

CHAPTER 43-23.1

SUBDIVIDED LANDS DISPOSITION ACT

43-23.1-01. Short title.

This chapter must be known and may be cited as the "Subdivided Lands Disposition Act".

43-23.1-02. Definitions.

When used in this chapter, unless the context otherwise requires:

1. "Commission" means the state real estate commission.
2. "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit.
3. "Offer" includes any inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit.
4. "Person" means an individual, corporation, limited liability company, 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.
5. "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.
6. "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.
7. "Subdivision" and "subdivided lands" means any land situated outside the state of North Dakota which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also includes any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

43-23.1-03. Administration of chapter.

This chapter must be administered by the state real estate commission.

43-23.1-04. Prohibitions on dispositions of interests in subdivisions.

Unless the subdivided lands or the transaction is exempt under section 43-23.1-05, it is unlawful for any person in this state:

1. To offer or to dispose of any interest in subdivided lands located without this state prior to the time that the subdivided lands are registered in accordance with this chapter.
2. To 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.

43-23.1-05. Exemptions.

1. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or disposition of an interest in land:
 - a. By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
 - b. If fewer than five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
 - c. 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;
 - d. Pursuant to court order;
 - e. By any government or government agency; or
 - f. As cemetery lots or interests.

2. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to:
 - a. Offers and dispositions of securities currently registered with the North Dakota insurance department;
 - b. A subdivision as to which the plan of disposition is to dispose to ten or fewer persons; or
 - c. A subdivision as to which the commission has granted an exemption as provided in section 43-23.1-11.
3. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to the sale or lease of any improved land on which there is a residential, commercial condominium, or industrial building or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years.

43-23.1-06. Application for registration.

1. The application for registration of subdivided lands shall be filed as prescribed by the commission and shall contain the following documents and information:
 - a. An irrevocable appointment of the commission to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or the applicant's personal representative.
 - b. A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, waterways, schools, churches, shopping centers, public transportation facilities, and other offsite improvements.
 - c. 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.
 - d. The applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state.
 - e. 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 that person's interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application.
 - f. 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.
 - g. Copies of the instruments which will be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign.
 - h. 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.
 - i. 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.
 - j. Copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands.

- k. 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.
- l. A statement of the existing provisions for legal and physical access or, if none exists, a statement to that effect; a statement of the existing or proposed provisions for 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.
- m. A narrative description of the promotional plan for the disposition of the subdivided lands, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision, together with copies of all advertising material which has been prepared for public distribution by any means of communication.
- n. A copy of its articles of incorporation, with all amendments thereto, if the subdivider is a corporation; copies of its articles of organization, with all amendments thereto, if the subdivider is a limited liability company; copies of all instruments by which the trust is created or declared, if the subdivider is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the subdivider is a partnership, unincorporated association, or any other legal or commercial entity; and if the purported holder of legal title is a person other than the subdivider, copies of the above documents for such person.
- o. The proposed public offering statement.
- p. Such current financial statements, certified or otherwise, as the commission may require.
- q. Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate for the protection of purchasers.
- 2. If the subdivider registers additional subdivided lands to be offered for disposition, the subdivider may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.
- 3. The subdivider shall immediately report any material changes in the information contained in an application for registration.

43-23.1-07. Public offering statement.

- 1. A public offering statement must disclose fully and accurately the physical characteristics of the subdivided lands offered and must 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 must be in a form prescribed by it and must include the following:
 - a. The name and principal address of the subdivider.
 - b. A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering.
 - c. 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.
 - d. A statement of the use for which the property is offered.
 - e. 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.
 - f. Such of the information contained in the application for registration, and any amendments thereto, and such other information as the commission may require

as being necessary or appropriate in the public interest or for the protection of purchasers.

2. The public offering statement may 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.
3. 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.

43-23.1-08. Inquiry and examination.

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, escrow and impoundage provisions, and 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 regulations and afford full and fair disclosures;
4. The subdivider has not, or if a corporation or limited liability company, its officers, managers, governors, 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. There is no evidence which would reasonably lead the commission to believe that the subdivider, or if a corporation or limited liability company, its officers, managers, governors, directors, or principals are contemplating a fraudulent or misleading sales promotion; and
6. The public offering statement requirements of this chapter have been satisfied.

