

## CHAPTER 83

### SUBDIVIDED LANDS

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#### 83.20 DEFINITIONS.

Subdivision 1. "Advertisement" means any written or printed communication or any communication by telephone or transmitted on radio, television, electronic means or similar communications media published in connection with the offer or sale of subdivided lands or any communication made to induce prospective purchasers to visit or attend an offer or sales presentation.

Subd. 2. "Agent" means any person who represents, or acts for or on behalf of, a subdivider in disposing of subdivided lands or lots in a subdivision, and includes a real estate salesperson or broker, but does not include an attorney at law whose representation of another person consists solely of rendering legal services.

Subd. 3. "Blanket encumbrance" means a trust deed or mortgage or mechanics lien or any other lien or financial encumbrance, securing or evidencing money debt and affecting lands to be subdivided or affecting more than one lot, parcel, unit or interest of subdivided land; or an agreement affecting more than one lot, parcel unit or interest by which the subdivider holds the subdivision under an option, contract for deed,

contract to purchase or trust agreement, except a lien or other encumbrance arising as a result of the imposition of a tax assessment by a public authority so long as no portion thereof is past due.

Subd. 4. "Commissioner" means the commissioner of commerce of the state of Minnesota or the commissioner's authorized delegate.

Subd. 5. "Sale" or "sell" means every contract or agreement to convey an interest, including a leasehold interest, in subdivided land for value.

Subd. 6. "Notice" means a communication from the commissioner. Notice to subdividers shall be deemed complete when personally served upon or mailed to the subdivider's address currently on file with the commissioner.

Subd. 7. "Offer" includes every inducement, solicitation or attempt to encourage a person to acquire a lot, unit, parcel or interest in land.

Subd. 8. "Option" means, and is limited to, an offer to sell or to purchase respecting which a consideration of not more than 15 percent of the total purchase price is exchanged to guarantee that the offer will not be withdrawn or revoked for an agreed period of time.

Subd. 9. "Person" means an individual, corporation, government or governmental division 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.

Subd. 10. "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

Subd. 11. "Subdivision" or "subdivided land" means any real estate, wherever located, improved or unimproved, which is divided or proposed to be divided for the purpose of sale or lease, including sales or leases of any timeshare interest, housing cooperative, condominium, or similar interest in real estate.

Subd. 12. "Subdivider" means a person whose interest in subdivided land is offered or advertised, by the person or the person's agent, for disposition.

Subd. 13. "Timeshare interest" means a right to occupy a unit or any of several units during intermittent time periods over a period of at least three years, including renewal options, whether or not coupled with a freehold estate or an estate for years.

Subd. 14. "Improved lots" means lots which have or will have within a two-year period from the date of purchase, a permanent residential structure thereon, and are not devoted to or used as a time share interest, cooperative apartment corporation, condominium, or similar interest in real estate.

**History:** 1973 c 413 s 1; 1974 c 440 s 1; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 452 s 1-5; 1984 c 655 art 1 s 92; 1986 c 444

### 83.21 COMMISSIONER OF COMMERCE TO ADMINISTER.

Sections 83.20 to 83.42, 83.43 and 83.44 shall be administered by the commissioner of commerce.

**History:** 1973 c 413 s 2; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 452 s 6; 1984 c 655 art 1 s 92

### 83.22 CITATION.

Sections 83.20 to 83.42 may be cited as the Minnesota subdivided land sales practices act.

**History:** 1973 c 413 s 3

### 83.23 REGISTRATION REQUIREMENT.

**Subdivision 1. Registration.** It is unlawful for any person to offer or sell an interest in subdivided lands in this state unless the interest is registered under this section or the subdivided land or the transaction is exempt under section 83.26.

**Subd. 2. Notification.** Unless the method of offer or sale is adopted for the purpose of evasion of sections 83.20 to 83.42, 83.43 and 83.44, subdivided lands may be registered by notification provided that all of the following requirements have been met:

(a) the subdivision consists of not more than 100 separate lots, units, parcels, or interests;

(b) at least 20 days prior to any offer pursuant to this subdivision, the subdivider must supply the commissioner, on forms which the commissioner may by rule prescribe, at least the following information:

(1) the name and address of the subdivider and the form and date of its organization if other than an individual;

(2) the location and legal description of the subdivision and the total number of lots, parcels, units, or interests;

(3) either a title opinion prepared and signed by an attorney licensed to practice law in the state wherein the subdivided land is situated; or a certificate of title insurance or its equivalent acceptable to the commissioner;

(4) a copy of each instrument which will be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and a copy of each contract or other agreement which a purchaser will be required to agree to or sign, together with the range of selling prices, rates, or rentals at which it is proposed to offer the lots, units, parcels, or interests in the subdivision, a list of fees the purchaser may be required to pay for amenities or membership in groups including, but not limited to, homeowners' associations, country clubs, golf courses, and other community organizations; and

(5) a copy of a signed and approved plat map or its equivalent;

(c) a filing fee of \$150 has been paid;

(d) the subdivider is in compliance with the service of process provisions of section 83.39.

