offered for sale or lease, the subdivider or his agent must notify the Real Estate Commissioner in writing of his intention. The notice is known as a "Preliminary Notice of Intention."

This notice must contain:

(1) The name and address of the subdivider.
(2) The names and addresses of all members of his sales force.
(3) The legal description and area of the lands, the proposed plat, or a certified copy of the

subdivision plat recorded in the city or county records, and a map showing the proposed layout and its relation to existing streets or roads and utilities.

(4) A brief but comprehensive statement describing the land and location.

(5) A statement of the condition of the title to the land.

(6) A statement of the provisions that have been made for legal access, sewage disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

(7) A statement of the intended use of the property.

(8) A statement of any restrictions limiting use or occupancy of the parcels.

The subdivider pays no fee in the filing of the "Preliminary Notice of Intention."

The Act gives the Commissioner broad discretionary powers and after an examination of the first notice he may waive further compliance with the reporting requirements of the law.

The waiver does not free the subdivider from the prohibition against false or misleading advertising, or from the penalty provisions of the law. The waiver does not remove the provision that a condition, stipulation, or provision in a contract or lease is contrary to public policy, and retains the authority of the Commissioner to issue a cease and desist order, or request the Attorney General to bring proceedings in circuit court.

The Real Estate Commissioner has stated that as a general policy, waivers will be issued after filing of the preliminary notice for subdivisions located within the state, created under jurisdiction of a city or county authority specified in Chapter 92, and which are *not to be advertised for sale outside the state.*

To date, waivers have been issued on approximately 97 per cent of all subdivisions for which the Preliminary Notice of Intention has been filed. For these subdividers the paper work under Chapter 624 has been simple and no fees were paid.

It should be stated here that a "Preliminary Notice of Intention" is required from *all* subdivisions, regardless of age, if unsold lots or parcels remain. Failure to file this notice subjects the subdivider to severe penalties under the law.

Waivers for in-state subdivisions advertising outside the state, and out-of-state subdivisions advertising within Oregon will *not be granted.*

Request for Further Information

After an examination of the preliminary notice, the commissioner may require further information. This information will include:

(1) Terms and conditions on which it is intended to transfer ownership, together with copies of any contract, conveyance, lease, assignment or other instrument.

(2) Copies of sales pamphlets and literature to be used in the sale.

(3) Any other information the subdivider cares to present.

In his reply to a request for further information the subdivider shall give proof of his financial ability to complete improvements and facilities which are required by the appropriate state, city and county authorities, and those promised to prospective purchasers.

In cases where this "Request for Further Information" is used, the subdivider for the *first time will be required to pay a fee.*

Fees For Administration

The following fees must be paid by the subdivider when he answers the request for further information:

For subdivisions containing 10 lots or parcels, or less, $10.

For subdivisions containing over 10 but not more than 25 lots or parcels, $25.

For subdivisions containing over 25 but not more than 50 lots or parcels, $50.

For subdivisions containing over 50 but not more than 100 lots or parcels, $75.

For subdivisions containing over 100 lots or parcels, $75, and 50 cents for each additional lot or parcel over 100 up to a maximum of $250.

Information contained in both the notice of intention and further information must be kept current.

Examination and Public Report

For the purpose of obtaining information necessary to compile a public report for the guidance of investors or purchasers, the commissioner will make an examination of the subdivision.

The law gives the commissioner discretionary power to waive an examination of a subdivision located in another state, and to waive examination and full compliance with the statute when the subdivision is located within this state.

The out-of-state examination can be waived when that state has a subdivision law which requires both an examination and report and where that state will waive investigation of a subdivision located within this state and will accept the public report prepared by the commissioner.

The discretionary power given the commissioner in the case of subdivisions located within this state include elimination of the necessity to pay fees. It provides that the commissioner, after an examination of the preliminary notice of intention, may conclude that the sale of lots would be reasonably certain not to involve any misrepresentation, deceit or fraud, and waive any provisions of the Act he considers unnecessary for the protection of the public. He is obliged to notify the subdivider within 15 days of receipt of the notice of intention of his decision in the matter of a waiver.

Use of Public Report

The selling or leasing of any lot or parcel in a subdivision prior to issuance of the public report (or granting of a waiver) is prohibited. The public report is intended to be given to each prospective purchaser, and the commissioner may require the subdivider to take and keep a receipt of delivery of such report.

Use of the public report, other than in its entirety and without alteration, for advertising pur-

poses is prohibited. The commissioner has also stated he will not permit the use of phrases such as "Approved by the Oregon Real Estate Commissioner." *The public report constitutes neither an approval nor disapproval of a subdivision.*

Fees for Examination

Whenever an examination is made of subdivided lands, no matter where located, the following fees shall be paid in advance by the subdivider:

An amount equivalent to 10 cents a mile for each mile to be traveled in going to and returning from the location; and an amount estimated to be necessary to cover the additional expense not to exceed $50 a day for each day consumed in the inspection. The unused portions of any of these advance fees is refunded to the subdivider.

A charge of 3-cents per copy for the public report is levied against the subdivider.

Escrow Provisions

Before any sales can be made of subdivided lands certain documents and instruments must be placed in escrow with a bank, attorney, trust company, title insurance company, or other legal escrow depository, These include:

(a) A copy of the title report or abstract; (b) original sales contract, setting forth the legal description, principal amount of the encumbrance outstanding at the date of the contract and its terms; (c) partial release of the lot or parcel being sold from the terms and provisions of any blanket encumbrance; (d) release of any other lien or encumbrance revealed in the title report; and (e) a warranty or bargain and sale deed conveying merchantable and marketable title to the purchaser.

In lieu of the escrow arrangement, the legal owner of the property being sold can execute a deed conveying title to a trustee, who can make conveyance to a purchaser when the required conditions of purchase have been met.

Ban on Misrepresentation and Fraud

The law prohibits any person selling or offering to sell lots or parcels in a subdivision from any act to:

(1) Employ any device, scheme or artifice to defraud.
(2) Make any untrue statement of a material fact or fail to state a material fact necessary to make the statement made, in the light of the circumstances under which it is made, not misleading.
(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deception upon any person.
(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature which contains an untrue statement of a material fact or fails to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading.
(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated.
(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the real estate subdivision has been in any way approved or indorsed by the real estate commissioner.

Health Officer's Approval

No person shall sell any lot or parcel of a subdivision until preliminary plans for providing a domestic water supply and sewage disposal facilities has been filed with the State Health Officer or his designated county representative.

False or Misleading Ads

The Act makes it unlawful for any person selling subdivided lands to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast which contains any statement, pictorial representation or sketch which is false or misleading. A publisher, broadcaster or telecaster is not liable for such false or misleading advertising unless he has knowledge of the falsity or has an interest in the subdivision.

Penalties

The Act provides a fine of not more than $10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both for violations of the following provisions:

(a) Preliminary Notice of Intention; (b) Request for Further Information; (c) failure to keep information current; (d) selling before issuance of the public report; (e) violation of the escrow provisions, and (f) making sales prior to compliance with the Act.

The Commissioner is given authority to issue a cease and desist order whenever he finds a subdivider violating any of the provisions of the Act. He may also request the Attorney General to bring proceeding in Circuit Court in which he would apply for the appointment of a receiver.

Summary

From the foregoing it can be seen that once a subdivision has been created it is unlawful to offer to sell or lease a lot or parcel in the subdivided lands before it is recorded in the recording office of the county in which it is located, and until the subdivider or his agent shall by a "Preliminary Notice of Intention" notify the Real Estate Commissioner of an intention to sell or lease.

FHA INSURED CO-OPERATIVE SUBDIVISION

Under this plan an association is formed of members, each issued a share of stock in the enterprise and given the right to occupy a particular dwelling erected on the tract. After certain conditions are met, the title is distributed to members covering the homes or apartments they individually occupy.

Completion of such projects depend upon the sale of a certain percentage of the stock, which means

that a certain number of potential home purchasers must be obtained before such a project can be closed.

Any type of such a corporation must first be approved by the Corporation Commissioner, and it is advisable that any plans for such a co-operative project be first submitted to the Corporation Commissioner for study and advice.

UNIT OWNERSHIP ACT

Continued popularity of the "condominium", or multiple-unit building or buildings in which each unit is owned in fee simple absolute by a person who also holds an undivided interest in the common elements, led to passage of the "Unit Ownership Act" by the 1963 Legislature.

The law requires the owner of any property qualifying under the terms of the Act to file a declaration in the office of the recording officer in the county in which the property is located.

Before a declaration may be recorded it must be approved by the county assessor and the tax collector of the county. No declaration shall be approved if the property bears a name that is the same or similar to the name of another property in the same county, or until all taxes and assessments due and payable have been paid.

A declaration must contain the following:

(1) A description of the land.
(2) The name of the property and a general description of the building, including the number of stories and basements, the number of units and the principal materials of which it is constructed.
(3) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.
(4) A description of the general common elements and the percentage of the interest of each unit owner therein.
(5) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.
(6) A statement of the use for which the building and each of the units is intended.
(7) The name of a person to receive service of process.

Exclusive Ownership and Possession

The law provides that each unit owner shall be entitled to the exclusive ownership and possession of his unit. A unit in the building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale as if it were solely and entirely independent of the other units in the building, and individual titles and interests shall be recordable.

The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

At the time of recording the declaration a copy of the by-laws adopted by the unit owners governing the administration of the property must also be recorded.

The by-laws shall provide for the election of a board of directors from among the unit owners; a chairman, secretary and treasurer; provision for maintenance, upkeep and repair of the common elements; and the manner of collecting from the unit owners their share of the common expense.

Deeds

The deed of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.
(2) The unit designation of the unit.
(3) The use for which the unit is intended.
(4) The percentages of undivided interest in the common elements appertaining to the unit.
(5) Any further details the grantor and grantee may consider desirable.

Editor's Note: The following is reprinted from the Subdivision Manual of the Mid Willamette Valley Planning Council.

WHY SUBDIVISION STANDARDS?

In the Past Much Property Was Subdivided Without:

Regard to Topography.
Relationship to surrounding properties.
Connecting streets.
Sufficient lot area.
Properly shaped lots.
Sufficient width for street rights-of-way.
Provision for access to school sites.
Adequate sanitary facilities.
Provision for necessary improvements.
Provision for park land.

This Led To:

A disconnected street pattern.
Impractical street grades.
Poor drainage.
Trapped land.
Long, narrow and irregular shaped lots.
The necessity for street widening.
Rapid deterioration and obsolescence of property.
Offset streets.

Proper Regulations Protect the Community From:

Excessive street maintenance costs.
Premature development of neighborhoods.
Inefficient street systems.
Deterioration and obsolescence of property.
Overcrowding of land.

They Protect the Home Owner By:

Safeguarding the quality of a development.
Supplying a stability to the value of his investment.
Assuring adequate lot areas.

They Help the Subdivider By:

Establishing development and construction standards that apply uniformly throughout the area.
Assuring review of land development for future access and tie-in to rest of the area.
Reviewing water, sewage disposal and drainage proposals in planning stage.
Experience has proven that a properly laid out and developed subdivision lends itself to better and more rapid lot sales.

Thus it becomes apparent that control of the subdivision of land is an important tool in area development. Few subdividers control sufficient land in a single ownership to plan a complete neighborhood. In fact, most subdivisions involve remnants of early land claims which have, through metes and bounds descriptions, been cut into many parcels of varying size and shape.

As a result of this multiplicity of ownership and land units, a logical and economic division of land is dependent upon three things:

(1) "Master planning" or area design of undeveloped lands.
(2) Coordination of the plans of the many owners in a given area.
(3) An ordinance which sets physical standards which a subdivision plan must meet prior to its approval.

Senator WILLIAMS. Again, we are very grateful to you, Mr. Jensen. I hope that this will be well reported and received in those States where they have not caught up to the enlightenment of Oregon and California.

Now we have Mr. Koske, the executive secretary of the Colorado Real Estate Commission.

STATEMENT OF KEITH T. KOSKE, EXECUTIVE SECRETARY OF THE COLORADO REAL ESTATE COMMISSION

Mr. KOSKE. Mr. Chairman, members of the subcommittee, we have been aware of mail order sales of Colorado land to residents of other States for the past 5 years. Colorado is primarily a situs State. There are more purchasers of Colorado land residing in other States than there are residents of Colorado who purchase land located in other States.

Tens of thousands of tourists visit Colorado each year and note the beauty, the grandeur, and color of the State. They also become aware of the delightful and healthful climate. Many of these persons determine then that they will someday return to spend their retiring years in Colorado. Other persons, too, who have never visited the State, are also susceptible to Colorado's charm.

As a result, Colorado is a rapidly growing State with an expanding economy. Colorado, in population, ranks 34th among the States—in land area it ranks seventh. Of the approximately 2 million persons living within its borders, more than 1 million live in Denver and its environs. As a result of this concentration, there are many land areas of the State which are sparsely populated.

There has been an orderly development of Colorado land. The resident real estate industry has most reputably brought about a consistent and economically stable development. Although the vast majority of the subdividers have contributed greatly toward development of Colorado land, they have also taught the public to expect certain things—such as a survey, zoning protection, roads of access, and merchantable title—to accompany the conveyance. Of course, the law does not demand that these things must necessarily accompany each conveyance.

A few unscrupulous subdividers are selling Colorado land by means of exaggerated claims, false promises, and misleading gimmicks. Little or no development accompanies the sale.

Colorado land has been sold to residents of other States when no local authority knew of the existence of the subdivision. No plat was placed, of record with the county clerk and recorder, and no identifying sign was placed upon the land. Under such circumstances, when a sale is made by a lot and block description, the lot cannot be located. I have seen a few retired couples come to Colorado and attempt to locate their homesite, and they had to be informed that what they owned was a one six-thousandths part of an undivided interest in an entire section of land. The lot itself could not be located. Some other purchasers have come, only to find that their homesite was so remotely located as to be untenable. Other purchasers have found that their interest in the land had been foreclosed by the owner of a blanket mortgage.

I realize that the primary purpose of this subcommittee is to investigate methods to protect the aging purchaser. However, personal injury is not the only injury created by the unscrupulous subdivider. There is also an injury to the State wherein the land is located, and there is also an injury which will fall upon our posterity. The orderly development of land is necessary to provide a continuous economic stability. Rural counties of Colorado have found some of their land to be so irresponsibly subdivided that tax assessment and collections are made difficult and costly. A county treasurer may have registered, as the owner of the land, a foreign corporation which has no intention of paying taxes. If a new owner of a lot has recorded his interest, the county treasurer may be compelled to spend $3 preparing a tax bill of 50 cents to be mailed to a resident of New York or Hawaii. Land is the tax base of the rural county for the support of its schools and other services. The tax base may be altered or made smaller.

Migration to such an undeveloped subdivision causes other problems. The only development that occurs may be a shack town created by the individual purchasers. Their development of the land is limited by their own individual financial resources. Oftentimes a health problem results, and the State or county may forbid further development. The land is abandoned by the purchasers, and it reverts back to the county for nonpayment of taxes. This cycle may repeat itself.

The reputable subdivider may wish to begin a proper development of the same land. He may find a renewal problem. Or he may find it necessary to begin an action to quit title, but this may not be successful. Assembly of lands is difficult because of the many owners scattered all over the United States and Canada. The assembly of the land may even be impossible. Orderly development of the land may be stopped, or delayed, or be made far more costly than it should be.

These are all injuries which are suffered not by the individual purchasers but by the residents of the State and community wherein the land lies; and, they are injuries which will also fall on our children. This, of course, has been a great impetus to us to confront the problem.

The character of the land is peculiar and local. The control and development of land must of necessity be a local problem. It cannot be compared to a "security" or an "investment contract" where the intrinsic value is a share in profits—this is personalty. Land has the tangible element and the local use which makes it a local problem.

Since interstate migration seems to be a way of life with American citizens, even small but reputable subdividers and real estate brokers and salesman are constantly making interstate sales; but not usually by mail, but sometimes it is by mail.

Even so, the sale of land is not a matter for Federal legislation demanding the registration of all sellers of subdivided land—neither can it be entirely handled on the State, county, or community level. In some areas the help of the Federal Government is needed.

However, the promotion, the development, and the sale of land should not be slowed nor hampered; neither can it be uncontrolled.