43-23.1-09. Notice of filing - Registration - Fees.

1. Upon receipt of the application for registration in proper form and of a registration fee of one hundred dollars, 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 must be deemed registered unless the applicant has consented in writing to a delay.
2. If the commission affirmatively determines, upon inquiry and examination, that the requirements of section 43-23.1-08 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.
3. If the commission determines, upon inquiry and examination, that any of the requirements of section 43-23.1-08 has not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within ten days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which must 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 is entitled to a hearing.

4. Registration under this chapter is effective for a period of one year and may be renewed for additional periods of one year by filing, not later than fifteen days prior to the expiration of a registration, a renewal application in such form and containing such information as the commission shall prescribe, together with the payment of a renewal fee of one hundred dollars. The initial registration and any renewal fees may not be returned or refunded for any reason.

43-23.1-10. Annual report.

1. Within thirty days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the commission. The report must reflect any material changes in information contained in the original application for registration.
2. The commission, at its option, may permit the filing of annual reports within thirty days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

43-23.1-11. General powers and duties.

1. The commission has the authority to promulgate, to amend, and to repeal reasonable rules and regulations for the administration and enforcement of this chapter. Such rules and regulations must 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 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 for which they contracted; provisions for operating procedures; and such other rules and regulations as are necessary or proper to accomplish the purposes of this chapter.
2. All advertising material of any nature whatsoever prepared for use in connection with the offer and disposition of any interests in subdivided lands registered under this chapter must be submitted to and approved by the commission prior to its use.
3. As a condition precedent to the registration of any subdivided lands, the commission shall require that the subdivider file an indemnity bond running to the state of North Dakota for the use, benefit, and protection of any person and conditioned for the faithful compliance by the subdivider, the subdivider's agents and employees with all of the provisions of this chapter, and with all rules, regulations, and orders made pursuant thereto and for the faithful performance and payment of all obligations of the subdivider, the subdivider's agents and employees in connection with the registration. The indemnity bond must be of such type and in such form as must be prescribed by the commission and must be in such amount as the commission deems necessary to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration, but in no event less than twenty-five thousand dollars. Any such bond must have as surety thereon a surety company authorized to do business in this state.
4. Whenever it appears that a person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of the provisions of this chapter or of a rule or regulation or order hereunder, the commission, with or without prior administrative proceedings, may bring an action in any district court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order must be granted without bond.
5. 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.
6. The commission may:
 - a. Accept registrations filed in other states or with the federal government;

- b. Contract with similar agencies in this state or other jurisdictions to perform investigative functions; and
 - c. Accept grants-in-aid from any source.
- 7. 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 regulations, and common administrative practices.
- 8. The commission may exempt a subdivision of ten or fewer lots, parcels, units, or interests 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 located.

43-23.1-12. Fraudulent practices.

It is a fraudulent practice, and it is unlawful:

- 1. For any person knowingly to subscribe to or make or cause to be made any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- 2. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to employ any device, scheme, or artifice to defraud;
- 3. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- 4. For any person, in connection with the offer, disposition, or purchase of subdivided lands, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.

43-23.1-13. Investigations and proceedings.

- 1. The commission shall investigate any subdivision offered for disposition in this state and may:
 - a. Rely upon any relevant information concerning a subdivision obtained from the federal housing administration, the United States veterans administration, or any other federal agency having comparable duties in relation to subdivisions;
 - b. Require the applicant to submit reports prepared by competent engineers as to any hazard to which any subdivision offered for disposition is subject or any factor which affects the utility of interests within the subdivision, and require evidence of compliance in removing or minimizing all hazards reflected in engineering reports;
 - c. Require an onsite inspection of the subdivision by a person or persons designated by it. All expenses incurred in connection with an onsite inspection must be defrayed by the applicant, and the commission shall require a deposit sufficient to defray such expenses in advance;
 - d. Make public or private investigations within or outside this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter or in prescribing rules and regulations and forms hereunder; and
 - e. 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.
- 2. For the purpose of any investigation or proceeding under this chapter, the commission or any person designated by it may administer oaths or affirmations, and upon its own motion or upon the 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.
3. Upon failure to obey a subpoena or to answer questions propounded by the investigator and upon reasonable notice to all persons affected thereby, the agency may apply to the district court for an order compelling compliance.
 4. The commission may permit a person registered with the commission whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against said person.
 5. Except as otherwise provided in this chapter, all proceedings under this chapter must be in accordance with chapter 28-32.