The commissioner may by rule or order withdraw or further condition registration by notification or increase or decrease the number of lots, units, parcels, or interests in subdivided lands permitted for registration by notification. If no stop order is in effect, no proceeding is pending, and no order has been issued under subdivision 4, a registration statement under this section automatically becomes effective at 5:00 in the afternoon on the 20th full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner by order determines.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

**Subd. 3. Qualification.** Subdivided lands may be registered by qualification provided all of the following requirements have been met:

(a) an application for registration has been filed with the commissioner in a format which the commissioner may by rule prescribe;

(b) the commissioner has been furnished a proposed public offering statement complying with section 83.24;

(c) a filing fee of \$400 plus an additional registration fee of \$1 for each lot, unit, parcel, or interest included in the offering accompanies the application. The maximum combined filing and registration fees shall in no event be more than \$3,500;

(d) the subdivider is in compliance with service of process provisions of section 83.39;

(e) the commissioner has been furnished a financial statement of the subdivider's most recent fiscal year, prepared by an independent public accountant and certified by the subdivider; and, if the fiscal year of the subdivider is more than 180 days prior to the date of filing the application, a financial statement, which may be unaudited, as of a date within 180 days of the date of application.

Subdivisions in which all the improvements are complete and paid for by the developer, and for which clear title can be given the purchaser at the closing, are exempt from providing financial statements prepared by an independent accountant.

An application for registration under this section becomes effective when the commissioner so orders.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

**Subd. 4. Consolidated registration.** If additional subdivided lands of the same subdivider are subsequently to be offered for sale, the registration thereof may be consolidated with any earlier registration offering subdivided lands for sale if the additional subdivided lands are contiguous to those previously registered. An application for consolidation shall be accompanied by a consolidation fee of \$50. If the registration is pursuant to subdivision 3, an additional registration fee of \$1 shall be submitted for each lot, unit, parcel, or interest included in the consolidation if the maximum fees have not already been paid.

**History:** 1973 c 413 s 4; 1974 c 440 s 2-4; 1984 c 452 s 7; 1984 c 640 s 32; 1985 c 248 s 27; 1986 c 444; 1987 c 358 s 98,99; 1988 c 493 s 3

### 83.24 PUBLIC OFFERING STATEMENT.

**Subdivision 1. Delivery.** A public offering statement shall be delivered to each person to whom an offer is made before or concurrently with (a) the first written offer other than offer by means of a public advertisement, or (b) any payment pursuant to a sale, whichever occurs first. Each person to whom an offer is made must be afforded a reasonable opportunity to examine the public offering statement and must be permitted to retain the statement. The subdivider or subdivider's agent shall obtain a receipt, signed by the person, acknowledging receipt of a copy of the public offering statement prior to the execution of any contract or agreement to purchase any lot, unit, parcel, or interest in subdivided lands. All receipts shall be kept in files which are in the possession of the subdivider or subdivider's agent, subject to inspection by the commissioner, for a period of three years from the date of the receipt.

**Subd. 2. Full disclosure.** A public offering statement shall disclose fully and accurately the subdivided lands being offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands.

**Subd. 3. Form.** A public offering statement shall be in a format prescribed by rule and shall include the following:

(a) the name, principal address, and telephone number of the subdivider and of its officers and agents in this state;

(b) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests to be offered;

(c) a statement which discloses whether the subdivider owns any rights or options to acquire an interest in adjacent properties, and if so, a description of the options and the locations and zoning status of the adjacent properties;

(d) a statement of the assistance, if any, that the subdivider or subdivider's agent will provide to the purchaser in the resale of the property and whether or not the subdivider or the subdivider's agent will be in competition in the event of resale;

(e) the material terms of any restrictions affecting the subdivided lands and each unit or lot, including, but not limited to, any encumbrances, easements, liens, and zoning status; a statement of the subdivider's efforts to remove the restrictions; and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(f) a statement of the use for which the property is to be offered;

(g) information concerning existing or proposed improvements and amenities and the completion dates thereof; and

(h) additional information as may be required at the discretion of the commissioner to assure full and fair disclosure to prospective purchasers.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

Subd. 4. **Permitted use.** The public offering statement shall not be used for any promotional purpose before registration of the subdivided lands and after registration shall be used only in its entirety. A person may not advertise or represent that the commissioner has approved or recommended the subdivided lands or sale thereof. A portion of the public offering statement may not be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless required or approved by the commissioner.