The county governments of Colorado are establishing planning commissions which are beginning to enforce their edicts and to chart progressive and orderly development. The State government of Colorado has recently enacted an act requiring the registration of subdivision developers. At the request of the Governor, the Legislative Council of

the Colorado General Assembly is making further studies of the problem and will recommend additional safeguarding statutes to the general assembly in its next session.

The Federal Government can also be helpful in this problem and some Federal agencies have already prosecuted offenders who have sold Colorado land. The Post Office Department, especially, has been effective and since this problem is directly concerned with the mail it appears that the mail fraud statutes should be particularly studied by this committee. The Federal Trade Commission may also have suggestions on strengthening their fraud statutes. The Securities Exchange Commission may also secure jurisdiction when installment contracts on the sale of land are discounted and sold.

However, land use and land sales are primarily problems only for the State and local governments.

This concludes my statement, Mr. Chairman.

Senator WILLIAMS. Is this a practice, the discounting of an installment contract?

Mr. KOSKE. Yes. We have seen quite a bit of that. The subdivider may be financed by some finance company. Immediately upon sale, the contract will be discounted. My last investigation showed the discount was 50 percent.

Senator WILLIAMS. How about you gentlemen from California and Oregon?

Mr. JENSEN. It is being discounted.

Mr. GORDON. We have the same, Senator.

Senator WILLIAMS. Is it a general practice or an exceptional practice?

Mr. KOSKE. In California I haven't seen any discounting of subdivisions of California land because I believe they do not permit specific performance to be demanded on the part of the seller. Now where the seller can demand specific performance of the contract, why that contract can be sold to a collection agency in New York and then under the full faith and credit of the Constitution, why that judgment could be enforced back in whatever State the contract was made or the purchaser lives.

Senator WILLIAMS. For the recording of real property, register of deeds, or whatever you call your register, is the method of description of property defined at the county or State level?

Mr. KOSKE. At the county level.

Senator WILLIAMS. When you get out of these vast areas, they certainly don't have the county level requirement, description by metes and bounds?

Mr. KOSKE. Well, legal descriptions would be demanded on every conveyance. But, of course, if it is sold by phony plat, and there is only a lot and block description, well, even if you recorded the deed which said lot so and so and block so and so, there would be no way of identifying the lot, because there is no relation to the legal description.

Senator WILLIAMS. In other words, the overall area has not been surveyed down to the individual lots with markers designating the lot?

Mr. KOSKE. That is right.

Senator WILLIAMS. Now you know that is one way I would think of getting at a fair description of property through the survey require-

ment. I believe in our State we have that. Is that in your testimony, the one six-thousandths part of a section? That helps a lot.

Mr. KOSKE. It doesn't help a fellow who wants to build a home, no.

Senator WILLIAMS. He could build in the area. You have given us a great deal of exploratory areas here to consider: FTC, mail orders, SEC. There has been some beginning discussion that one of the keys, if we are going to have a national policy with interstate sales of land, the SEC and its disclosure principles might be applied to land sales. It is a preliminary discussion and only that, but I think it is worthy of thought.

Mr. KOSKE. Might I make one more comment, Mr. Chairman? I would like to impress upon the committee the true situation that almost every real estate broker and real estate salesman in the United States engages in interstate sales. He must, to earn a living, regularly sell from subdivisions, legitimate subdivisions. And with this constant immigration going on in America, why, he is engaged in interstate commerce almost constantly. Federal legislation basing your coverage or your jurisdiction on interstate commerce, would, I think, include every licensed broker and salesman in the United States.

Senator WILLIAMS. But the average broker or salesman does not reach into other States through advertising media.

Mr. KOSKE. Oh, but he does. They do use the mails for advertising purposes. Their sales are not consummated through the mails such as the people we have been talking about. But they do inform the people, they have contacts in other States, they send their mail to cooperating brokers in other States describing a ranch, describing even a particular house.

Senator WILLIAMS. So you are putting an amber light up on any consideration we might have in this area?

Mr. KOSKE. Yes.

Mr. GORDON. Mr. Chairman, if I may comment on the last remark: we have had in California in our so-called 10-percenter scandals something analagous to the problem that Keith points out. We have now put promotional-type trust deeds into the category of securities. But in order to come within the purview of the laws of the promotional-type trust deeds, you have to meet certain qualifications. It has to be one of a series. The land must be contiguous. Now as a practicing broker myself for 14 years before I became a member of the Governor's cabinet, I know that most brokers are concerned perhaps in the individual sale of a ranch, or a home, or a large piece of acreage. I don't think the number is so great who will represent, say, a subdivision. I don't think the percentage is so high among the real estate licensees who will grab hold of these promotional-type subdivisions to sell en masse. I think that most of the licensees, if they deal across State boundaries, will be concerned with a home, or a factory, or a building, in other words, an individual parcel. So that if this committee should inquire into the possibility of bringing some type of regulatory legislation and assign it to the SEC or FTC that certain properties could be exempted just as we have done in California. A single trust deed does not come within the purview of our law of making it a corporate security. Or if it has been zoned for more than 3 years it is exempted from the law.

Senator WILLIAMS. That is very helpful.

Mr. Koske, are you familiar with what is described to me as Colorado City?

Mr. KOSKE. Yes.

Senator WILLIAMS. In the Colorado Springs area?

Mr. KOSKE. Farther south than Colorado Springs, I believe.

Senator WILLIAMS. Is that under development or is that just in the planning stage?

Mr. KOSKE. They have begun selling now, and they have registered with the State. It's a California company. The only reports we have so far is all their legal entities and their sales people have registered with us.

Senator WILLIAMS. Is this directed primarily to elderly people, a retiring community?

Mr. KOSKE. Not entirely, no. But partially, yes.

Senator WILLIAMS. Well, gentlemen, we are very grateful to you.

We will recess until 2 o'clock, when we will have Mr. Bertoch, from Arizona; Mr. Robert Caro, from Newsday; and Mr. Alfieri.

[From the Colorado Real Estate News, December 1963]

LIVERY OF SEISIN AND DISSEISIN

(By the executive secretary, Keith T. Koske)

Interstate sales of subdivided land through the mails is now big industry. The most recent estimates are that the yearly volume greatly exceeds $500 million.

A few years ago an interstate promoter of Colorado land told the real estate commission that: "They laughed at Mr. Sears and Mr. Roebuck when they began to sell personal property by mail through the use of an illustrated catalog. I will show them that land can be sold the same way." I can assure this promoter that we are not laughing. Land is unique and transfer is not easy. The earliest method of transferring land is lost in the antiquity of the law. Some of its history is apparent in the English method of transfer of 1,000 or more years ago. It was called livery of seisin. It was a symbolic pageant with the definite purpose of insuring the just delivery and acceptance of the unique and immovable land.

The pageant proceeded. The neighbors were called to witness the transfer and to make sure that justice was done. The new owner was taken to view the land and escorted upon it where he was clothed with the robes of ownership (investiture). The person presently seised of the land would hand to the new owner a twig or a clod of earth to symbolize the transfer. The neighbors would know if the man in possession (the seller) was truly seised of the land (or was he as a disseisor?) and they could verify the seisin of the new owner.

Today the delivery and acceptance of a written instrument replaces the clod of earth.

Today there is no compulsion to view the land, it is only a wise custom encouraged by the real estate broker.

Today the neighbors, the watchdogs, are still with us in the form of written records and qualified opinions such as the attorney's opinion on the abstract and the title insurance commitment.

Few interstate land sellers encourage viewing the land before purchase.

Few, if any, provide abstracts or title insurance for their purchasers. Few, if any, record the instruments they draft. Their credo is: "I am honest therefore do not question me."

We do not believe that the safeguarding customs which have been developed through thousands of years should suddenly be discarded without adequate substitutes.

We do not believe that the view of the brochure is equivalent to the view of the land.

We are not ready to believe that recorders, abstractors, lawyers, and title insurance companies are obsolete and that land should be sold from catalogs like personal property or like intangibles such as stocks and bonds.

(Whereupon, at 12:30 p.m., the hearing recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

The subcommittee reconvened at 2 p.m., Hon. Harrison A. Williams, chairman of the subcommittee, presiding.

Senator WILLIAMS. The committee will come to order.

We have as our first order of business this afternoon Mr. Carl Bertoch, chairman of Rules and Regulation Committee, of the League of Arizona Developers.

STATEMENT OF CARL BERTOCH, CHAIRMAN, RULES AND REGULATION COMMITTEE, LEAGUE OF ARIZONA DEVELOPERS

Mr. BERTOCH. Thank you. I keep having the feeling that insofar as I represent the industry out in Arizona, someone will say, "Ha, he fell off his lot and broke his leg." Needless to say, that is not the case.

Senator WILLIAMS. From skiing?

Mr. BERTOCH. No, I was playing softball and received my injury.

Senator WILLIAMS. We are pleased that you could join us from Arizona.

Mr. BERTOCH. We appreciate your invitation.

It is a pleasure to appear before this committee today to report to you on behalf of the land industry in Arizona. I wish to express the appreciation of the League of Arizona Land Developers for this invitation to present our views, and we welcome the opportunity to tell you about Arizona.

I would like to make a personal observation on my part regarding my appearance today. At this time, 20 years ago I was preparing to graduate from high school in Sandusky, Ohio, a small community of 25,000; and except for an expected tour in the military, my horizons then did not extend beyond Cleveland to the east or Toledo to the west. The grandson of an immigrant German blacksmith, the son of an electrician, no one could foresee that in that brief span of time I would be here before a committee in Washington speaking on behalf of the multimillion dollar land development industry in Arizona.

Senator WILLIAMS. That makes two grandsons of blacksmiths. I qualify, too.

Mr. BERTOCH. Glad to be aboard, sir.

This is quite an experience for me and another example of what can only happen in America.

I find an analogy between my personal life and the growth and development of the industry of the State which I represent here today. The State of Arizona, as you know, was only admitted to the Union as recently as 1912, but it has a heritage that goes back many years and across the ocean. It is a mixture of Indian, Spanish, Mexican, and now midwestern and eastern culture. It is a State over which four flags have flown, the Spanish, Mexican, Confederate, and that of the United States. It is a State 6th largest in size, notwithstanding the recent admission of Alaska, and ranks 35th in population. It is a State consisting of more land than people, quite obviously; and it is a State which is so diverse in its geography, that you may, within

a few hours' drive, experience all the climatic conditions which exist throughout our entire country. From an elevation of 137 feet above sea level near Yuma and its sandy cactus covered plains, to 12,670 feet above sea level at Mount Humphrey, near Flagstaff, among snow-capped and pine tree covered mountains, you can experience all these things.

This is a State which may have the coldest spot in the Nation at Maverick in winter, and a State which can have the hottest spot in the Nation in Yuma in the summer. It is a State with a climate which can only be described as amazing. It is a State which, although referred to as a retirement area, is a vital vigorous area where people live outside, play outside; where the number of boats per capita is the highest in the Nation and where, I believe, you would see more campers, more tents, more fishing equipment than in any other spot in the country. According to a recent study prepared by our two State universities, the Valley National Bank, and the Employment Security Commission, migrants to Arizona on the average, are younger than the U.S. population as a whole, and with the exception of teen-agers, Arizona migrants are concentrated in ages below 40.

The study further states that the "well-advertised influx of retired people have been more than balanced by the young migrant seeking opportunity."

This is an area that until World War II was virtually unknown, and even unheard of, to many persons, until as a result of a military assignment, where they either passed through or stayed in Arizona, its wonders were discovered. These people are today returning, and these are the people who have made our population explode, and created the demand for homes, for schools, for gas stations, for shopping centers, for land.

As a result of this, it was only natural that an active real estate market develop which, although active, appeared to really catch fire in 1957, 1958. It was only natural that the activity moved from the local scene to the national scene as well, following the trend for "retirement living" which seemed to sweep the Nation. Although not in the forefront of this move originally, Arizona, along with other Southwestern and Western States, found itself rapidly in the forefront of this market.

It was only natural that as with any new, emerging concept, there would be marginal or submarginal operators who would bring discredit upon or seriously damage, the business and reputation of the legitimate developer or businessman. Arizona was not immune to this, and as previous testimony before this committee has shown, these operators made the most of the situation.

But since the time of the last hearings in January of 1963 by this committee, two of the most notorious offenders have been indicted. Our industry has no need for the practices of that type of operator, and the sooner they are placed back under the rock from which they emerged, the sooner the stigma that has attached itself to our industry will be gone. We have a product to sell of which we are proud, which we offer for sale in an ethical manner.

We recognize that because of the excesses of a few, a free, unrestrained market no longer exists, and is not desirable. The ethical businessman cannot compete with the unethical, unscrupulous person

who misleads and deceives his customers. For not only does he, by virtue of his deceit, take a part of the market, but later when the purchaser discovers the true situation, he may be completely disenchanted and his desire to buy in Arizona destroyed.

Recognizing this, the League of Arizona Land Developers was formed in the latter part of 1962; our league, like most associations, was carried on by the desire and spirit of the people who realized the need for this association. Our membership extends from the sole proprietorship developing a small recreational tract to publicly held corporations marketing nationally.

In our association, we have brokers whose offerings are as diverse as our State geography. Having been in existence now a little over a year, and experienced the birth pains, that I feel certain all associations must go through, we feel that we now have arrived at a position where we are an effective voice for our industry in Arizona, as evidenced by a letter from the Land Title Association of Arizona, to Senator Williams, which I have presented to the Senator and committee, copies of which are enclosed in the supplemental materials.

We now have an executive secretary and have established a newsletter. A copy of volume I, section I, our first publication, is also enclosed in the supplemental materials to our statement. Because of my past experience as the deputy superintendent of the Division of Securities of the State of Ohio, I was named the chairman of the laws and regulations committee of our association in April, and as such, have the responsibility for reviewing new legislation and discussing changes which may be deemed desirable. We expect to work with Commissioner Talley in order that we may develop the best law for the State of Arizona.

Certainly not all of the problems of the installment land sale business have been solved but a review of the recent legislative enactments in the market States coupled with the activities of the Federal authorities and the spotlight of attention focused on this business by this committee have combined to eliminate the submarginal operator from the business and has made the ethical developer more conscious of his responsibilities to make sure his purchasers are fully informed; therefore, we feel, minimizing the need for additional regulation in this area.

In addition to the foregoing, there appears to be greater industry emphasis toward local broker representation in the market States, thereby imposing another level of regulation in those States with subdivision laws and providing regulation in those States without subdivision laws where they do have real estate broker licensing laws. Some of us in the industry are beginning to feel that no longer are we in an area without sufficient regulation as it may have appeared here a year and a half ago, but we are now rapidly becoming overburdened by a prolixity of regulations which lack uniformity and represent divergent philosophies.

The solution to this must come, I believe, by the development of liaison by the industry with the regulatory agencies in order to achieve adequate protection for purchasers without foreclosing their rights to acquire and own land in any State of their choice.

We, in our industry, pledge our cooperation to this committee as well as the regulatory authorities in those areas where we do business

in helping eliminate or solve any problems which may presently exist or arise in the future.

I have submitted an additional statement along with the other materials. I would like to make that a part of our presentation to this committee.

Thank you again for your consideration in extending the invitation. I will answer any questions you have regarding our business or the league, or the Arizona markets, within the limits of my ability.

(The additional statement follows:)

(Text continues on p. 84.)

LAND TITLE ASSOCIATION OF ARIZONA,
May 15, 1964.

Hon. HARRISON A. WILLIAMS, Jr.,
Special Committee on Aging,
State Capitol Building, Phoenix, Ariz.

DEAR SENATOR WILLIAMS: The Land Title Association of Arizona, with some 37 members, represents the entire title industry in the State of Arizona.

The development of Arizona over the past decade has been outstanding. Retirement communities for the aging such as Young Town, Sun City, Green Valley, and Arizona City are in themselves a testimonial to the ethical conduct of the majority of the developers in our State.

The unfortunate instance of one project some 2 years ago should not, we believe, be used as a criterion for the multitude of outstanding developments that have taken place in our State. The Land Title Association of Arizona in cooperation with the League of Land Developers and the proper State authorities have zealously watched each new area to protect the land buyer.

The Land Title Association of Arizona respectively requests that your committee make its judgments on the land developments being currently offered for sale in the State of Arizona under the guidance of recent legislation.