43-23.1-14. Orders.

1. The commission may issue an order requiring a 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 if the commission determines after notice and hearing that a person has:
 - a. Violated any provision of this chapter;
 - b. 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;
 - c. Made any substantial change in the plan of disposition and development of the subdivided lands after the order of registration without obtaining prior written approval from the commission;
 - d. Disposed of any subdivided lands that have not been registered with the commission; or
 - e. Violated any lawful order or rule or regulation of the commission.
2. If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the commission may commence an action in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter. The commission is not required to give any bond for commencing this action. Upon a showing of a violation the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

43-23.1-15. Revocation.

1. A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:
 - a. Failed to comply with the terms of a cease and desist order;
 - b. Been convicted of an offense determined by the commission to have a direct bearing upon a person's ability to serve the public as a real estate subdivider, or the commission determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1;
 - c. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
 - d. Failed faithfully to 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; or
 - e. 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.
2. 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.

43-23.1-16. Judicial review.

A person who has exhausted all administrative remedies available within 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 judicial review in accordance with chapter 28-32.

43-23.1-17. Real estate license required.

No real estate broker, salesperson, or mortgage broker may offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section 43-23.1-05, unless said real estate broker, salesperson, or mortgage broker is licensed pursuant to chapter 43-23.

43-23.1-18. Civil remedy.

1. Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, is voidable at the election of the purchaser. The person making such disposition, and every director, officer, salesperson, or agent of or for such person who has participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit, or interest, together with interest at the rate of six percent per year from the date of payment, property taxes and assessments paid, court costs, and reasonable attorney's fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, that person 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.
2. No action may be brought under this section for the recovery of the consideration paid after five years from the date of such disposition nor more than three years after the purchaser has received information as to matter or matters upon which the proposed recovery is based, whichever occurs first.
3. Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or regulation or order under it is void.
4. The rights and remedies provided by this chapter are in addition to any and all other rights and remedies that may exist at law or in equity.

43-23.1-19. Jurisdiction.

Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims for relief 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.

43-23.1-20. Extradition.

In 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.

43-23.1-21. Service of process.

1. In addition to the methods of service provided for in the North Dakota Rules of Civil Procedure and statutes, service may be made by delivering a copy of the process to the office of the commission, but it is not effective unless:

- a. The plaintiff, which may be the commission in a proceeding instituted by it, forthwith sends a copy of the process and of the pleading by registered mail to the defendant or respondent at that person's last-known address.
 - b. The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
2. If any person, including any nonresident of this state, engages in conduct prohibited by this chapter or any rule or regulation or order hereunder, and has not filed a consent to service of process and personal jurisdiction over that person cannot otherwise be obtained in this state, that conduct authorizes the commission to receive service of process in any noncriminal proceeding against that person or that person's successor which grows out of that conduct and which is brought under this chapter or any rule or regulation or order hereunder, with the same force and validity as if served on that person personally. Notice must be given as provided in subsection 1.

43-23.1-22. Evidentiary matters.

1. In any action, civil or criminal, when a defense is based upon any exemption provided for in this chapter, the burden of proving the existence of such exemption is upon the party raising such defense.
2. In any action, civil or criminal, a certificate signed and sealed by the commission stating compliance or noncompliance with the provisions of this chapter is admissible in any such action.

43-23.1-23. Penalties.

Any person who willfully violates any provision of this chapter or who willfully violates any rule or regulation or order of the commission made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful, is guilty of a class C felony.