

## Opinion No. 70-84

October 27, 1970

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** The Honorable Turner W. Branch New Mexico State Representative 4308 Avenida La Resolana, NE Albuquerque, New Mexico

### QUESTIONS

#### FACTS

A large parcel of land has been subdivided into smaller parcels. Mobile homes are placed on each parcel of land. The mobile homes are sold out-right but the land is leased on a periodic year-to-year basis.

#### QUESTION

Does this corporation have to file a subdivision plan in compliance with subdivision law?

#### CONCLUSION

See Analysis.

### OPINION

#### {\*143} ANALYSIS

This question must be answered in the alternative. If the large parcel of land which has been divided into smaller parcels is within a municipality the sections on subdivision law within the municipal code will be applicable.

Section 14-19-2, N.M.S.A., 1953 Compilation (1969 P.S.) states:

Every person who desires to subdivide land shall furnish a plat of the proposed subdivision, prepared by a registered, licensed surveyor of New Mexico; except that the resubdivision of platted tracts, which are less than one [1] acre and which are contiguous with each other, for the purpose of increasing or reducing the size of such contiguous tracts, but not less than the minimum standard size required by the political subdivision, {\*144} shall not require the furnishing of a plat of the proposed resubdivision, provided that a certificate of survey setting forth the legal description of tracts resulting from such resubdivision shall be filed with the municipal planning commission, the county clerk and the county assessor of that county in which the resubdivision is situated, and such filing shall be considered as a rededication of said described lots in all respects.

Section 14-19-1, N.M.S.A., 1953 Compilation defines the words "subdivide" and "subdivision". The words are defined as:

"Subdivide" or "subdivision" means the division of land into two [2] or more parts by platting or by metes and bounds description into tracts of less than five [5] acres in any one [1] calendar year for the purpose of:

- A. Sale for building purposes;
- B. Laying out a municipality or any part thereof;
- C. Adding to a municipality;
- D. Laying out suburban lots; or
- E. Resubdivision.

"Plat" means map, chart, survey, plan or replat certified by a licensed or registered surveyor which contains a description of the subdivided land with ties to permanent monuments.

Under the definition stated in Section 14-19-1, **supra**, it is clear that land which is divided into two or more parts for the purpose of leasing cannot be classified as a subdivision.

Under the facts of this case the division of land for the purpose of leasing is not defined as a subdivision under the provisions of Section 14-19-1, **supra**. Therefore, no compliance need be made with Section 14-19-2, **supra**, because the leasing of these parcels is not covered within the definition laid out in Section 14-19-1, **supra**.

However, the above is only the case if this parcel of land is situated within a municipality. If this parcel of land is not situated within a municipality and if the land is divided into 25 or more parcels the Land Subdivision Act, Sections 70-3-1, et seq., N.M.S.A., 1953 Compilation (1969 P.S.) will be applicable.

Section 70-3-2, **supra**, defines "subdivided land" and "subdivision" as:

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, but does not include the leasing of apartments, offices, stores or similar space within a building unless an undivided interest in the land is granted as a condition precedent to occupying space within the building and does not include subdivisions approved by an agency of the United States or by a municipality, and does not include any subdivision where the primary business of the developer is the construction of home improvements;

Section 70-3-3, **supra**, states:

Approval of plat by county commission prior to sale. -- It shall be unlawful to sell, offer to sell, **lease** or offer to lease to the public subdivided land as defined hereinabove until a plat of such subdivided land being sold has been approved by the county commission wherein such land is situate; and

Until legal access from an existing public way and to each lot offered for sale or lease has been dedicated and accepted by the appropriate county commission. (Emphasis added.)

It is the opinion of this office based on Section 70-3-3, **supra**, that it would be unlawful for this subdivision to lease the parcels of land as described in the question if there are 25 or more parcels without having a plat approved by the county commission.

It is noteworthy that under Section 70-3-2, (A), **supra**, the Land Subdivision Act does not apply to a subdivision within a municipality.

By: Frank N. Chavez

Assistant Attorney General