Yours very truly,

WILLARD B. FLEMING, *President.*

ARIZONA LAND DEVELOPMENT INDUSTRY

(By the League of Arizona Land Developers)

More than 400 years have passed since the first historic real estate transaction was consummated in America. The Seneca Indians, without the benefit of a broker's license, sold Manhattan Island for $24 worth of beads. Thus the buying and selling of land began in America.

Fortunately for us today, the foresight of our forefathers resulted in several other noteworthy land transactions, among them the Louisiana Purchase, the Gadsden Purchase and what was referred to as "Seward's Folly," the purchase of Alaska for $12 million, now our 50th State.

Today, we in Arizona look at the land development industry as a vital moving force in our economy, as our State real estate commissioner, J. Fred Talley, stated before this committee in its hearings in January of 1963:

"The State of Arizona has doubled in population every 10 years, with mathematical exactness since 1900. We are in a mad race to build subdivisions, shopping centers, commercial and industrial developments and to assimilate the more than 100,000 new residents who are pouring into our State each year. Each 10 years we must completely rebuild a new Arizona for this doubled population."

We feel that it is, therefore, incumbent upon the land development industry in the State of Arizona to provide the space and facilities required to satisfy this great annual demand. An enclosure captioned "Arizona! Seeing Is Believing" is included as a supplement to our statement which is dramatic proof of the rapid changes occurring in our State. This brochure was prepared by the Research Department of the Valley National Bank of Arizona and visibly demonstrates that rural areas of only a few years ago are today densely populated urban communities. The major force responsible for this continuing influx is evidenced by a 1958 study of the migration to Arizona prepared for the Arizona Development Board by the Bureau of Business Services of the Arizona State University. A survey conducted by the bureau of business services indi-

League of Arizona Land Developers

Recognize
this Symbol
as your
Assurance
of Integrity

- o Land Developers
- o Syndicators
- o Landowners
- o Brokers
- o Advertising Media
- o Engineers
- o Attorneys
- o Title Companies

MEMBER league of ARIZONA land developers CONFIDENCE IN ARIZONA

LAND OWNERSHIP is a precious heritage heretofore enjoyed only by those in better than average walks of life.

The pattern, fortunately, has greatly changed in the past few years. Now it is possible for anyone to invest in, and own valuable land in Arizona, the fastest growing state in the nation.

There was a time, not so long ago, when a man homesteaded his land, sweated over it, swore at it and worked on it for long years before he could call it his own.

Today men still sweat over the land, swear at it and work on it but in a completely different manner.

The homesteaders of today are the land developers. These are the men who purchase large tracts of land, spend hundreds of thousands of dollars developing, surveying, platting, recording, engineering and making the land available in small parcels.

Efforts of the developers have made it possible for anyone in any walk of life to own land for as little as ten dollars down and ten dollars a month.

Today huge bulldozers are cutting ribbons of roads once turned by a plow. Today engineers, surveyors and developers are doing the work of the homesteader. Today a man can sit in his living room looking out across the snow-swept plains of Kansas and with a stroke of the pen buy his sun-blessed land in Arizona.

When you invest in Arizona land developed by a member of the League of Arizona Land Developers, you can be assured the developer is pledged to a strict code of ethics, and that your investment can be made with complete confidence.

Make certain you buy your land from a member of the LALD and share in the rich heritage of land ownership — there is no other single transaction in your life which will hold more promise of lasting satisfaction and happiness.

There is no greater dignity in man's achievements than the ownership of land.

Code of Ethics

ALL MEMBERS OF THE LEAGUE OF ARIZONA LAND DEVELOPERS HAVE PLEDGED THEMSELVES TO:

1. Promote high standards of conduct and methods of operation in order to protect the general public and the members of the industry.
2. Cooperate with supervising officials and all public authorities in the administration of laws and regulations applicable to the development and sales of Arizona land.
3. Encourage codes, rules, regulations, and legislation for the betterment and protection of the general public and of the industry.
4. Adhere to ethical business standards in advertising and in transactions with the public.
5. Use simple, clear and unambiguous written instruments in all land sales transactions.
6. Provide a media for the exchange of information regarding activities in the land sales industry.
7. Aid in the development and stabilization of the land development industry in Arizona.
8. Transact all business in such manner as to merit the respect and confidence of purchasers and the public.
9. Continue to provide opportunity for persons in all walks of life to enjoy the dignity of land ownership, in keeping with our American heritage.

cated that the major causes of the then current migration were found to be health, climate, transfer by employer, and opportunity, in that order. One-half of the persons queried, indicated that the climate or its influence on health was a major cause of their moving to Arizona.

As climate was indicated as a primary factor, we have included with the documents we are submitting to this committee an information folder prepared by the University of Arizona, Institute of Atmospheric Physics, which illustrates the broad range and wide choice of climates available to Arizonans. Little wonder that with the favorable climate shown, that Arizona generates an outdoor way of life making recreation a part of every family's activities. Illustrative of this is the fact that Arizona has the highest per capita rate of boat ownership in the Nation. This may appear incongruous in a State that is alleged to be dry and barren, but as illustrated in the document prepared by the Arizona Development Board supplementing this statement, captioned "Water Sports in Arizona," the location of the 69 recreational lakes in Arizona are shown.

The above facts are given by the League of Arizona Land Developers to better familiarize this committee with the factors which produce the widespread appeal of Arizona. Because of this great appeal and the desire to live in Arizona it was only natural that public acceptance to the Federal Government Homesite Act was overwhelming. The shortage of available small parcels of land was responsible for the creation of the land development installment sale industry in Arizona.

While it would appear that there is a vast amount of available land in the State of Arizona, it must be kept in mind that approximately only 15 percent of the entire State is privately owned. The balance of the ownership of this State is divided between federally owned land, Federal trust lands, and State-owned lands. When the existing developed areas are subtracted from this and the present communities and cities also deducted, there is a comparatively small amount of practicable usable acreage for distribution to the public. As these parcels were divided and made available, they were quickly purchased by the American public, who for the first time were now able to own a small part of Arizona on terms that could meet their budget. As you undoubtedly know, the Government parcels which were available then, as well as now, were sold only for cash which prevented the majority of persons desiring to purchase unable to do so because of this fact. The land development industry in Arizona became a big business fast, and as usual in any new business, a few sharpshooters entered the picture, which created havoc with land developers everywhere. From time to time different areas of the United States have had to contend with these people and so did our State of Arizona. We now feel that these people have been fully exposed and in some instances prosecuted. The ultimate result being that the "fast buck boys" have been largely eliminated from the business, and those persons in the business today represent the substantial brokers and businessmen who are in our industry on a permanent basis.

This has been made possible by the fine work of our own real estate commissioner, J. Fred Talley, the work of the postal department, the activities of the better business bureaus, the work of the many other State agencies regulating this activity, and to a great extent by the spotlight of public attention directed on this subject by this committee. During this period of investigation, it became apparent to the majority of developers in Arizona that an association was needed in order to establish standards of conduct and to protect the public from a reoccurence of such happenings.

In September of 1962 the formative steps were taken and a code of ethics was adopted which all members of the league must subscribe to. A copy of the code of ethics is included in the supplemental materials as part of our statement. It should be pointed out that membership is not available just on the basis of payment of dues but applicants are screened by the board to determine whether their past and present practices and conduct have been in accord with our established standards. It has been necessary to reject some and in fact it was necessary to expel a member because of his failure to adhere to our advertising standards. Our league was one of the first to adopt the national better business bureau standards for land advertising as a standard for its members.

As a result of the activities referred to above, we of the League of Arizona Land Developers are of the opinion that the situation is now under control and there is no present need for additional legislation in this area. We in Arizona have a full disclosure law wherein a public report is prepared by the real estate commissioner which must be given to each purchaser prior to the time of enter-

ing into a contract and his receipt taken therefor. These provide purchaser protection by advising them precisely as to the nature of the offering. These reports are given to prospective purchasers whether they are in Arizona or any other State.

In addition to the control of Arizona subdivisions by our real estate department and the use of a public report, in many cases the properties are being offered by licensed real estate brokers who are further subject to the real estate licensing laws which govern their activities as well as the regulations promulgated by the real estate commissioner.

Further, due to the recent legislative enactments in those States which represent a proportionately large share of the market, additional registration or qualification is required. In several of the States this qualification imposes additional restrictions on the developer beyond the disclosure requirements of Arizona. The legislative pronouncements go beyond disclosure and may be considered as qualification laws meaning that certain minimum standards must be met prior to the property being offered for sale. Typical of the States with such laws are California, Ohio, Tennessee, New York (which provides for an offering statement to be employed in the sale in addition to certain requirements) to name a few. There is also the continuing jurisdiction of the postal department and the Federal Trade Commission over the interstate offerings. In addition to these laws controlling the developer today, there are the indirect controls brought to bear by associations such as ours, and the continuing vigil of the national better business bureaus. With this type of control both direct and indirect, we are of the opinion that the problem today is not additional laws but in developing reciprocity with the various regulatory agencies in order to avoid a duplication of effort and expense. This we feel is one of the purposes of our association and a goal toward which we will strive.

We of the league are proud of our State and the industry of which we are a part. Having suffered a more than painful birth and an incubator type existence for a period of time, we are of the opinion that today people can deal in Arizona land with confidence.

Senator WILLIAMS. Could you describe the League of Arizona Developers, what the membership is, and what part of the total industry you represent?

Mr. BERTOCH. In dollar figures, Senator?

Senator WILLIAMS. No, developers.

Mr. BERTOCH. We have at this time approximately 25 active members. We have five or six associate members. I don't have the list of the membership at this time. I could prepare one and have it forwarded to the committee. This is a group, again, which is a young group, but we think we have some of the people in industry who are interested in this movement. We feel that we are going to increase our membership this year and the following years, and become a stronger voice.

Senator WILLIAMS. What is your estimate of the number of developers that there are in Arizona, those eligible for your membership?

Mr. BERTOCH. That almost requires a definition of "developer," Senator.

Senator WILLIAMS. The subdivider. Is that another way of expressing it?

Mr. BERTOCH. Our group has subdividers selling Arizona property to Arizona people in Arizona, and it also has people who have Arizona property who are marketing in other States. So when it comes to Arizona subdividers, as such, marketing in Arizona, we have a representative group of that level of operation. When it comes to those who are marketing Arizona property in other areas, we then have a representative group there. We do not have an organization at this time that represents all the people in the business.

Senator WILLIAMS. Some of your members do market through mail-order and out-of-State advertising; is that right?

Mr. BERTOCH. Yes, sir.

Senator WILLIAMS. Does your League of Developers have its own code of defining standards for your publicity and advertising for sale?

Mr. BERTOCH. Yes, we do, Senator. A copy of our brochure describing a little bit about our league, with our code of ethics on it, has been included with the materials we are presenting to the committee. We were one of the first associations to adopt the National Better Business Bureau's standards of advertising. This is part of our operation. (See p. 79.)

As a matter of fact, as we indicated in our other statement, membership is not just acquired by virtue of payment of dues. At the time of its inception, two developers who made application were denied membership, and since we have been organized we have excluded one developer because of his failure to conform with our advertising standards.

Senator WILLIAMS. You have excluded them from membership?

Mr. BERTOCH. Yes, sir.

Senator WILLIAMS. You talk about this regulation. Is that State level of regulation?

Mr. BERTOCH. Yes, sir. We run into this type of a situation when we are marketing in a number of States. This represents a duplication of materials, and in many cases, by examinations a number of these States. These clearing States have varying standards, that is, some States have one report and others several reports, while others have a qualification under a fair, just, and equitable standard.

Senator WILLIAMS. Is that pursuant to legislation?

Mr. BERTOCH. Yes.

Senator WILLIAMS. I remember the first hearing we had and Commissioner Talley was here. He did a remarkable job of explaining the abuses that were then rampant. He had a brochure from one development that described this area as near water. It happened that Senator Goldwater was here that day, and he said, "Well, I guess that is a relative term. I happen to know that the closest water is 40 miles away."

In an example of that kind, in your code do you require when they use the descriptive word such as "near," that they spell out how near?

Mr. BERTOCH. We believe that any piece of Arizona land can be marketed or should be able to be marketed anywhere so long as all the facts are known and the purchaser is fully informed as to all the surrounding circumstances.

Senator WILLIAMS. Would that be an example of where you would censor a member if he said "near water" and, in fact, the water was 40 miles away?

Mr. BERTOCH. This would be true. We would consider this an abuse of our standards of ethics.

Senator WILLIAMS. I only know of one developer in Arizona. I believe his name is Mr. Webb.

Mr. BERTOCH. Del Webb? Not at this time, sir.

Senator WILLIAMS. We discussed his developments at that other hearing. From what I have seen of them, they meet all of the stand-

ards of the advertising that precedes the sale of housing—a very fine development.

Mr. BERTOCH. We have in our association not only those persons who are marketing homes or some recreational places up in the mountain areas, but we also represent some people who are marketing land in wholesale amounts, you may say, in bulk acreage. This is another area of operation. This is an area which, again, by virtue of some of these limiting laws, is being foreclosed. This creates some kind of a problem. It is not that this property should be sold as a homesite, as such. It is just a matter of selling it as what it is, as an investment in real estate, undeveloped.

Senator WILLIAMS. We do have a letter that I would like to include in the record from Mr. Del Webb. We asked him questions about the extent of his investments in Sun City, and his letter tells that the investment was about $16 million and took 5 years to develop.

(The letters referred to follow:)

DECEMBER 16, 1963.

DEL E. WEBB CORP.,
Post Office Box 555,
Del Webb's Sun City, Ariz.

DEAR MR. WEBB: One of the areas of study for the Subcommittee on Frauds and the Elderly is the problem of interstate mail order land sales. We are concerned about the implied promise that retirement villages can somehow arise from undeveloped land in remote areas of the Nation.

We are, therefore, gathering information on the careful preparations that must be made for reputable retirement communities. We on the Senate Committee on Aging have been very much impressed with the planning that obviously went into the creation of Sun City in Arizona and other well-established projects of this kind. It would be of help to us if we could contrast the history of such projects with those of promoters who apparently are less equipped to develop retirement communities.

Would it be possible, therefore, for you to send information on the following:

1. What sort of planning was necessary for such a community? How long had planning been underway before first offers were made to customers?

2. Would you care to describe, in general terms or specifically in terms of Sun City, how much investment is required for an adequate retirement city? I'm referring to the cost of developing the site before construction of individual homes and, if you wish, the cost of constructing the homes and funds required to make financing of the homes possible.

3. What special preparations had to be made for a community created exclusively for retired men and women?

4. Have you encountered any special problems because your residents are retired or elderly? In other words, is there any feeling among the residents that they are cut off from other age groups? (I am also a member of the Subcommittee on Housing, and I am very much interested in this question.)

5. Do you have any other comments that would be of help to the subcommittee?

Thank you for your courtesy and time,

Sincerely,

HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Frauds Affecting the Elderly.

DEL E. WEBB CORP.,
Phoenix, Ariz., January 17, 1964.

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

DEAR SENATOR WILLIAMS: In reply to your letter of December 16, 1963, I am pleased to convey the following information relating to the planning of our retirement communities. The following numbered paragraphs refer to your questions of like number.

1. A period of 5 years of rather intensive general research preceded the actual planning of our first retirement community, Sun City, Ariz. This research included every aspect of retirement living such as the physical requirements of the homes and apartments, as well as those recreational and community activities which are desirable, and commercial, social and medical facilities which are needed.

As you no doubt know, most of the facilities and services included in the overall plan were constructed and ready for operation by the time the first homes were sold.

2. Depending on the terms and size of the land contract involved, our commitments have run up to approximately $16 million to open a retirement community, and actual cash invested will run $3 to $5 million. This would include our downpayment on the land, plus nonfinancable development expense, which excludes actual home construction.

3. All of our homes are designed to accommodate the special requirements of our market, but we do not make these adjustments prominent, nor do we feature them in the merchandising of our product. All crafts, arts, and other activity programs are, of course, aimed at satisfying the interests of the retired market, but main emphasis is placed on the independence of the individual, stressing that the facilities are available for use according to their desires.

Buyers are restricted to those who are 50 years of age or older, which logically excludes persons having children of school age, but does not identify the community as being an "old folks' home."

4. Through our continuing research of our projects, we have learned that the residents of these communities are quite individualistic and no longer have any desire to maintain the status which they felt was so important during their former careers. After having made the transition from a working career to retirement, people seem to adopt a new set of values by which to measure their day-by-day requirements.

