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Current through the end of the 2004 Regular Session**

[Return](#) to the **Code of Laws** Main Page

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**Title 27 - Property and Conveyances
CHAPTER 29.
UNIFORM LAND SALES PRACTICE ACT**

SECTION 27-29-10. Short title; definitions.

This chapter may be cited as the "Uniform Land Sales Practice Act" and, when used herein, unless the context otherwise requires:

- (1) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit;
- (2) "Offer" includes any inducement, solicitation or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;
- (3) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;
- (4) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;
- (5) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;
- (6) "Subdivision" and "subdivided lands" means any land situated outside the State of South Carolina which is divided or is proposed to be divided for the purpose of disposition into twenty-five or more lots, parcels, units or interests and also includes any

land whether contiguous or not if twenty-five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

SECTION 27-29-20. Administration.

This chapter shall be administered by the South Carolina Real Estate Commission.

SECTION 27-29-30. Exceptions to application of chapter.

(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter do not apply to offers or dispositions of an interest in land:

- (1) by a purchaser of subdivided lands for his own account in a single or isolated transaction;
- (2) if fewer than twenty-five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) on which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;
- (4) to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in the business of construction of buildings for resale;
- (5) pursuant to court order;
- (6) by any government or governmental agency;
- (7) as cemetery lots or interests.

(b) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter do not apply to:

- (1) offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;
- (2) offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
- (3) a subdivision as to which the plan of disposition is to dispose to ten or fewer persons;
- (4) a subdivision as to which the commission has granted an exemption as provided in Section 27-29-100.

SECTION 27-29-40. Prerequisites to disposition of interest in subdivided land.

Unless the subdivided lands or the transaction is exempt by Section 27-29-30:

- (1) No person may in this State offer or dispose of any interest in subdivided lands prior to the time the subdivided lands are registered in accordance with this chapter;
- (2) No person may dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

SECTION 27-29-50. Application for registration of subdivided land.

(a) The application for registration of subdivided lands shall be filed as prescribed by the commission's rules and shall contain the following documents and information:

- (1) an irrevocable appointment of the South Carolina Real Estate Commission or any duly authorized assistant or deputy appointed by the Director of the Department of Labor, Licensing, and Regulation to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
- (2) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, and the dimensions of the lots, parcels, units or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;
- (3) the states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
- (4) the applicant's name, address, and the form, date and jurisdiction of organization, and the address of each of its offices in this State;
- (5) the name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application;
- (6) a statement, in a form acceptable to the commission, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the commission;

- (7) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;
- (8) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;
- (9) if there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (10) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;
- (11) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;
- (12) a statement of the existing provisions for access, sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance;
- (13) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;
- (14) the proposed public offering statement;
- (15) any other information, including any current financial statement, which the commission by its rules requires for the protection of purchasers.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(c) The subdivider shall immediately report any material changes in the information contained in an application for registration.

SECTION 27-29-60. Public offering statement.

(a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided

lands. The proposed public offering statement submitted to the commission shall be in a form prescribed by rules and shall include the following:

- (1) the name and principal address of the subdivider;
- (2) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;
- (3) the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;
- (4) a statement of the use for which the property is offered;
- (5) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;
- (6) additional information required by the commission to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the commission requires it.

(c) The commission may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the commission and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

SECTION 27-29-70. Examination of application for registration.

Upon receipt of an application for registration in proper form, the commission shall forthwith initiate an examination to determine that:

- (1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when

appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the commission in its rules and afford full and fair disclosure;

(4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, the United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;

(5) The public offering statement requirements of this chapter have been satisfied.

SECTION 27-29-80. Order of the commission on application for registration.

(a) Upon receipt of the application for registration in proper form, the commission shall issue a notice of filing to the applicant. Within ninety days from the date of the notice of filing, the commission shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety days from the date of notice of filing, the land is considered registered unless the applicant has consented in writing to a delay.

(b) If the commission affirmatively determines, upon inquiry and examination, that the requirements of Section 27-29-70 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(c) If the commission determines upon inquiry and examination that any of the requirements of Section 27-29-70 have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within fifteen days. If the requirements are not met within the time allowed the commission shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

SECTION 27-29-90. Annual renewal reports.

(a) Within thirty days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a renewal report in the form prescribed by the rules of the commission. The report shall reflect any material changes in information

contained in the original application for registration. The report may, at the option of the commission, be consolidated with the annual renewal report required by Section 27-29-200(c).

(b) The commission at its option may permit the filing of annual renewal reports within thirty days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

SECTION 27-29-100. Public hearings; filing of advertising material; injunctive relief; intervention in certain suits; exemption of certain lots.

(a) The commission shall prescribe reasonable rules after a public hearing with notice of it published once in a newspaper with statewide circulation not less than five days nor more than fifteen days before the hearing and mailed to all subdividers not less than five days nor more than fifteen days before the public hearing. The rules shall include, but not be limited to, provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other rules as are necessary and proper to accomplish the purpose of this chapter.

(b) The commission by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands before its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the commission, with or without prior administrative proceedings may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The commission is not required to post a bond in any court proceedings.

(d) The commission may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the commission notice of the suit and copies of all pleadings.

(e) The commission may:

(1) accept registrations filed in other states or with the federal government;

(2) contract with similar agencies in this State or other jurisdictions to perform investigative functions;

(3) accept grants-in-aid from any source.

