

## **Opinion No. 63-154**

November 13, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. Paul R. Brown Executive Secretary New Mexico Real Estate Commission 1013 Simms Building Albuquerque, New Mexico

### **QUESTION**

#### QUESTIONS

1. Under the Land Subdivision Act, Laws 1963, Chapter 217, must a seller of land, at the time he puts a tract of land up for sale determine how many parcels into which the tract will eventually be divided?
2. If he knows, or determines that he will have more than twenty-five parcels, must he comply with Section 3 of the Act if he provides the prospective purchasers with a disclosure letter which complies with Sections 4 and 5 of the Act?

#### CONCLUSIONS

1. See analysis.
2. Yes.

### **OPINION**

#### **{\*362} ANALYSIS**

The answer to your questions depends upon an interpretation of the pertinent portion of Section 2 of the Act (Section 70-3-2, N.M.S.A., 1963) Supp.) which reads as follows:

**{\*363}** "A. 'Subdivided land' and 'subdivision' means improved or unimproved land divided, or proposed to be divided, into twenty-five (25) or more lots or parcels for the purpose of sale or lease. . . ."

By its own terms the Land Subdivision Act applies only to land which is divided or proposed to be divided into at least twenty-five parcels for the purpose of sale or lease. Until the developer actually divides or frames a definite proposal to divide the land into at least twenty-five specific parcels, the Act cannot apply.

At the outset we are faced with the situation in which a large land owner desires to sell parcels of his land to anyone offering a good price. He is likely to be willing to sell any size parcel so long as the price is right. Eventually it is possible that he will have sold at

least twenty-five parcels from his land without having any intention whatsoever about subdividing and developing the land in accordance with a definite plan. We do not think the Act was intended to apply to an operation of this nature. It could hardly be expected that an individual should comply with the Act before making any sales when he could have no way of determining whether or not his particular operation would result in a division into at least twenty-five parcels. We are of the opinion that the Act was intended to apply to those developers who, for the purpose of sale, pursue a regular plan of dividing a tract into twenty-five specific parcels, or more.

On the other hand, we do not think that a developer who has adopted a definite proposal to divide can avoid compliance with the Act. Thus advertising and selling parcels by a metes and bounds description could not save a developer from compliance with the Act if he had otherwise divided the tract into the minimum number of specific parcels.

In a situation in which the question is whether or not the developer has proposed to divide the tract into at least twenty-five parcels the enforcing authority should determine the question from the method of operation and all the facts in each particular case. It is obvious in this situation that the enforcing authority could not rely solely on the statements of the developer. We must conclude, however, that if the developer has not honestly formed any proposal to divide the tract into at least twenty-five specific parcels, then the Act does not apply.

Turning to your second question we observe that Section 3 of the Act requires first that the plan of subdivision be approved by the county commission, and, second, that legal access be provided from each lot to an existing public way. Sections 4 and 5 require disclosure to the buying public of information which may affect the title to, the use, and the enjoyment of the land. All of these sections are applicable to "subdivided land."

We think that supplying legal access from each lot to an existing public way is in the public interest. The street systems of a tract and the size and shape of the lots affect the use to which the land is to be dedicated. Subsequent owners of lots will have to be content with the planning adopted by the developer. Their environment is largely determined by his development of the tract. It is almost impossible for them to replan and resubdivide what the original developer has established. See **Ratcliff, Urban Land Economics** 415 (1949).

{\*364} Therefore, supplying legal access and seeking approval of the County Commission are both important elements in the scheme of the entire Act. We conclude that if a tract falls within the definition of subdivided land the subdivider must comply with Section 3 of the Act in addition to Sections 4 and 5.

By: Wayne C. Wolf

Assistant Attorney General