Our buyers all understand the nature of the community before purchasing, and I believe they feel they are part of a special community and generally prefer limited contact with other age groups. This results in a feeling of being exclusive rather than isolated or cut off. Also, it has always been our policy to permit visits by children or grandchildren at any time, as long as these younger members do not establish permanent residency.

As buyers, they are extremely discriminating and astute, but also very loyal once they are convinced that their purchase was well founded and based on factual promotion.

5. The communities we have developed appeal to only a small portion of the entire retirement market, and we are constantly expanding our knowledge about this segment. The subject of housing for the elderly, by itself, represents a tremendous number of desires and needs that are just beginning to be appreciated and partially met. To be completely successful in this field, we must find ways to make available the housing and services needed by our senior citizens and accomplish it in such a way that their overwhelming needs for self esteem, independence and self-justification can be met.

If I can be of further help, please let me know.

Very truly yours,

DEL E. WEBB.

Senator WILLIAMS. Your development is called Horizon Land, is it?

Mr. BERTOCH. Yes, sir. I work for the Horizon Land Corp., and my primary function is obtaining clearances in the various States where we market our properties. This is where I run into the varying requirements in the various States where we do business.

Senator WILLIAMS. How much of a development is Horizon Land?

Mr. BERTOCH. We have a number of developments. We have five at this time. We have one in Texas, two in New Mexico, and two in Arizona. One just outside of Tucson, 17 miles southeast of the city called New Tucson. We have one called Arizona Sunsites, about 90 miles southeast of Tucson.

Senator WILLIAMS. Do you include in your materials some of your advertising?

Mr. BERTOCH. No; I didn't bring any materials from the company as such, sir, because I am here on behalf of the league.

Senator WILLIAMS. Do you consider the retired people your primary market?

Mr. BERTOCH. Not necessarily, sir. In fact, we have found that, or at least it is our opinion, many times, by taking a development as such and trying to make it exclusively retirement, you have limited your market to such an extent that you have slowed down its development.

Senator WILLIAMS. Where do you locate your development? Near a settled community, or are they self-contained communities themselves?

Mr. BERTOCH. In most cases we attempt to acquire land near established communities. If not, then it is incumbent upon us to provide these initial facilities.

Senator WILLIAMS. You put in the streets and the other public utilities?

Mr. BERTOCH. This, of course, will depend upon that portion of the development which we are offering or developing at that time. We offer property running the full gamut, from unimproved acreage down to fully improved lots, complete with central sewer, central water, fully paved streets and sidewalks.

In any one of our developments, we have development areas with people living there. Outside of Albuquerque, our Paradise Hills development has 606 homes in it now.

Senator WILLIAMS. Thank you very much for your appearance today.

Mr. BERTOCH. And thank you, Mr. Chairman and members of the committee.

Senator WILLIAMS. The next witness will be Mr. Robert A. Caro, of Newsday.

STATEMENT OF ROBERT A. CARO, NEWSDAY, GARDEN CITY, LONG ISLAND, N.Y.; ACCOMPANIED BY POSTAL EMPLOYEE FRED J. SEWALK, HICKSVILLE, LONG ISLAND, N.Y.

Senator WILLIAMS. Mr. Caro is an award-winning newspaperman with a lot of interesting background and experience in this field.

Mr. CARO. Thank you very much.

Senator WILLIAMS. I understand you have brought a friend with you.

Mr. CARO. Yes, Mr. Chairman.

Senator WILLIAMS. Would you bring him forward with you?

Mr. CARO. He is Mr. Sewalk.

This is Fred Sewalk, a postal employee from Hicksville, N.Y.

Senator WILLIAMS. How about the patrolman?

Mr. CARO. Mr. Pray apparently hasn't been able to make it.

Senator WILLIAMS. We welcome you, Mr. Sewalk.

Now you may proceed, Mr. Caro.

Mr. CARO. Mr. Chairman, Senator Keating, 16 months ago at this committee's preliminary hearings into the mail-order real estate boom, I was sitting at the press table over there and I heard J. Fred Talley, the real estate commissioner of the State of Arizona, testify that legislation at the Federal level is a necessity if the boom is to be ade-

quately regulated. Since that time I have had the opportunity myself to find out a little of what's back of the boom, and as a result of what I found out, I am appearing before you today to respectfully add another small voice to the plea for Federal regulation.

There are several reasons why some sort of new regulation of the mail-order real estate boom is needed. The first is the defenselessness of the people on which it feeds. Mail-order real estate transactions are today aimed primarily at the poor and the elderly.

We know they're aimed at the poor because of the prevailing terms of sale—$10 or $20 down and $10 or $20 a month.

We know they're aimed at the elderly because the land is being sold as "retirement homesites" in "retirement cities." Recently, in an attempt to evade mail-fraud prosecution, some of the phony promoters in the boom have been advertising "investment opportunities" instead, but both I and other reporters from Newsday have posed as purchasers to these companies, and I can assure you that when it comes to the person-to-person sales talks, the sales pitch is still aimed at the retirement angle.

The poor and the elderly are, as you gentlemen know especially well, two of the most defenseless portions of our population. They need the shield that regulation will give.

The second reason why the boom needs regulation is its scope. The staff director of your subcommittee asked me to give you some idea of its panorama, of the vastness of the thing we're discussing. I don't think I am skilled enough with words to do so. I don't think any verbal description can prepare any one for the sight of a vast desert valley in Mohave County, Ariz., perhaps 60 miles long and 20 miles wide.

When you top a mountain rise and come into the valley, you can see the entire valley. There is not a sign of human habitation, except every few miles there are signs saying, "This is Shangri La Rancheros" or "Heavenly Acres." Then you go into the county courthouse and ask the county clerk, "Are people out there really buying that land?" And he laughs and shows you the deeds, with thousands and tens of thousands of names of people in New York, New Jersey, and Illinois, paying their $10 or $20 a month on that same land that you just walked off of.

A few figures might give a better picture than I can of the scope I am talking about. In that single Arizona county, Mohave, there were, as of last July, 335 separate developments, some with thousands of lots being sold through the mail to residents of the Northern States.

In the State of Florida, where such subdividers must register with the State, there were, in that same month, 454 such developments so registered. Of course, as other witnesses have told you today, the boom has simmered down. The indictments which followed the salutary effect of your preliminary hearings have scared the worst of the con men who infest the boom into hiding. And the publicity which television and other news media gave to the frauds in the boom alerted the public to what lay behind those gaudy full-page ads with the girls water skiing near Lake Mojave. But as you gentlemen well know, the effect of indictments and publicity tends to wear off after a while and as some of these witnesses hinted today and as others will tell you tomorrow, our every indication is that interstate real estate trans-

actions are even now beginning to pick up volume again and we can expect the scope to be bigger than ever unless regulation, some sort of new regulation, is enacted.

Now, if some sort of regulation of mail-order real estate transactions is needed, why do I think it should be Federal regulation?

You have heard testimony that self-regulation by the industry is desirable. Self-regulation by the mail-order real estate industry itself, certainly the most desirable method of regulation, has been tried, and it has failed dismally. You'll be hearing more testimony on this from witnesses on Wednesday, so I won't go into it, except to say that while it is a cliche that every industry is 90 percent legitimate and dangers are posed only by a small minority on the periphery of the industry, I do not believe this is true of the mail-order real estate industry. The boom has been permeated to its very core by the breed of con men who travel from one field to another, looking for fertile ground to ply their deceptive hard sell.

They found mail-order real estate a very fertile field. In the first place, it didn't take any capital to get into it. You could take an option for a few thousand dollars on a vast tract and pay off the option and acquire the land if and when your sales came through.

In the second place, the mass of State laws which are in some States nonexistent and in other States weak, this weakness makes it easy for this type of man to operate.

We have found this heavy influx of con men in the industry first of all in the small firms. I will give you one example. The Gulf Land Co. has been selling land in several locations. Its founder, Spurgeon Pickering, was convicted in 1946 on three counts of using the mails to defraud, selling phony nylon stockings. He then went into something called The World's Most Beautiful Lawn, and in 1955 and 1957 the Federal Trade Commission moved against him for misleading and false advertising. He thereupon moved into oil drilling in Arkansas and was promptly named in 13 separate civil suits over unpaid bills. Today he is in mail-order real estate.

We also find the situation in a substantial number of the larger, supposedly better firms in the boom.

Senator KEATING. May I interrupt? Where is this Gulf Land Co. located?

Mr. CARO. The corporate headquarters of that company are in Biloxi, Miss. However, the attempts to reach Mr. Pickering generally take you to Costa Rica or over to the Bahamas. The man seems to operate largely out of his briefcase.

To take just one example of what I am talking about in the larger firms, the American Realty & Petroleum Corp. is one of the largest mail-order real estate firms. It is currently selling off 10,000 acres in Florida, 55,000 acres in New Mexico, and it has taken options on other large tracts in several States. Three of the key stockholders of that corporation are Herman B. Oberman, Chester Carity, and Henry L. Hoffman. Mr. Oberman was convicted of stealing $12,800 in 1940 from a Polish-Jewish fraternal organization of which he was then president. Carity and Hoffman have been associated in numerous sales activities since 1954. Neither Carity nor Hoffman have been convicted or have admitted violating any laws.

But their corporations, which have sold items like heat applicators for massages and flowing air purifiers, have been the subject of Post Office, Food and Drug Administration, and Federal Trade Commission action.

We found similar situations in numerous major mail-order real estate companies. Time does not permit me to go through these companies now, but I will later submit for the record a copy of the story printed in Newsday and dated February 15, 1963, which names some of these companies and gives the background of the individuals who control them.

I am sorry to say that we have been forced to conclude that there simply does not exist in the mail-order real estate industry, as it does in the overall real estate industry, and in most other industries, that mass of reputable developers whose best interests lie in effective industry self-regulation. For this reason, self-regulation does not seem to be the answer to the industry's problems.

How about State regulation? The plain fact is that the very character of this boom defies policing by the individual States. The corporate headquarters of some of these companies are in Florida. The land is selling in New Mexico, and they are selling it to customers in Illinois, New York, and New Jersey.

The State officials in Illinois see the ads, but often they don't see the land. The officials in New Mexico see the land, but often they don't know what the ads are saying about that land up north. There have, it is true, been some fine steps forward by about a dozen States during this past year. My own State, New York, adopted last year a measure which has, at least for the moment, in the present quiescent state of the boom, been successful to some extent. But the States passing the best laws are the investor States.

Some of the so-called situs States have demonstrated a laudable desire to clean up their end of the boom, too. But in some situs States, this desire has been hobbled by another understandable but deplorable attitude. This is the attitude that whatever their faults, the subdividers are, by luring people to undeveloped areas of the State, helping these areas to develop.

I was startled when I was out in Mohave County to hear one civic leader after another, after freely explaining to me that people could never really live in comfort on this land, say to me, "Well, they are bringing people down here anyway, and that is what we need."

Senator WILLIAMS. Where do they go then? Into the settled communities?

Mr. CARO. They hope they will go into the settled communities, yes, and build up Kingman. Of course, that would mean losing their original investment in the land completely. As a matter of fact, this has happened already. Some people, including a number of New York City patrolmen, with limited funds, who have bought this land, often for a total cash payment which took most of their resources, moved down there, moved out of their apartments in New York and moved down there, and found themselves literally trapped. They couldn't get back. All their possessions were there, and they were forced to move to Kingman.

Senator WILLIAMS. Do you know how much Patrolman Pray invested? He describes it as worthless acreage.

Mr. CARO. I think the figure was $240. He was paying $10 a month, and I believe he had been paying for 2 years when he decided to go down there and see what he was paying on.

Senator WILLIAMS. I thought you bought some property there.

Mr. CARO. No; it was never necessary.

Senator KEATING. He knew too much.

The gentleman with him, I believe, purchased some.

Mr. SEWALK. Yes, I did.

Mr. CARO. The most important reason that Federal regulation is needed, however, goes beyond what I have been talking about so far. It is that the boom contains the seeds of a national social problem. And I believe the only way to handle this problem is to regulate the boom on a national basis. I believe the real danger we are facing here may, over the long run, come not from the outright crooks—the bad developers, if you will—but from the so-called good developers. By these developers I do not mean the stable giants of the industry—firms like Del Webb, General Development, or the Mackle Bros. These firms have the financial ability and the sense of moral responsibility not only to promote a retirement city but to develop it over a long term of years.

But what of other developers, legitimate developers, developers who do give their purchasers livable land and nice houses, but who simply do not have at their command the tremendous financial resources and financial backing necessary to create the streets, sewage systems, utilities, police, fire protection, schools, and hospitals that real cities have?

Virtually all land-by-mail developers select sites in the most undeveloped areas of their States. The reason is simple: The land is cheapest there, the chance for profit therefore greatest. But, because these areas are undeveloped, because they have little or no heavy industry and a limited tax base, they cannot afford to provide the services for a sudden, large influx of new residents.

Mohave County, Ariz., the fifth largest county in the United States, contains 13,000 square miles. But its population is under 8,000 people. It has only two rather minor industries in the entire county, although a copper mine that is opening there now may provide jobs for a few hundred more. What is this county to do if, in 4 or 5 years, the people who have been buying the land in Mohave's 335 separate desert subdivisions start to move down to the county?

Probably, most will see what the land is like and go back home, poorer than before. But others will have to stay. How is that county to provide services for them? To go into a little more detail on this, take a single developer in a single county in Florida—the Gulf American Land Co., in Collier County, Fla.

Collier County is a beautiful resort county. Naples is a lovely resort. But it is a poor county, with a municipal poverty almost unimaginable by the standards of New York and New Jersey. A municipality of 1,030 square miles, the county is almost as large as all Long Island. But its population is only 15,700. There is not a single heavy industry in the entire county. Its total assessed valuation is only $165 million, about the same as two small Long Island communities.

Gulf American came into that county and bought up no less than 175.8 square miles of Collier County. The company says it will drain the land and build roads, and enable people to move onto their lots.

If the company fails in its promises, its tens of thousands of purchasers will have lost their money. But what if the company succeeds? I would like to quote the words of a local official in Collier County, a Naples city councilman named Joel Kuperberg. He said:

> We have a beautiful, quiet little community. It has been growing well. Normally, it would continue to grow gradually and, as it grew, commercial enterprises would come in to broaden the tax base, and the people coming in would produce tax revenue.
>
> Now, suddenly, the population of the entire county will be doubled, and tripled, and these new people will live in low-cost homes. Therefore, because of Florida's homestead exemption, under which the first $5,000 of the assessment on homes is tax exempt, they will produce almost no new revenue for the county. Right now the county is extended right up to the hilt to pay for the needs of the people who live here. Who is going to pay for the policing of the new development? The developer isn't. Who is going to pay for maintaining the roads? The developer isn't. The garbage collection, the schools, the hospitals, the fire protection, any one of a dozen other things?
>
> I foresee little clumps of houses out there—tar paper shacks, trailers, and hundreds of people begging the county to help them out. And the county can't possibly have the resources to do it.

This is not a problem of the present. None of the big problems posed by the mail-order real estate boom is hitting us right now. But the boom contains a built-in time bomb. As you know, this land is being sold off on installment contracts, and these contracts are generally being paid off over 9 or 10 years. Since the boom only reached large-scale proportions relatively recently, these contracts won't begin to mature for a while yet.

Until they do, experience has shown the majority of the individuals paying off on their contracts won't go down to see their land. At that time, those purchasers who bought land in completely worthless desert or swamp promotions will realize that they have been gypped.

Keith Barnard, former president of the Chicago Better Business Bureau, says that when this happens "it will be the great national scandal of the 1960's." I agree. But I would also like to go a little further.

I submit to you that the bigger problem, in terms of its total implications, is what is going to happen to the tens of thousands of elderly couples who do move from the cities and suburbs of the North to partially developed "retirement cities" in undeveloped counties of Florida and the Southwest. Without industries to provide them jobs to eke out their social security and pension checks, without adequate municipal services, hospitals, or adequate funds for welfare, what is to become of them?

What of the whole concept of herding together large numbers of elderly persons, an idea now being frowned upon by many leading gerontologists, as you know.

We don't know the answers to these questions. But the questions are starting to loom ever larger. To me, anyway, they seem frightening. This is a national problem, and it should be handled on a national basis by Federal regulation.

I said before that I think there is a built-in time bomb in this boom. To keep that from exploding in 4 or 5 years, action is needed now.