(f) The commission shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

(g) The commission may exempt one hundred or fewer lots, parcels, units, or interests in a subdivision from the provisions of this chapter if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

SECTION 27-29-110. Powers of commission as to investigations.

(a) The commission may:

(1) make the necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this chapter, the commission or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the commission may apply to the circuit court for an order compelling compliance.

SECTION 27-29-120. Unlawful practices; cease and desist orders.

(a) If the commission determines after notice and hearing that a person has:

(1) violated any provision of this chapter;

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

(3) made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the commission;

(4) disposed of any subdivided lands which have not been registered with the commission;

(5) violated any lawful order or rule of the commission, it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter.

(b) Whenever the commission has reason to believe that any person is violating or intends to violate any provision of this article, it may, in addition to all other remedies, order such person to immediately cease and desist and refrain from such conduct. The commission may apply to an administrative law judge as provided under Article 5 of Chapter 23 of Title 1 for an injunction restraining the person from such conduct. An administrative law judge may issue a temporary injunction ex parte, and upon notice and full hearing may issue any other order in the matter it deems proper. No bond shall be required of the commission by an administrative law judge as a condition to the issuance of any injunction or order contemplated by the provisions of this section.

SECTION 27-29-130. Revocation of registration.

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(1) failed to comply with the terms of a cease and desist order;

(2) been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

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

(4) failed to faithfully perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;

(5) made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the commission finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

SECTION 27-29-140. Judicial review of orders.

A person who has exhausted all administrative remedies available with the commission and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the commission is entitled to review by an administrative law judge as provided under Article 5 of Chapter 23 of Title 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate commission action or ruling is immediately reviewable if review of the final commission decision would not provide an adequate remedy.

SECTION 27-29-150. Penalties.

It is unlawful for a person to wilfully violate any provision of this chapter or a regulation adopted under it, or to make an untrue statement of a material fact, or omit to state a material fact in an application for registration.

A person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or double the amount of gain from the transaction, whichever is the larger but not more than fifty thousand dollars or imprisoned not more than two years, or both.

SECTION 27-29-160. Remedies of purchaser of subdivided land.

(a) Any person who disposes of subdivided lands in violation of Section 27-29-40, or who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(b) In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit or interest in subdivided lands together with interest at the rate of six percent per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees less the amount of any income received from the subdivided lands upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of six percent per year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under subsection (a), every general partner, officer, or director of a subdivider, every person occupying a

similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

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

(f) A person may not recover under this section in actions commenced more than four years after his first payment of money to the subdivider in the contested transaction.

(g) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or order under it is void.

SECTION 27-29-170. Jurisdiction of circuit court.

Dispositions of subdivided lands are subject to this chapter, and the circuit court of this State has jurisdiction in claims or causes of action arising under this chapter, if:

(1) The subdivider's principal office is located in this State; or

(2) Any offer or disposition of subdivided lands is made in this State, whether or not the offeror or offeree is then present in this State, if the offer originates within this State or is directed by the offeror to a person or place in this State and received by the person or at the place to which it is directed.

SECTION 27-29-180. Extradition.

In the proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

SECTION 27-29-190. Service of process.

(a) In addition to the methods of service provided for in the rules of civil practice service may be made by delivering a copy of the process to the office of the commission, but it is

not effective unless the plaintiff (which may be the commission in a proceeding instituted by it):

(1) forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address, and

(2) the plaintiff's affidavit of compliance with this section if filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) If any person, including any nonresident of this State, engages in conduct prohibited by this chapter or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct authorizes the commission to receive service of process in any noncriminal proceeding against him or his successor which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (a).

SECTION 27-29-200. Fees; land, books and records subject to examination by commission; annual renewal reports.

(a) For the registration of subdivided lands there shall be paid to the commission a registration fee of ten dollars, plus one-tenth of one percent of the maximum aggregate offering price of the registered subdivided lands to be offered in this State up to one hundred thousand dollars, plus one-twentieth of one percent of the amount in excess of one hundred thousand dollars and not exceeding four hundred thousand dollars, plus one-fortieth of one percent of the amount in excess of four hundred thousand dollars; but in no case shall such fee be greater than five hundred dollars for each registration. Provided, however, that the commission may prescribe a maximum amount of subdivided lands to be registered at any one time. If registration is denied or withdrawn before the offering of subdivided lands in this State, the commission shall refund all of the fee in excess of one hundred dollars.

(b) the land and books and records of every person selling or offering for sale subdivided lands subject to the provisions of this chapter are subject to examination by the commission, or such other person as it may designate, and the examinee shall pay a fee for each examiner employed to make such examination of not to exceed twenty-five dollars for each day or fraction of it, plus the actual expenses, including the cost of transportation of the examiner, while he is absent from his office for the purpose of making the examination.

(c) The commission may require any registrant under this chapter to file an annual renewal report containing such reasonable information as it may believe necessary regarding the financial condition of such registrant and the subdivided lands sold in this State by such person. Each renewal report must be accompanied by a renewal filing fee of one hundred dollars.

(d) In order to carry out the provisions of this chapter the commission shall retain such fees and other funds which may come into its possession to defray expenses in the administration of this chapter.

SECTION 27-29-210. Construction.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

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