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STATE CAPITOL
PHOENIX, ARIZONA

May 26, 1965

DEPARTMENT OF LAW OPINION NO. 65

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ARIZONA ATTORNEY GENERAL
(R 107)

REQUESTED BY: J. Fred Talley
State Real Estate Commissioner

QUESTION: Before offering out-of-state subdivided lands for sale or lease in the State of Arizona, does the owner, agent or subdivider have to comply with Title 32, Article 4 of the Arizona Revised Statutes regulating the sale of subdivided lands?

ANSWER: Yes.

Subdivided lands mean improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease into five or more lots or parcels. A. R. S. Sec. 32-2101 (11).

A. R. S. Secs. 32-2101 through 2185 regulate the sale of lands or subdivided lands in the State of Arizona. These sections of law in no way restrict the definition of lands to lands that are located in the State of Arizona. Title 32, Article 4 of the Arizona Revised Statutes regulates the sale of subdivided lands. Before offering subdivided lands for sale or lease the owner must notify the commissioner in writing of his intention to do so. The notice shall contain the name and address of the owner, the name and address of the subdivider, the legal description and area of land, a true statement of the condition of the title to the land, including all encumbrances thereon, and the terms and conditions on which it is intended to dispose of the land, together with copies of any contract intended to be used and such other information the owner, his agent or subdivider desires to present; further, a map of the subdivision which has been filed in the office of the county recorder in the county in which the subdivision is located shall accompany the notice. A. R. S. Sec. 32-2181 (A). The commissioner may then investigate the subdivision offered

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for sale or lease. A. R. S. Sec. 32-2182. The commissioner, after his investigation, prepares a report on the subdivision and may publish it; he may further require the owner, agent or subdivider to reproduce the report and furnish each prospective customer with a copy, taking a receipt thereof. A. R. S. Sec. 32-2183. The subdivider, owner or agent may not materially alter the subdivision after securing approval of the commissioner without first notifying the commissioner of the change. A. R. S. Sec. 32-2184. When the interest of the owner, his agent or subdivider of the land is held under option or contract of purchase or in trust or when the land is subject to a lien or encumbrance other than taxes or assessments levied by public authority, the owner, agent or subdivider may not sell a parcel of the subdivision unless he evidences in the instrument the lien, encumbrance, option, contract, or trust agreement. A. R. S. Sec. 32-2185.

The passage of a "subdivision law" requiring owners of subdivided lands to notify the real estate commissioner of their intent before selling or leasing, as stated in the leading case of In Re Sidebotham (1938) 12 Cal. 2d 434, 85 P. 2d 453, 454, has as its object the "prevention of fraud and sharp practices in a type of real estate transaction which is clearly open to such abuse..." The sections of the subdivision law referred to above clearly indicate an intent on the part of the legislature to protect the public of Arizona from imposition or fraud in the sales of land. Certainly, sales of lands located outside of Arizona are more subject to fraud than those within its territorial boundaries. Where a contract is entered into within the State, although it is to be performed elsewhere, its terms, obligations and sanctions are subject in some measure to the legislative control of the State. The mere fact that state action in its regulation of contracts may have repercussions beyond state lines is of no judicial significance as long as the action is not within the domain which the Constitution forbids. 81 C. J. S., States, Sec. 3, Jurisdiction.

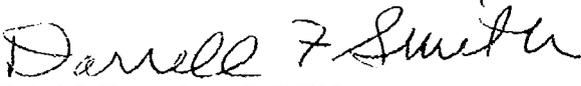
The Arizona legislature did intend that our statutes have an extra-territorial effect. The statutes relating to grounds for suspension or revocation of realtors licenses include as one of the grounds: "9... any material false statement or representation concerning his business or any land or subdivision thereof for sale in this or any other state." (Emphasis supplied). A. R. S.

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Sec. 32-2153 (A)9. The legislative intent is also seen in a section that was added in 1960, A. R. S. Sec. 32-2163, wherein it is stated: "...A licensed real estate broker may pay a commission to a broker of another state and may also receive a commission." The Arizona statute on subdivisions was adopted in Arizona in 1937 at which time the definition of "subdivision" or "subdivided lands" in the statute was substantially identical with the California statute. (West's Annotated Business and Professional Code No. 11,000). The California Appeals Court applied the subdivision law of California on sales of New Mexico lands in California. Cowell v. Clark, 37 C. A. 2d 255, 99 P. 2d 594 (1940); People v. Gallinger, 37 C. A. 2d 261, 99 P. 2d 597 (1940). It was decided in the above cases that the seller was a "subdivider" under the statute.

Consequently, before subdivided lands located outside the State of Arizona are offered for sale in Arizona, the subdivider, owner or agent must comply with Title 32, Article 4, by giving the appropriate notice to the real estate commissioner and obtaining his approval.

Respectfully submitted,


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The Attorney General

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