Senator WILLIAMS. Mr. Sewalk, did you want to describe your personal experiences?

Mr. SEWALK. Yes, Senator.

Senator, actually it is not too involved. My first contact with the land by mail came to me through a defunct New York paper. I am employed by the Hicksville post office. I am a Federal employee. I read the offer through, and it sounded pretty good to me. Of course, as far as legal terms, or any fine print, or anything like that, as I say, I am only a high-school-educated person. But, after reading it over and digesting it, it sounded fairly well to me.

I approached my wife with the idea of maybe in the future we might be able to retire in this area, as we had both wanted to move West. So, we purchased 2½ acres at first. It was $1 down, $10 a month.

We made a few payments on this property and my wife said, "Do you think the acreage that we bought now would be sufficient?" I said, "Well, do you think we should invest any more in it?"

She said, "Will you buy another 2½ acres and make it 5 acres?" I said, "All right." I agreed.

We wrote to these people and they were very happy to have us increase the acreage that we bought. We made new contracts with these people. We had them notarized. It was all legal.

Senator KEATING. May I interrupt, Mr. Chairman?

Have you identified the name of this company?

Mr. SEWALK. It is an Arizona company, Senator.

Senator KEATING. You don't know the name?

Mr. CARO. This name is under indictment, Senator, and we were advised that the name should not be brought out.

Senator KEATING. Very well. I didn't realize that. I agree.

Mr. SEWALK. We made the new contract and continued to make payments, only now the payments were $20 a month. As I said, if I couldn't retire there, it would be something to leave to my two children.

It wasn't too long after this that I came home from work and my wife said, "Have you seen the paper?" And I said, "No, I haven't seen any paper." And she said, "Well, in Newsday there is an article by a reporter whose name is Robert Caro, and I would like you to read it. It is the first installment."

Well, I read it, and after reading it, I wasn't too sure that it involved myself. I thought, "Maybe this might be another land company." But I took the time and I phoned Mr. Caro, and I explained to him where I had purchased my land, my property, and I asked him if this was the same area he was relating, and he said, "Yes, this is the same area." So I discontinued making any payments to these people. I just felt, "Well, I have invested a sum of money and my chances of getting it back are just about impossible."

My wife had sat down and wrote many, many letters to these people. I kidded her about the writing. I knew that she was wasting her time. But she felt that at least as long as she can write and complain, something, somehow—well, we might get the investment that we made back.

I had received from these people continuous literature. I still receive it to this day. Approximately 2 weeks ago I received another letter from these people. Now I have come to the stage with these people where they say if I don't make payments, my entire investment will be lost.

Senator WILLIAMS. What is your investment at this point?

Mr. SEWALK. $460, Senator.

I ignore the letter, but I worked with Mr. Caro as best I could. Whatever literature I would get from these people, I would forward to him. When the articles appeared in the paper, I felt that he had saved me a considerable amount of money.

Senator WILLIAMS. Did you give the purchase price for each acre? What was the contract price for each acre?

Mr. SEWALK. I don't remember offhand. It was $1,100 total.

Senator WILLIAMS. For the 5 acres?

Mr. SEWALK. No, I think that was for two and a quarter acres or two and a half acres. It would come to $2,200 for 5 acres. I have two separate contracts with these people.

With Mr. Caro receiving the literature that I was receiving from these people, I felt that if I could not get anything back from my investment, I would have to suffer the loss, but if I could expose it to enough people around our area, they would be forewarned, and forewarned is forearmed. At least they would not suffer or fall into a pitfall like I did.

Unfortunately, we find out too late that we have been taken. Literally that is what it amounts to at this present time, Senator. I have been taken, but, by the same token, I am not ashamed to come up and admit that somebody had misrepresented themselves to me and that I had lost money on it. I feel that if I can really help somebody else in the future to avoid these pitfalls, I will have done something in my life that is worthwhile.

Senator WILLIAMS. Do you have any idea of the number of sales, the number of acres sold, in the development, the area, where you bought?

Mr. SEWALK. No, Senator, I really couldn't say how many they have sold.

Mr. CARO. When we investigated the company's finances about a year ago, they had 3,000 purchasers for this particular tract. But they are selling off 18 different developments. I don't know what the total is.

Senator WILLIAMS. Do you know the total dimension of those that you feel were desperately misrepresented?

Mr. CARO. We have been unable to ascertain that. But to give you one idea, the Gulf American Land Co. last year—and they are listed on the American Stock Exchange, so we have some means of examining their financial statement—that one company last year reported $72 million in sales. These are sales on contracts of about $2,000 each.

Senator KEATING. In what States do they sell?

Mr. CARO. Gulf American sells across the country, in every State.

Senator KEATING. Mr. Sewalk, were other Federal employees taken in the same way you were?

Mr. SEWALK. I believe there is one person I know that works in my office, but he did not buy in the Arizona sector. He bought in New Mexico. He bought with another company. As to his disposition on this, as to what has taken place, the expose and all, I really don't know what his ideas are on this. I haven't approached him on it.

Senator KEATING. Where did you say you first read the sale of this property?

Mr. SEWALK. I read it, this advertisement, in the late New York Daily Mirror. It was a regular advertisement. It was a full-page advertisement, "Land of the Sun."

I don't know if I still have the paper at home. My wife generally saves a lot of this stuff. I have brought some stuff with me, material, but I don't believe it is necessary to open it, unless you care to examine it yourself.

Actually, what it is is the contracts for the land and the correspondence, the brochure that they send and, of course, as time went on letting us know that they were falsely accused by some excitable person who really wasn't clewed in on all the facts and they were just trying to make a name for themselves.

Senator KEATING. In answer to these letters that your wife has written to them, what has been the general substance of their reply?

Mr. SEWALK. Absolutely no refund.

Senator KEATING. Have they given any excuse for it?

Mr. SEWALK. They claim that if we would make a trip out there, we would possibly get our money back—possibly. But, as I say, Senator, I just couldn't afford to make the trip.

Senator KEATING. They prey on these people who, to a large extent, cannot afford to go to these long distances to see what it is that they are buying. It just makes your blood boil to hear stories like this.

Mr. SEWALK. I would love to have made the trip. Were I financially able I would have enjoyed making the trip. I was honest and sincerely interested in what I was buying. I had planned that possibly in about 4 or 5 years were we able, we would make the trip. But, of course, the entire matter came out in the paper much sooner, and, as I said before, Senator, it saved me somewhat.

Senator WILLIAMS. Patrolman Pray went to Arizona; did he not?

Mr. CARO. Yes.

Senator WILLIAMS. Have you talked with him?

Mr. CARO. Yes, I have.

Senator WILLIAMS. What was his experience, how much did he invest, and what did he get?

Mr. CARO. Harry Pray's story is a more desperate one. He is a New York City patrolman nearing retirement age now, and his doctor advised him that both he and his wife had to move to a warm, dry climate. They had always wanted to move to Arizona, anyway. They saw the ads, the same development as the one Mr. Sewalk is talking about, and they bought a retirement homesite and paid, I believe, $10 a month for about 2 years. Then Mrs. Pray said to her husband, "This is eating up a substantial bit of our money. Maybe you should go out there before we pay any more."

They weren't able to afford a plane trip out there or a train trip, so he had to go out by bus. That bus trip took 72 hours, and the description of it is that apparently they don't stop, except for rest stops.

As he was pulling into Kingman, in Mohave County, he said in his words, as near as I can recall, "I looked out the window and there was this horrible desert and in the middle of it was this tremendous red sign 'This Is It' with the name of the developments, and I knew right then I might as well stay right on the bus and turn around and come back. I knew I had been taken and there would never be anything I could do about it."

He did go out to his development there with an agent, and, as he put it, the agent said, "Well, this is it"; and the man said, "This is your lot." There was nothing around, not even a stick, for 20 miles.

Senator WILLIAMS. Did he buy on the basis of the newspaper ad?

Mr. CARO. Yes, he did.

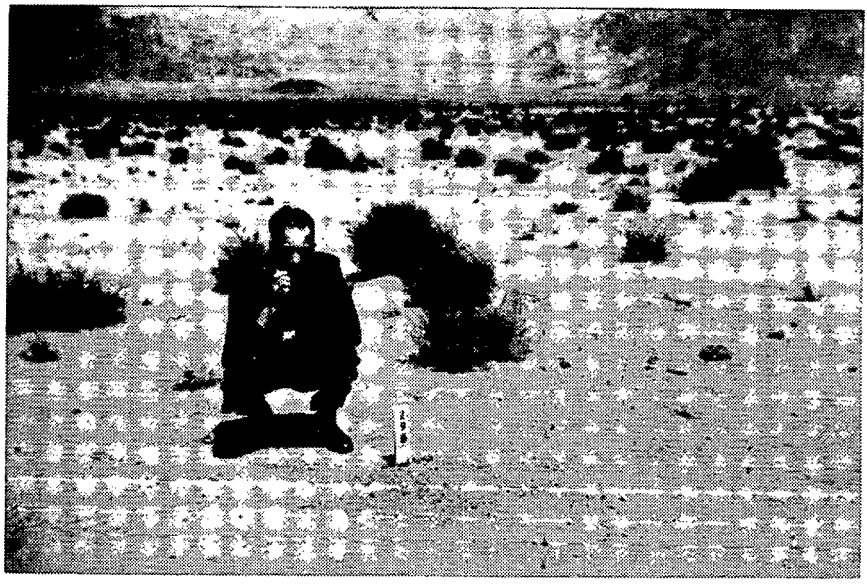
Senator WILLIAMS. Do you have a copy of the ad you relied on, Mr. Sewalk?

You said your wife might have it.

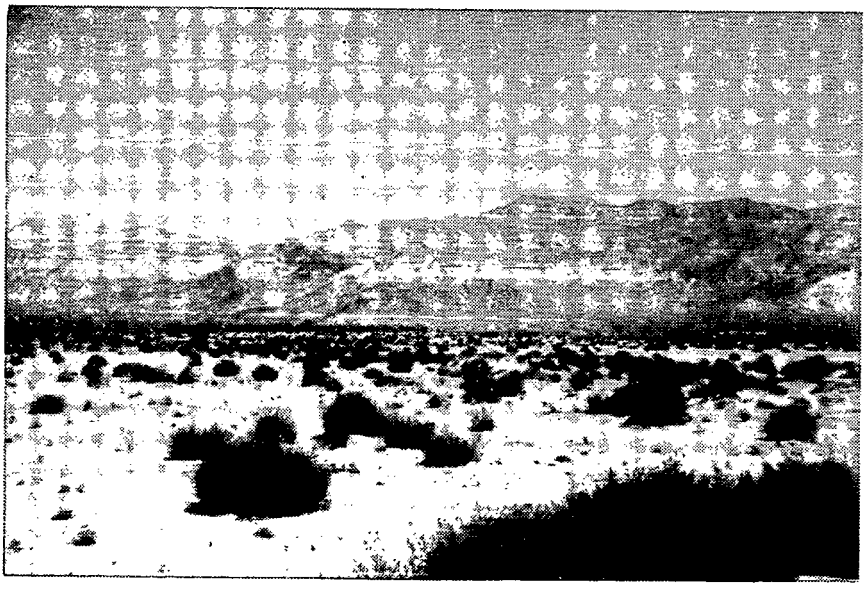
Mr. SEWALK. I might have it at home, Senator. I don't know.

Senator WILLIAMS. What descriptive words were there?

Parenthetically, we have the pictures that the patrolman took and we have put them in our files.



Mr. Pray surveying his property



Did they say anything about water?

Mr. SEWALK. Yes, they did, Senator. They said that water was on the property. They didn't say where it was. The ad started off: "Live in the Sun."

Senator WILLIAMS. A lot of sun. They were accurate there.

Mr. SEWALK. Yes, sir. And also that it was proved upland. There was supposed to be water and electric on the property.

Senator WILLIAMS. Did they mention roads?

Mr. SEWALK. It said they were dirt roads built—I guess in laying out of a section for map purposes, there were supposed to be dirt roads there. I don't know. I have never been there.

Senator WILLIAMS. But in the ad did it say anything about the improvements?

Mr. CARO. We have the words in one of the stories I wrote. The ad they were running in the New York paper said: "Health and welfare for you in the wonderful world of the West. Blue skies nearly every single day, pure air, the land of play and outdoor living year-round. The rancheros are livable now, not raw, undeveloped, and inaccessible land."

Senator WILLIAMS. Would you say that again?

Mr. CARO. "Not raw, undeveloped, and inaccessible land. Laid out, waiting for people, water available, roads, electricity, phone, wide-open living."

Senator WILLIAMS. That is slippery, although obviously it is the worst misrepresentation there.

Mr. SEWALK. It is wide open, I imagine, Senator.

Senator WILLIAMS. It is very misleading and the others are misrepresentations. From these pictures, you can see a long, long way.

Mr. SEWALK. I believe that is one of the photographs that they sent in the brochure to us.

Senator WILLIAMS. It looks like it. But this is what Mr. Pray took when he was out there visiting his retirement area.

Senator Keating?

Senator KEATING. Let me ask you, Mr. Caro: This very fine series, which was an award-winning series written by you, contains in it, does it, the name of the company which is now under indictment?

Mr. CARO. Yes; it does.

Senator KEATING. And, of course, we do want to be careful not to say anything in these hearings which might have any bearing on the pending trial.

Where is this indictment pending?

Mr. CARO. Phoenix, Ariz.

Senator KEATING. And what is the indictment for?

Mr. CARO. Mail fraud.

Senator KEATING. It is in the Federal court?

Mr. CARO. Yes; it is.

Senator KEATING. I was going to offer this for the record, but I presume in light of what you have told us it would be unwise to do that at this point.

You spoke of yourself in the first paragraph as adding another small voice to the plea for Federal regulation. I am sure the chairman will agree with me that it is more than a small voice because you have investigated this so thoroughly and you have been rewarded

for your efforts by a fine award. I congratulate you. It is something that certainly needed going into. Your series is known as Misery Acres, and you have performed a very fine public service by alerting the older Americans to the frauds in the mail-order sale of land.

Is it not correct that your investigation was one of the influential factors in bringing about a change in the New York State real property law?

Mr. CARO. Well, we like to think so.

Senator KEATING. There has been a change?

Mr. CARO. Yes, there has.

Senator KEATING. And it followed after your series was published?

Mr. CARO. Yes, it did; directly afterwards.

Senator KEATING. When was your series published?

Mr. CARO. We had a series of them, a number of them. The first was in January 1963, the second was in August of that year, and another one later.

Senator KEATING. Do you consider that the problem is now under control in New York State?

Mr. CARO. It is difficult to judge that. At the moment, the number of fraudulent offerings to which New York State residents are being exposed have certainly been drastically curtailed. But in the opinion of some people, the reason is because the indictments have been made. There have been 21 separate indictments arising out of the earlier Senate hearings and the series by our paper and others, such as the Saturday Evening Post, which have scared these people into hiding for a while.

Also, the publicity has alerted people like Mr. Sewalk. However, we feel that our investigation has disclosed that several of the most fraudulent of these companies still have vast, untapped land that they have bought and they have not been able to sell yet. This one company has tremendous acreage in British Honduras and Utah. The investment is there and we feel they are going to try to get rid of it someday. If there is no new regulation, they will devise new sales pitches and come back with it.

Senator KEATING. Do you have specific recommendations as to what you feel such a Federal law should contain?

Mr. CARO. I am not a lawyer, and I don't want to get into specifics. There has been talk about extending SEC regulation to cover this field. I feel that that is a good idea. The line of cases which ended about 1945 was tending to allow the SEC to handle land as a security in certain cases mainly when the investment in that land depended not solely upon the depreciation of the land but, rather, upon efforts of the developing company to develop it. That is certainly the case here. You are buying a retirement homesite, in a community, and you are dependent upon the company to develop it.

Further, the SEC has discretionary power, as you know, to revoke the registration of brokers, dealers in securities, who have criminal records, records of involvements, long records of involvement, with Federal regulatory agencies, such as cease-and-desist orders. I feel strongly that the business which aims at the poor and elderly should not contain people such as those I have described in my testimony.

Senator KEATING. Your feeling is that by Federal statute we ought to bar from engaging in such interstate business those who have criminal records?

Mr. CARO. I think the SEC ought to be given by statute the same authority over interstate land sales as it has over the sale of securities.

Senator KEATING. I think we have a witness coming from the State of New York who will testify also.

Can you give any idea from your investigation of the number of New Yorkers who have been defrauded by these schemes?

Mr. CARO. Again, it is impossible to tell because there is no way, since there is no central body. You can never get total figures. The national Better Business Bureau was receiving in the neighborhood of 600 and 700 letters a week from people inquiring about various schemes at the height of this thing last year. A typical Sunday in New York would show in the Mirror and in other newspapers as many as eight or nine full-page ads for some developments which our subsequent investigation revealed to be totally fraudulent.

Senator KEATING. Are these advertisements still being carried in the New York papers?

Mr. CARO. No, they are not.

Senator KEATING. In other words, these people now are pulling in their horns somewhat?

Mr. CARO. For the moment, at least.

Senator KEATING. Is that the reason that these ads are not appearing, the fact that they are quiescent in their activities right now?

Mr. CARO. We don't know that. I feel the new New York State law, while we think it will work, hasn't yet gotten a test. The real test will come when this industry swings back into action again and tries all the devices at its command. This law has not yet had any sort of legal test.

Senator KEATING. This primarily is based on the full disclosure. That is the basis of the New York law?

Mr. CARO. That is correct.

Senator KEATING. When was this law enacted?

Mr. CARO. It went into effect on July 1, 1963.

Senator KEATING. Did this falloff in advertising in the New York papers follow that time or precede that time?

Mr. CARO. Prior to the passage of the law, the indictments had started coming through. I think it was not only the New York law but other States passed laws. I think it was the cumulative effect of the mail-fraud indictments, the knowledge that the Post Office was going after them if they continued to do this, the uncertainty about the State laws and the publicity so that they couldn't sell.

A number of companies with which we have maintained close contact have seen an almost 90-percent dropoff in their sales since the waiver of publicity. They can't sell. How long that will last, I don't know.

Senator KEATING. You referred in one place to advertising which was misleading but not false, I believe.

Mr. CARO. That is correct.

Senator KEATING. Let me have an illustration, if you can, of what you had in mind in that statement.

Mr. CARO. I would have to have an ad in front of me because the word is very subtle. Instead of saying, as this ad did, "Water is there available now," which you can easily prove is not true, they would use fine print, or would suggest to the average reader that the water is there but legally in court would not be saying that the water is there.

The difference is that this was blatant fraud by people who were certain that they were immune from prosecution, no matter what they did.

Now that they know that they are not, they are seeking, we feel, for more subtle ways to effectuate the fraud.

Senator KEATING. I have a letter from a constituent that had bought land that was advertised on a matchbook cover. Have you run into that sort of thing?

Mr. CARO. That is what they are turning to now. They feel it is impossible to police them, and they are turning to matchbook covers, direct mail, and around-the-clock phone lines from Florida—boiler-room operations.

Senator KEATING. Did you say telephone calls?

Mr. CARO. Yes. You can't police them.

Senator KEATING. They call you from Florida and try to interest you on the long-distance phone?

Mr. CARO. That is correct. I was called myself. I don't know how they got my name. It was by one company a couple of months ago. It was at 2 o'clock in the morning. I couldn't understand it until I was told that the telephone company sells lines for so much a month and you can use it as much as you want.

In other words, they would sell a long-distance Miami-New York line.

Senator KEATING. You can buy a long-distance line for a month and use it 24 hours a day, if you want to.

Mr. CARO. Apparently that is what they were doing.

Senator KEATING. You are not as aging as some of the members of this committee. They must be going after the young people, too. Maybe they got your name out of these articles.

The chairman has asked you about one policeman, Patrolman Pray. Do you have evidence of other New York City policemen who have been drawn into this same net?

Mr. CARO. We found one case where I think the number was 112 New York people—New York policemen—had lost substantial sums of money, together with another 100 firemen and possibly a larger number of sanitation department employees. This was not a fraudulent development; it was a development which went bankrupt.

The New York City Patrolmen's Benevolent Association was contacted by the officials of the development called Harbor Heights, in Florida. The parent company was the Charlotte County Land & Title Co. These developers said they wanted policemen as customers and, if the PBA would put its seal of approval on their ads, they would give each policeman, I believe it was, a 10-percent discount on the price of a lot and a house down there when they retired.

Senator KEATING. The house as well as the lot?

Mr. CARO. Right. These were developers. The PBA went down to Harbor Heights and found, as I did when I went down there, a

flourishing development, a country club, a swimming pool, and houses—eventually they might have had 50,000 or 60,000 homes there. They have a tremendous tract, measured in square miles. These policemen were paying $20 a month for a number of years. One day each of them got in the mail an envelope. All that was inside that envelope was reprint of an article from a Florida paper: "Harbor Heights Goes Bankrupt."

Subsequently, they all made efforts to recover their money. The company is in the throes of reorganization now, but it doesn't appear likely that they will be able to get their money back. The amount of money they invested in this was, particularly for people on limited incomes, substantial.

Over and over again, I have had a policeman say to me on the phone: "$600 may not sound like a lot, but to me it is what we were going to retire on."

What happens here illustrates another danger in the boom. The fact that many developers who are not attempting to effectuate a fraud don't have the financial resources to carry the thing through.

One person down in Florida told me that this boom—the words he used were: "This boom is filled with people trying to swing a $5 million deal on $5,000.

I think that is the story illustrated.

Senator KEATING. It certainly poses a very serious problem. We are very grateful to you for coming here to help us from your extensive investigation.

Mr. CARO. Thank you for taking interest.

Senator KEATING. We will try to devise something to meet this problem. It makes your heart ache to think that people who have been working on their land and spending money in the last years, when they face their retirement, see that it is all gone.

Mr. CARO. That is right.

Senator WILLIAMS. In your studies, did you go back and compare this current boom with the land booms of the 1920's in Florida?

Mr. CARO. When I say "compare," I interviewed people in Florida about it. They found some differences and many similarities. This isn't a subject I went into too deeply. The differences are that in that boom they were using paper there. They were discounting freely and using the paper, the contracts, to try to build up paper empires. Here, in the present boom, the land actually exists, although it may be under 3 feet of water. They are dealing more in properties than in paper. But the similarities far outweigh the differences. It bears the same vast sales to far more people than could possibly move down there over a decade or two decades, or half century. The same thing that happened in that boom—well, that was touched off by the depression. People tried to cash in their paper, found out it was worth far less than they had paid for it, and the prices plummeted. Some people felt—and I am not an expert on this—that, if there was a recession, a tightening of the economy, precisely the same thing would happen. People with sales contracts would attempt to dispose of them, needing the cash. They would then find out that they were worth the original price of the land, which might be $20 an acre instead of $2,000. The prices would then plummet in that fashion.

Senator WILLIAMS. That is most helpful. Thank you very much.

Mr. CARO. Thank you.

Senator WILLIAMS. We will next hear from Edward Alfieri, Office of the Chief Counsel, New York Secretary of State.

STATEMENT OF EDWARD ALFIERI, OFFICE OF F. WILLIAM GUMA, THE CHIEF COUNSEL, NEW YORK SECRETARY OF STATE

Senator KEATING. We wish to welcome you, Mr. Alfieri. The secretary of state is an old and very dear friend of mine. I know he is very much interested in this problem. I hope you will convey my best regards to him.

Mr. ALFIERI. I will be most pleased to.

Senator Williams, our own distinguished and lovable Senator Keating from my home State of New York, I am privileged to appear before this committee on behalf of our dedicated public servant, the Honorable John P. Lomenzo, secretary of the State of New York. As secretary of state of New York, Mr. Lomenzo has jurisdiction over the sale of subdivided lands located both within the State of New York and those outside the State of New York. The New York law is a full-disclosure law. It has been in effect since 1936, and has been amended in the subsequent years. The law, as amended on July 1, 1963, has effectively curtailed the operations of the submarginal and undesirable-subdivided-land operator, who sought to bilk the residents of the State of New York.

I would like to take a moment, Senator, to explain to you briefly how the New York law now operates.

No land, no vacant land, that is, can be sold to a resident of the State of New York on the installment plan or any other plan unless and until that subdivider has filed with the office of the secretary of state, John P. Lomenzo, the required documentation. That documentation consists of, first, a very detailed questionnaire which we refer to as a verified statement. It must be supported by documentation such as title reports, mortgages, deeds, the type of contract they ask the prospective purchaser to sign. It must disclose all the covenants and restrictions that affect that land. But we go even further than that. We then say to the subdivider "You must prepare and submit to this department an offering statement."

That offering statement is a detailed, factual report of what the land is and what is being offered.

Senator KEATING. Is that statement what he must use in offering the land for sale?

Mr. ALFIERI. That statement, Senator, is something that he must give and make available to every person to whom he makes an offer of this land.

The statement is not prepared by him independently, in the sense that he has to prepare a document and then disseminate it publicly.

That statment is submitted to us, as I said previously. Then we examine all the documentation to see that everything is in proper order. We then have a physical inspection of the land at the expense of the subdivider, and no land can be sold to a resident of the State of New York unless and until we have seen it and we know what is there, and the truth and the actual facts are reported in that offering statement.

We go even further than that. The law was amended in 1963 and it said this:

"You, Mr. Subdivider, if you are going to advertise the land which the New York Department of State has now cleared for sale, must submit to the secretary of state's office all your advertising."

We have written regulations setting up advertising standards which are in a negative sense, telling him what he cannot say.

Among the things that he cannot say are how many minutes away because minutes away to a man in Arizona may mean 60 miles, but to the man walking in the streets of the city of New York minutes away means 2 blocks, so this would be deceptive and misleading while it may not have been intended to be defrauding.

Senator, as you know, the evolution of legislation is this: It is privilege, it is abuse, and then the necessity for control or legislation. We in the secretary of state's office, under the supervision of Judge Lomenzo, have just passed a new regulation because we have sensed that there was possibly a growing abuse. There are certain subdividers who employ a party, sales gathering, or buffet supper, as a method of engineering and fostering sales for their subdivision.

We have been advised that the offering statement which is required and mandated by the New York law was not being made available, readily available, as the legislature intended.

It was for that and other reasons that we have promulgated this new regulation.

I wanted to make it available to this committee, with copies of our law and all the other regulations, it now requires that the subdivider notify us at least 7 days before the event where the party is going to be held and the name of the real estate broker. That would be the name of the real estate broker who will be in charge of the party.

Judge Lomenzo's office has the jurisdiction not only over land sales but the licensing functions of real estate brokers and salesmen. So we can take further corrective action, if necessary, against the broker who represents the subdivider.

It is the opinion of the secretary of state that the jurisdiction over the sale of subdivided lands should remain with the State. We are now possessed of an effective law. It is doing the job it was intended to do. It is a good law and it is effective because we get the cooperation of the newspapers, periodicals, TV and radio. I, myself, am in charge of this unit, and I receive telephone calls daily from all the New York newspapers, the TV stations and the radio stations. They ask of me and members of the staff whether or not a particular subdivider has been cleared by the secretary of state's office for advertising. If the advertising is cleared, then it must carry a legend which notifies the reader that there is available to him a copy of that offering statement.

Senator KEATING. In other words, they don't accept the advertising until they have assurance from you that this particular advertising has been cleared.

Mr. ALFIERI. That is correct. What we do to control this, Senator Keating, is to give a basic advertising number to each subdivider who has been accepted for filing, as we determine it, with our department. Each item of advertising that is then sent to us is given a subnumber.

For instance, NYA–100 would be the basic number. The first piece

of advertising that we would clear would carry subnumber 1. So it would be NYA–100–1. When the advertising industry sees that number on the ad, then they know that it has been accepted for filing.

Senator WILLIAMS. Does this apply to out-of-State?

Mr. ALFIERI. It applies to out-of-State as well as in-State, Senator Williams. New York State is an investor State.

Senator WILLIAMS. How long have you had this regulation?

Mr. ALFIERI. The law was amended in 1963 requiring the filing of not only the offering statement, in addition to the prior verified statements, but also the advertising.

Senator WILLIAMS. Were you here this morning?

Mr. ALFIERI. Yes, I was.

Senator WILLIAMS. This is similar to the law of California?

Mr. ALFIERI. Yes, ours is similar to the California and can be distinguished, I think, in this area.

California, I believe, on September 20, 1963, brought into its law the fair, just, and equitable standard.

Senator WILLIAMS. You don't have that?

Mr. ALFIERI. We do not at this time.

I will say this. I heard the testimony of Mr. Sewalk. I can only guess that I know the subdivider of whom he speaks. If it be the same one, Senator Keating, I can tell you that we in New York did get an indictment against the subdivider. Attorney General Lefkowitz moved quickly when we asked him to, and we did get the indictments.

How did he get to buy this land? The now defunct newspaper that carried the ad did not cooperate with us, and that is why this ad was carried, time and time again.

That land was never cleared in the State of New York. It could never possibly meet the standards of the State of New York. If they tried to do it today, they would be guilty of a felony, which it now is under our present statute.

Senator KEATING. This indictment pending against them I believe is in Arizona.

Mr. ALFIERI. Yes, it is. And, Senator Keating, I myself went down to Albuquerque, N. Mex., after working approximately a year and a half with the postal authorities against the subdivider who was brought to trial in Albuquerque, N. Mex., so we in Judge Lomenzo's office cooperate not only with industry who wants to bring good lands into the State of New York, but we have been working very closely with the postal authorities. I will say this in behalf of the Secretary, that we believe that in the area of postal laws there would be need for legislation, because you have here State law whose jurisdiction must, of necessity, stop at its State border.

Senator KEATING. So that you do recognize the need for Federal legislation?

Mr. ALFIERI. Federal legislation in that area of the Post Office, going through the mails, which we cannot control. But basically, on the control of subdivided lands as we have it now we believe should remain with the State.

Senator WILLIAMS. You recommend tightening of the law? Under present law there are 16 indictments now pending.

Mr. ALFIERI. Yes.

Senator KEATING. Do you mean under Federal law?

Mr. ALFIERI. Yes, the Federal law as pertains to the postal regulations.

Senator WILLIAMS. I believe, though, that under the mail fraud statutes the quantity of proof is heavy. This fraud doesn't go to the slippery misrepresentation, I don't believe.

Mr. ALFIERI. Senator Keating, we also have been working very closely with the other States that have subdivided lands.

For instance, when I get a request from a Florida developer, I will get in touch with the new Installment Land Sales Board and ask for reports from them. They, in turn, have asked of me what subdividers have been cleared in the State of New York. So the closer cooperation that we get between the States the better land laws we will have.

Senator KEATING. Under the 1963 amendments to the real property law in New York, are there criminal penalties for certain acts?

Mr. ALFIERI. Yes. It is a felony to offer to sell land to a resident of the State of New York unless it has been accepted for filing by the Secretary of State's office.

Senator KEATING. Have there been prosecutions under that?

Mr. ALFIERI. We haven't had any yet.

Senator KEATING. In other words, so far as you know, there has been a compliance with that law since it was enacted?

Mr. ALFIERI. I would say yes, Senator. The nature of the complaint that we are getting now generally falls in the category of the technical violation of the law.

For instance, a subdivider may be accused of not giving a copy of the offering statement to the purchaser before he executed the contract. And I have been successful in getting moneys back for those who, shall I say, are disenchanted, dissatisfied, or felt that they were misrepresented.

Senator KEATING. I think that is all.

Senator WILLIAMS. That is all I have.

Senator KEATING. Thank you very much.

Mr. ALFIERI. It has been a pleasure to appear.

I should like to leave with you a copy of our New York statute, and I would like to make available to this committee all the offering statements that we have on file.

Senator WILLIAMS. I wish you would.

Mr. ALFIERI. I am sure they will be of assistance to you.

Senator WILLIAMS. Thank you very much.

We will recess at this time until tomorrow. We will reconvene at 9:15 tomorrow morning.

In addition to the land fraud question, we will be hearing from Mr. Dan Bell again, and also from Special Attorney General Richard N. Carpenter of the State of New Mexico, who will discuss mail order preneed burial insurance.

We will now be in recess.

(Whereupon, at 4:33 p.m. the committee was recessed, to be reconvened at 9:15 a.m. Tuesday, May 19, 1964.)

(The materials referred to in the preceding testimony follow:)

[From the Phoenix Gazette, May 20, 1964]

FOUR INDICTED HERE IN 'FREE' LAND DEAL

Four men who are part- or full-time residents here were indicted today by the U.S. district court grand jury on mail fraud charges, involving a Phoenix-based "free homesite" land promotion.

Indicted were: Jacob Walz, 60, and Robert Walz, 30, of Southwestern Warehouse Co. in Arizona; Lide J. Peduzi, 3449 E. Turney of Western States Mailing Lists, Inc., 5133 N. Central; and Roger Engler.

The indictments charge that congratulatory letters were mailed from Phoenix offices of Western States, telling people who registered in Midwestern supermarkets that they had drawn a "free homesite" in the Round Valley subdivision.

Most of those who registered in the drawings received the congratulatory letters, and several hundred persons in Minnesota, North Dakota and South Dakota completed the deal, according to the indictment.

With the congratulatory letter the "winners" were told that because of closing costs required under Utah law, it would be necessary to send $29 to the Tri-State Title & Escrow Co., incorporated at Kanab, Caine County, Utah, the county in which the land was located.

This firm, it has been learned, was a one-man operation, where deeds for the "homesites" were prepared and forwarded to the winners, with notice that they would be required to send $2 with the deed for recording.

The land promotion would have brought $118,320 to the promoters had all sites been taken before the operation closed down, it was reported.

The sites had no utilities, no roads or streets and were in a remote area of Utah, about 60 miles northwest of Glen Canyon in Arizona, where the land surface was cut by 10-to-15-foot-deep arroyos, said Martin I. Dworkis, postal inspector of Phoenix, who investigated the land.

Other addresses of those indicted were Jacob Walz, Tracy, Minn., Robert M. Walz, Pipestone, Minn., and Roger Engler, Sioux Falls, S. Dak. The two Walz men and Peduzi have been in Phoenix on other land investment matters. Engler at the time of the land promotion, April to November 1962, was a flour salesman in the middle western territory, calling on supermarkets where the "free land" drawings were set up in supermarkets, the district attorney's office said.

In separate cases, Phoenicians, Ted Carter, wholesale meat dealer, and Harold Schoenber, produce grower and shipper, were indicted on income tax charges.

NATIONAL BETTER BUSINESS BUREAU, INC.,
New York, N.Y., December 13, 1963.

ED ALFIERI, Esq.,
Department of State,
State of New York,
New York, N.Y.

DEAR ED: As I mentioned to you by telephone, I attended the meeting convened by the Association of Better Business Bureaus with the real estate industry, held in Phoenix, December 6.

During this meeting, I had an opportunity to discuss a number of matters both before and after the formal proceedings, with various major developing firms.

You may be interested to learn that several remarks were made expressing satisfaction with the new real estate law in New York and its administration.

One firm's principal observed that he had been able to work quickly and smoothly with the department of state in connection with advertising copy and language of the offering statement. Another official commented that their sales had actually increased after prospects had seen the considerable detail in New York's offering statement and felt that it was to the developer's advantage, therefor, to supply such details. This official pointed out that the information in the offering statement seemed to reassure prospects that they were dealing with a reliable firm of adequate capitalization, etc.

Contrasts were drawn between New York's offering statements and those issued by other States, and New York was praised for insisting on full details rather than selecting highlights as certain States do.

We thought you might be interested in these reactions and observations.

Cordially yours,

BOB HOFFMAN, *Vice President.*

COLONIAL OFFICE, THE CHURCH HOUSE,
March 12, 1964.

MR. EDWARD V. ALFIERI,
State of New York,
Department of State,
New York, N.Y.

DEAR MR. ALFIERI: Mr. Lawrence Hunt has very kindly sent me a copy of your letter to him of March 3 and other material, about the operation of New York State's subdivided land law. I have been studying this with great interest and the material will be most useful to me.

In recent months I have been most impressed by the effect of your New York State legislation on real estate development in the West Indies. It has been in every way most salutary. What has happened all too often in the past is that real estate developers from Canada, the United States, and Britain have acquired pieces of land in our territories in the West Indies and have then proceeded to advertise building lots. Their advertisements generally promised the installation of certain basic amenities in the way of roads, electricity, and water supplies. All too often, however, no effective steps were taken to provide such amenities. Meantime, the so-called developers collected deposits from prospective customers, generally at a time when such customers were not able to come and inspect the sites for themselves. Later, when they were able to come to see the sites, they were put off by the lack of basic development and frequently backed out of the deal on the spot, leaving the developers with the deposit. The result was that such developers had a steady source of revenue. Not only were potential customers losing on the deal and being put off from venturing into the West Indies, but also the territories concerned were not benefiting in any way.

In every case, however, when such developers came to advertise in the State of New York or in some State which had similar legislation, a rapid transformation took place. The necessary works to bring the amenities of the site up to the standard advertised were quickly undertaken, and genuine improvements began to take place with a consequent real benefit to the inhabitants of the territories concerned as well as to prospective customers. In fact, it is no exaggeration to say that by your legislation you are providing underdeveloped areas in the West Indies with a most useful form of foreign aid at no expense to Uncle Sam. We are most grateful, and hope you will continue the good work.

Yours sincerely,

DOUGLAS WILLIAMS.

I, John P. Lomenzo, secretary of state of the State of New York, pursuant to the provisions of section 339–a of article 9–A of the real property law and section 91 of the executive law, do hereby amend section 135.13 of title 19 of the Official Compilation of Codes, Rules, and Regulations by adding to section 135.13 a new subdivision (c), to read as follows:

"(c) No subdivider shall sell, lease, or offer for sale or lease subdivided lands to the public within this State at a sales meeting, reception, party, or gathering whether such sale, lease, or offer is made as principal, broker, or agent or otherwise, unless such subdivider shall first file a notice in the Department of State at least seven days prior to the date set for said meeting, reception, party, or gathering containing:

"(1) the name of the subdivision and the location of the land to be offered by section, lot, and block number;

"(2) the name and business address of the owner and subdivider;

"(3) the name and location of the establishment or place where the sales meeting, reception, party, or gathering is to be held, including the date and the time thereof and room number or name of room;

"(4) the name and the office address of the licensed representative real estate broker;

"(5) the names of all personnel participating in the event and statement that such personnel participating in the even are licensed as required by article 12–A of the Real Property Law;

"(6) a statement that the subdivider is aware that such meeting, reception, party, or gathering constitutes an offer of sale or lease within the meaning of article 9–A of the Real Property Law and that copies of the offering statement on file with the Department of State will be publicly displayed and given to each person in attendance.

"(7) the Department of State must be notified in writing of any adjourned date of the meeting, reception, party, or gathering;

"(8) the notice required by this section must be accompanied with letters, circulars, notices, or advertisements which are used to call and advertise the meeting and indicate in what papers such ads appeared or will appear."

I, John P. Lomenzo, secretary of state of the State of New York, certify that the foregoing rule and regulation pertaining to article 9–A of the real property law is tne original thereof and promulgated by me on the 12th day of May 1964, pursuant to the authority vested in me by the provisions of section 339–a of article 9–A of the real property law.

JOHN P. LOMENZO, *Secretary of State.*

Dated: May 12, 1964.

CHECKLIST FOR REPORT OF PHYSICAL INSPECTION OF SUBDIVISION AND RECOMMENDATION PURSUANT TO ART. 9A REAL PROPERTY LAW AND RULES AND REGULATIONS ADOPTED THEREUNDER

NAME OF SUBDIVISION | FILE No.

DATE INSPECTION BEGAN | DATE COMPLETED

OWNER OF SUBDIVISION | SUBDIVIDER

NAME OF PERSON OR PERSONS PRESENT DURING INSPECTION | RELATIONSHIP (STATUS) TO SUBDIVIDER OR OWNER

A. LOCATION

1. AIR MILES FROM N.Y.C.	2. STREET	3. ROAD	4. HIGHWAY

5. TOWN	6. COUNTY	7. CITY	8. STATE	9. COUNTRY

10. a. NEAREST RAILROAD STATION	b. LINE	c. DISTANCE FROM STATION
11. a. NEAREST BUS STATION	b. LINE	c. DISTANCE FROM STATION
12. a. NEAREST COMMERCIAL AIRPORT	b. LINE(S)	c. DISTANCE FROM AIRPORT

13. a. NEAREST PUBLIC HIGHWAY — HWY NO. — NAME — DISTANCE FROM DEVELOPMENT | b. TYPE AND WIDTH OF ACCESS ROAD FROM HIGHWAY

14 METHOD OF TRAVEL TO SUBDIVISION USED BY INSPECTOR. (GIVE FULL DETAILS)

15. DISTANCE TO NEAREST POPULATED AREA FROM PROPERTY

	NAME	SIZE	DISTANCE
NORTH			
SOUTH			
EAST			
WEST			

16. IS ONE SIDE OF EACH LOT IN SUBDIVISION CONTIGUOUS TO A STREET OR AVENUE AFFORDING INGRESS OR EGRESS TO AND FROM THE STREETS AND/OR AVENUES IN THE SUBDIVISION. ☐ YES ☐ NO IF NOT, SPECIFY LOCATION OF EACH LOT NOT SO SITUATED

B. INQUIRIES MADE (IN EACH INSTANCE GIVE NAME AND TITLE OF PERSON INTERVIEWED)

1. CHAMBER OF COMMERCE (IF AVAILABLE)

2. BANK (IF AVAILABLE)

3. REAL ESTATE COMMISSION OR OTHER SUPERVISORY GOVERNMENTAL AGENCY

4. BETTER BUSINESS BUREAU (IF AVAILABLE)

5. OTHER

CHECKLIST

C. SPECIFIC FEATURES

1. TERRAIN. DRY GENERALLY ☐ YES ☐ NO IF WET, IN SPOTS, INCLUDING SWALES, INDICATE LOCATION SO THAT AREA MAY BE EXCLUDED FROM SALEABILITY (GIVE LOT AND BLOCK AS SHOWN ON FIELD MAP OR PLAT.)

2. SOIL.
ROCKY- ☐ YES ☐ NO; CLAY- ☐ YES ☐ NO; SANDY- ☐ YES ☐ NO; ARABLE- ☐ YES ☐ NO.

3. TOPOGRAPHY
WOODED- ☐ YES ☐ NO; CLEARED- ☐ YES ☐ NO; HILLY- ☐ YES ☐ NO; STEEP- ☐ YES ☐ NO.

4. SEA LEVEL _____ FEET ☐ ABOVE ☐ BELOW.

5. OTHER FEATURES NOTED. _____

6. ROADS.
(a) DOES WIDTH OF ROADS CONFORM TO FILED MAP OR PLAT? ☐ YES ☐ NO.
IF NO, SPECIFY DEVIATIONS. _____
(b) COMPOSITION:
☐ CONCRETE, ☐ ASPHALT, ☐ MARL, ☐ CLAY, ☐ MACADAM, ☐ SHELL.
(c) CONDITION:
☐ ROUGH CUT, ☐ FINISH SURFACE, ☐ PASSABLE, ☐ OVERGROWN.
(d) DRAINAGE:
☐ DITCHES, ☐ CULVERTS, ☐ STORM SEWERS, ☐ CANALS.
DO CANALS, IF ANY CONFORM TO SIZE SHOWN ON FILED MAP OR PLAT? ☐ YES ☐ NO.
(e) MAINTENANCE:
☐ SUBDIVIDER, ☐ GOV'T AGENCY
DO SPECIFICATIONS MEET AGENCY'S REQUIREMENTS? ☐ YES ☐ NO. IF NO, SPECIFY DIFFERENCE.

7. UTILITIES:
☐ GAS; ☐ PIPED; ☐ BOTTLED; ☐ ELECTRICITY: ☐ AC ☐ DC; ☐ TELEPHONE.

8. WATER
COMMUNITY SUPPLY (AVERAGE EST. PRESSURE _____ LBS.); ☐ TREATED
SOURCE: ☐ STREAM; ☐ LAKE; ☐ RESERVOIR (CAPACITY _____ GAL); ☐ WELLS
INDIVIDUAL WELLS; ☐ DUG; ☐ DRIVEN; ☐ TESTED BY LOCAL HEALTH AUTHORITY.
IS WATER SUPPLY PROTECTED FROM SEWAGE DISPOSAL? ☐ YES ☐ NO

9. SEWAGE DISPOSAL:
☐ COMMUNITY ☐ SEPTIC TANKS ☐ CESSPOOLS
DOES SEWAGE DISPOSAL SYSTEM COMPLY WITH LOCAL LAWS? ☐ YES ☐ NO.

IF ANSWERS TO 8 OR 9 ARE NO,
SPECIFY DIFFERENCES.

D. AREA FACILITIES

1. FIRE PROTECTION
ORGANIZED DEPARTMENT ☐ YES ☐ NO; HYDRANTS ☐ YES ☐ NO. DISTANCE FROM FIREHOUSE TO CENTER OF DEVELOPMENT _____
2. HOSPITAL ☐ YES ☐ NO AMBULANCE ☐ YES ☐ NO
IF YES, NUMBER OF BEDS _____, DISTANCE FROM CENTER OF DEVELOPMENT. _____
3. SCHOOLS
A. ELEMENTARY; ☐ PUBLIC; DISTANCE FROM CENTER OF DEVELOPMENT. _____
OTHER, STATE TYPE AND SPONSORING AGENCY. _____
B. SECONDARY; ☐ PUBLIC; DISTANCE FROM CENTER OF DEVELOPMENT. _____
OTHER, STATE TYPE AND SPONSORING AGENCY. _____
TRANSPORTATION TO SCHOOL ☐ YES ☐ NO, TYPE _____ COST _____
4. SHOPPING AREA ☐ YES ☐ NO, TYPE _____ DISTANCE FROM DEVELOPMENT _____

CHECKLIST

E. RECREATIONAL AND COMMUNITY FACILITIES. (SEE QUESTIONNAIRE, CONTRACT AND ADVERTISING FOR FACILITIES PROMISED)

1. SWIMMING: ☐ YES ☐ NO

☐ RIVER ☐ LAKE ☐ STREAM ☐ OCEAN ☐ POOL ☐ BEACH ☐ DOCK ☐ PIER

IF SWIMMING, POOL SIZE _____ DISTANCE FROM CENTER OF SUBDIVISION _____ CHARGES _____

LOCKERS: ☐ YES ☐ NO LIFEGUARD: ☐ YES ☐ NO DUTY SCHEDULE _____

2. BOATING

☐ MARINA ☐ CONFORMS TO PAPERS FILED

☐ BOATING FACILITIES ☐ CONFORMS TO PAPERS FILED

REMARKS:

3. GOLF COURSE IN SUBDIVISION: ☐ YES ☐ NO NUMBER OF HOLES _____ CHARGES FOR USE _____

REMARKS:

4. PARK IN SUBDIVISION: ☐ YES ☐ NO SIZE _____ PLAYGROUND FOR CHILDREN IN SUBDIVISION: ☐ YES ☐ NO

REMARKS:

5. COMMUNITY HOUSE IN SUBDIVISION: ☐ YES ☐ NO TITLE TO COMMUNITY HOUSE _____

6. OTHER RECREATION OR COMMUNITY FACILITIES IN SUBDIVISION (DESCRIBE FULLY)

7. PUBLIC RECREATIONAL FACILITIES OUTSIDE SUBDIVISION AVAILABLE TO PURCHASERS. SPECIFY TYPE, DISTANCE FROM SUBDIVISION AND CHARGES, IF ANY, MADE FOR USE.

TRANSPORTATION TO FACILITIES _____

F. IMPROVEMENTS IN SUBDIVISION AND VICINITY

1. HOW MANY HOMES ARE COMPLETED IN SUBDIVISION _____ NUMBER OCCUPIED _____

2. ARE THERE OCCUPIED HOMES NEAR SUBDIVISION? ☐ YES ☐ NO DISTANCE _____

3. FACILITIES IN VICINITY ☐ WATER SUPPLY TYPE _____

☐ SEWAGE DISPOSAL TYPE _____ OTHER _____

G. GENERAL OBSERVATIONS AS TO ENTIRE SUBDIVISION

THE UNDERSIGNED DOES HEREBY RECOMMEND THAT THE SAID INSPECTION BE DEEMED FAVORABLE / UNFAVORABLE.

DATE _____ SIGNATURE _____ TITLE _____

RECEIVED LICENSE DIVISION
Date.....
Fee Paid.....
Received by.....
Inspected___Date.....
By.....

STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF LICENSES
270 Broadway
New York City, N.Y.

QUESTIONNAIRE ON RESIDENTIAL AND BUSINESS SUBDIVIDED VACANT LANDS TO BE SOLD IN NEW YORK STATE

This request for information is essential to the Division in making its investigation of your subdivision project. You are requested to furnish promptly and completely all the following information.

If there is not sufficient room in the blank spaces for your answers, write them on a separate sheet under headings and numbers corresponding to those of the questionnaire.

IT IS UNLAWFUL FOR THE SUBDIVIDER TO PROCEED WITH ANY SALE PRIOR TO OFFICIAL NOTIFICATION BY THE DEPARTMENT OF STATE THAT THIS QUESTIONNAIRE HAS BEEN ACCEPTED AND REPORT THEREON FILED.

THIS QUESTIONNAIRE MUST CONTAIN COMPLETE ANSWERS AND INFORMATION REQUESTED HEREIN. FAILURE TO SUPPLY SAME WILL DELAY THE PROCESSING OF QUESTIONNAIRE.

THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THE QUESTIONNAIRE AND MUST COMPLY WITH THE REQUIREMENTS SET FORTH IN ARTICLE 9A, REAL PROPERTY LAW OF THE STATE OF NEW YORK, AND IN THE RULES AND REGULATIONS ADOPTED THEREUNDER.

1. Recent certified certificate of Title or Policy of Title Insurance.
2. Certified copy of mortgages and/or Trust Deeds.
3. Certified Offset Statement and Release Clause from Owners of Mortgages and/or Trust Deeds.
4. Copy of Agency Contracts.
5. Copies of Preliminary and Final Contract of Sale or Lease, and Deed to be used to convey property to purchaser.
6. Copy of Conditions, Reservations and Restrictions which run with the land.
7. Certified Copy of Map of Development.
8. Name and location of bank where trust funds will be deposited subject to provisions of Section 338, sub-division 4.
9. Attach all literature which you intend to distribute to promote sales.
10. Attach price List.
11. If the subdivided lands offered for sale or lease or any plan of sale or lease are located outside of the State of New York, a certified check in the sum of $50.00 payable to the Department of State should accompany this questionnaire.
12. Certificate of engineer or surveyor as to height of water table and soil analysis, and the effect of said conditions on the intended method of sewage disposal. (If unsatisfactory, a certificate from the local health authority may be required.)

SECTION 337. Definitions. As used in this article:

1. The words "subdivided lands" and "subdivision" mean vacant land or lands sold or leased on the installment plan or offered for sale or lease on such plan and ALSO VACANT LAND OR LANDS SITUATED OUTSIDE THE STATE OF NEW YORK AND SOLD OR LEASED OR OFFERED FOR SALE OR LEASE ON THE INSTALLMENT PLAN OR UPON ANY AND ALL OTHER PLANS, TERMS AND CONDITIONS OF SALE OR LEASE.

2. The word "subdivider" shall include every person, partnership, corporation, company or association who or which engages directly or through an agent in the business of selling, leasing or offering for sale or lease subdivided lands and subdivisions to the public in this state.

3. The words "installment plan" mean any plan, arrangement or agreement pursuant to the terms, covenants and conditions whereof the proposed purchaser of vacant land or lands to be acquired amortizes the purchase price by periodic payments and whereby the conveyance of title to the purchaser of such land or lands is deferred until such time as all said periodic payments have been made and shall also include the provision in a plan, arrangement or agreement or lease requiring a consideration from the lessee in addition to the periodic payments as a condition precedent to the conveyance of title to the lessee.

4. The words "a lease of land or lands on the installment plan" mean and include a plan, arrangement or agreement whereunder the periodic payments made are designated as rent and upon the completion of such payments the lessee is entitled to a conveyance of title to the vacant land or lands leased.

STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF LICENSES

Date _____

SUBMITTED BY _____

1. NAME OF SUBDIVISION (As Appears on Plat or Plats)

_____

2. NAME OF OWNER _____

3. (a) Name of person, partnership, company or corporation who will subdivide vacant lands for the purpose of offering such lands to the public.

Individual _____

Partnership _____

Company _____

Corporation _____ State of _____

(b) Subdivider's principal office _____

Branch office _____

4. (a) STATE WHETHER OWNERSHIP LEGAL OR EQUITABLE _____

(b) If equitable, give full details _____

5. (a) State name and location of any subdivision with which subdivider herein has been connected within the past five years, and in what capacity. If subdivider is a partnership or corporation, include such experience by any partner, officer and director, and name of such person.

NAME OF SUBDIVISION	LOCATION	CAPACITY	BY WHOM

(b) State name, business and residence address of individual subdivider, and also title of each partner, if a partnership, and of each officer and director, if a corporation:

NAME	RESIDENCE	BUSINESS ADDRESS	TITLE

6. (a) Give following information for any other person, not heretofore listed, who will share as a principal in the profits of this venture, including stockholders owning 10% or more of the capital stock of a corporate subdivider:

NAME	RESIDENCE	BUSINESS ADDRESS	RELATIONSHIP

(b) With respect to any person listed under 6 (a), state name and location of any subdivision with which he has been connected within the past five years, and in what capacity:

NAME OF SUBDIVISION	LOCATION	CAPACITY	BY WHOM

7. (a) Has the aforementioned owner and subdivider, either as individual or as a partner, principal officer, director, branch manager of such partnership, company or corporation ever been convicted in any state or country of any criminal offense in connection with any transaction involving the sale or offer for sale of subdivided lands?____ or for any criminal offense whatsoever?_____If so, give full details.

(b) Has the aforementioned owner and subdivider, either as an individual, or any partner, principal officer, director, branch manager of such partnership, company or corporation, been enjoined or restrained by order of any court of competent jurisdiction from selling or offering for sale or lease subdivided vacant lands in any state or country? _____If so, give full details._____

(c) Has the aforementioned owner and subdivider, either as an individual, or a partner, principal officer, director, branch manager of such partnership or corporation, had his or her real estate broker's or salesman's license denied, revoked, suspended or cancelled in any state, or country for any misconduct in any real estate transaction?

(d) Has the aforementioned owner and subdivider, either as an individual, or a partnership, principal officer, director, branch manager of such partnership or corporation been complained of to any department, bureau, board, prosecuting officer, criminal court of any other governmental or regulatory body or officer? _____If so, give full details.

8. LOCATION (Legal description or the complete identifying information appearing on plat or plats submitted herewith):

_____

_____

_____

City or Town_____County_____State_____

Map No. or Nos._____

Distance from New York City_____miles.

Bounded on North by (Largest Town, City or Village)_____

Bounded on South by (Largest Town, City or Village)_____

Bounded on East by (Largest Town, City or Village)_____

Bounded on West by (Largest Town, City or Village)_____

If located outside New York City, nearest city or town_____

How many acres?_____How many lots?_____

Size of smallest lot_____Size of largest plot_____

Are you aware that you may not sell or offer to sell an undivided interest in any platted lot, plot or site?_____

TOPOGRAPHY

Wooded?_____Cleared land?_____Hilly?_____

Below grade?_____Swampy?_____

State any unusual conditions if any_____

Name and address of Surveyor_____

Licensed_____Date when survey completed_____

Date when map was made_____

Is map certified by surveyor?_____

Is map recorded?_____Office_____Date_____

What is the height of the water table of this subdivision?_____

Will the height of the water table in any way interfere with proper functioning or operation of the sewage disposal method. (Proposed or intended)

_____

9. (a) Is title search submitted certified by a title company or by an attorney?

_____

(b) Give name and address of either_____

(c) Does the title search reflect any liens, encumbrances and clouds upon the title of such land?_____

10. (a) RECORD TITLE HOLDERS:

1. Name_____Address_____
2. Name_____Address_____
3. Name_____Address_____

(b) CONDITION OF TITLE

Are there any mortgages, trust deeds, liens, leases or other encumbrances against this property?_____

If so, list below:

FIRST MORTGAGE:

Name of Mortgagee_____Address_____

Total amount $_____Balance due $_____Matures_____

Amortizations$_____When and how payable_____

Interest rate_____When and how payable_____

Release clauses_____

_____

Is mortgage and interest obligation paid to date?_____

If in default, explain_____

SUBSEQUENT ENCUMBRANCES (Describe fully):

_____

_____

_____

_____

_____

_____

_____

(If space is not sufficient, attach rider)

TAXES AND ASSESSMENTS

11. (a) TAXES:

Amount of taxes on total acreage_____County_____

School_____Village_____

Estimated amount of taxes per lot_____

County_____School_____Village_____

Are current taxes paid?_____Amount $_____

Any taxes past due?_____Amount $_____Years?

Is tax based on acreage or lot?_____

When and how is tax payable?_____

Who is to pay taxes during life of installment contract?
(Owner?_____
(Purchaser?_____
(_____

Does contract provide as to who shall pay taxes?_____

If taxes are payable by purchaser to owner and/or subdivider, are you aware that subdivider must establish a separate trust account for the payment of the taxes to the municipality or other taxing authority?_____

If taxes are so payable, state name and address where such trust account will be established_____

_____

(b) ASSESSMENTS:

Amount of assessment on total acreage $_____ County _____

School_____ Village_____

Estimated amount of assessments per lot $_____

County_____ School_____ Village_____

Are current assessments paid?_____ Amount? $_____

Any assessments past due?_____ Amount? $_____

Year_____ Is Assessment based on acreage or lot?_____

When and how is assessment payable?_____

When is next assessment due? _____

Who is to pay assessment during life of installment contract. (Owner?_____
(
(Purchaser? _____
(
(_____

12. (a) SALES AGENTS:

Name_____ Licensed Real Estate Broker No._____

Address_____

(If individual, corporation or partnership or association, give names and addresses of all persons connected with the sales direction.)

If Corporation State Inc._____ Date_____

1._____

2._____

3._____

Branch office, if any _____

(b) State all provisions, covenants, terms and conditions upon which it is the intention of the owner and/or subdivider to sell or lease such subdivided lands, to be made part of contract and deed attached hereto.

_____

_____

_____

_____

_____

(c) METHOD OF SALES PROMOTION:

Radio?_____ Free lot?_____

Newspaper?_____ Undivided interests?_____

Canvas?_____ Resale promises?_____

Speculation?_____ Investment?_____

Do you intend to enter into a home building project on this development?_____

If so, give details as to type, price, terms of sale, etc. of homes

_____

_____

(d) Will the lands be offered for sale or lease?_____

(e) TERMS AND CONDITIONS OF SALE:

Down payments $_____ or _____ %

Monthly payments $_____ or _____ %

Is interest included in payments?_____

Interest rate _____ %

13. IMPROVEMENTS OFFERED TO PURCHASERS:

Water supply?_____ Size of mains?_____ Furnished by?_____

Gas supply?_____ Size of mains?_____ Furnished by?_____

Electricity?_____ Size of mains?_____ Furnished by?_____

Sewerage disposal?_____ Size of mains?_____ Disposal methods?

_____ Drainage?_____ Kind?_____

Roads?_____ Kind?_____

Sidewalks?_____ Kind?_____

Curbs and gutters?_____ Kind?_____

Telephone connections?_____

(If the above not installed, what arrangements are contemplated for their installation and how long before work will be started?)

_____

_____

Has owner or subscriber entered into a contract with any contractor or public utility for the installation of any improvements?_____

_____

If so, what improvements, and when are such improvements to be completed?

_____

Has bond for completion of improvements been placed with any governmental authority?_____ Name of authority_____

_____

Do you intend to impost a charge for construction and/or maintenance and preservation of any improvements or community facilities?_____

_____

If so, state name and address of bank where separate trust account will be established and kept for deposit and expenditure of such moneys_____

_____

If so, state type of improvement, location and charge for same:

IMPROVEMENT	LOCATION	CHARGE

Number of homes on development?_____

Kind?_____

Approximate value per home? _____

Schools?_____Distance from development?

_____

Churches?_____Distance from development?

_____

Denominations?_____Banks?_____

Restrictions:

Deed_____

_____

Owner_____

_____

Municipal_____

Have arrangements for water supply and sewage disposal been approved by your State or County Departments of Health?_____

If so, furnish certified copy of such approval_____

_____

Do improvements comply with local Planning Board Requirements? _____

Will improvements conform to local Planning Board Requirements?_____

14. TRUST FUNDS:

(a) Have you established a trust fund for the purpose of liquidating releases and unpaid taxes at time of conveying property sold under installment contracts?

_____

(b) What method do you propose following?_____

_____

_____

15. Are you aware that it is unlawful for the subdivided or his or its agent to change the financial structura of subdivided vacant lands offered for sale or lease, including the selling price of each lot, after submission thereof to the Department of State, without first notifying the Department in writing of such intention?_____

_____

(The following verification must be signed and sworn to by the applicant; if applicant is a partnership, by one of the partners; if a corporation, by the president or vice-president or secretary or treasurer.)

STATE)
) SS:
COUNTY OF)
)

_____being duly sworn, deposes and says that with relation to the within questionnaire of _____ _____I am the _____ _____;
(applicant, partner or title of office)

that the statements herein contained, and the documents attached hereto are true, full and complete, in compliance with the provisions of Article 9-A, Real Property Law of the State of New York.

_____

Subscribed and sworn to before me
this_____day of _____19____

_____
Notary Public

(Where above verification is made outside of the State of New York, the authority of the notary public or other public officer administering the oath of such verification shall be established by a certificate of authentication subjoined to the verification, which certificate shall be issued by an official having authority to authenticate the act of the notary public or other public officer).

FAILURE TO ANSWER TRUTHFULLY ANY OR ALL OF THE ABOVE QUESTIONS IS A MISDEMEANOR PUNISHABLE BY A FINE OF $1,000., OR ONE YEAR IN JAIL, OR BOTH, AND WILL BE PROSECUTED AS SUCH.

IRREVOCABLE CONSENT

(NON-RESIDENT INDIVIDUAL OR PARTNERSHIP)

STATE OF)
) SS:
COUNTY OF)

DESIGNATION BY _____
(Name of Individual or Partnership)

I (WE) _____

trading and operating under the firm name and style of _____

_____ with principal office at _____

_____ hereby designate the Secretary of State of the State of New York, as the person upon whom may be served any subpoena, subpoena duces tecum or other process directed to said _____

_____

and issued in any investigation, examination, action or proceeding pending or about to be instituted under and pursuant to the provisions of Article 9-A of the Real Property Law of the State of New York.

IN WITNESS WHEREOF, the said _____

has (have) executed this instrument this _____ day of

_____ 19_____.

_____

_____

(SEAL)

STATE OF NEW YORK,

CITY OF)
) SS:
COUNTY OF)

On this _____ day of _____ 19 , personally appeared before me _____

who is (are known to me to be the person (s) named in and who signed the foregoing instrument, and who acknowledged that he (they) signed the same as his (her or their) voluntary act and deed for the uses and purposes therein expressed.

_____
Notary Public

Authority of each notary public or commissioner of deeds, taking an affidavit or acknowledgement should be shown by certificate of authentication from the proper authenticating officer, indicating his authority to act.

IRREVOCABLE CONSENT
(Foreign Corporation)

STATE OF)
) SS:
COUNTY OF)

DESIGNATION BY _____a

_____a corporation

incorporated under the laws of the State of _____

on the ____ day of _____, 19___ with its principal office

at_____hereby designates the Secretary of

State of the State of New York, as the person upon whom may be served any

subpoena, subpoena duces tecum, summons or other process directed to said

_____,

AND ISSUED IN ANY INVESTIGATION, EXAMINATION, ACTION OR PROCEEDING pending or about to be instituted under and pursuant to the provisions of Article 9-A of the Real Property Law of the State of New York.

IN WITNESS WHEREOF, the said corporation has caused the execution hereof in its name this _____day of _____19___.

_____ _____

By _____

(SEAL)

STATE OF)
) SS:
COUNTY OF)

On the _____day of _____19___, before me personally

came_____, to me known, who, being by me duly sworn, did

depose and say that he resides at_____

that he is the _____of _____, the

corporation described in, and which executed the above instrument; that he knows the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

_____
Notary Public

THIS IRREVOCABLE CONSENT IS TO BE SIGNED AND VERIFIED BY THE PRESIDENT, OR A VICE-PRESIDENT, OR THE SECRETARY OR TREASURER OF THE FOREIGN CORPORATION.

Authority of each notary public or commissioner of deeds, taking an affidavit or acknowledgement should be shown by certificate of authentication from the proper authenticating officer, indicating his authority to act.