Subd. 5. **Other law.** Any public offering statement which complies with the requirements of any federal law or the laws of any other state requiring substantially the same disclosure of information as is required by this section, may by rule or order of the commissioner be deemed to be in full or partial compliance with this section.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

**History:** 1973 c 413 s 5; 1984 c 452 s 8; 1984 c 640 s 32; 1986 c 444

### 83.25 LICENSE REQUIRED.

Subdivision 1. No person shall offer or sell in this state any interest in subdivided lands without having obtained:

- (1) a license under chapter 82; and
- (2) an additional license to offer or dispose of subdivided lands. This license may be obtained by submitting an application in writing to the commissioner upon forms prepared and furnished by the commissioner. Each application shall be signed and sworn to by the applicant and accompanied by a license fee of \$10. The commissioner may also require an additional examination for this license.

Subd. 2. Every license issued pursuant to this section expires on June 30 following the date of issuance. It may be renewed, transferred, suspended, revoked or denied in the same manner as provided in chapter 82 for licenses issued pursuant to that chapter.

Subd. 3. This section does not apply to persons offering or disposing of interests in subdivided lands which are registered as securities pursuant to chapter 80A.

**History:** 1973 c 413 s 6; 1976 c 2 s 38; 1984 c 452 s 9; 1986 c 444

### 83.26 EXEMPTIONS.

Subdivision 1. **Generally; lands.** Unless the method of offer or sale is adopted for the purpose of evasion of sections 83.20 to 83.42, 83.43 and 83.44, the following subdivided lands are exempted from sections 83.20 to 83.42:

- (a) any lands offered or sold by the United States, any state, any political subdivision of a state, or any other corporate instrumentality of one of the above;
- (b) leases of apartments, stores, offices, or similar space;
- (c) leases of rooms or space in hotels, motels, or similar space for a period of less than three years, including renewal options;
- (d) cemetery lots or interests therein;
- (e) mortgages or deeds of trust of real estate securing evidences of indebtedness;
- (f) subdivided lands which are registered as securities pursuant to the provisions of chapter 80A; and
- (g) other subdivided lands not within the intent of this chapter which the commissioner may by rule or order exempt.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

Subd. 2. **Generally; transactions.** Unless the method of offer or sale is adopted for the purpose of evasion of sections 83.20 to 83.42, 83.43 and 83.44, the following transactions are exempt from sections 83.23, 83.24, 83.25, 83.28, 83.29, and 83.30:

- (a) the offer or sale of an interest in subdivided land by an owner, other than the subdivider, acting as principal in a single or isolated transaction;

(b) the offer or sale of all of the subdivided lands within a subdivision in a single transaction to any person;

(c) the offer or sale of subdivided land pursuant to an order of competent jurisdiction, other than a court of bankruptcy;

(d) the offer or sale of subdivided land consisting of not more than ten separate lots, units, parcels, or interests in the aggregate;

(e) the offer or sale of subdivided lands which have been registered under section 83.23, subdivision 2, if there are no more than ten separate lots, units, parcels, or interests remaining to be sold and no material change has occurred in the information on file with the commissioner;

(f) the offer and sale of subdivided land located within the corporate limits of a municipality as defined in section 462.352, subdivision 2, which municipality has adopted subdivision regulations as defined in section 462.352, except those lands described in section 83.20, subdivision 13;

(g) the offer and sale of apartments or condominiums as defined in chapters 515 and 515A;

(h) the offer and sale of subdivided lands used primarily for agricultural purposes provided each parcel is at least ten acres in size;

(i) the offer or sale of improved lots if:

(1) the subdivider has filed with the commissioner, no later than ten business days prior to the date of the first sale, a written notice of its intention to offer or sell improved lots, which notice shall be accompanied by a fee of \$50, together with a copy of the public offering statement accepted by the situs state and the standard purchase agreement which documents are required to be supplied by the subdivider to the purchaser; and

(2) the subdivider deposits all downpayments in an escrow account until all obligations of the subdivider to the purchaser, which are pursuant to the terms of the purchase agreement to be performed prior to the closing, have been performed. The subdivider shall provide the purchaser with a purchase receipt for the downpayment paid, a copy of the escrow agreement and the name, address, and telephone number of the escrow agent. The escrow agent shall be a bank located in Minnesota. All downpayments shall be deposited in the escrow account within two business days after receipt.

The commissioner may by rule or order suspend, revoke, or further condition the exemptions contained in clauses (f), (g), (h), and (i) or may require such further information as may be necessary for the protection of purchasers.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

**Subd. 3. Exemption; burden.** The burden of proving an exemption or an exception from a definition is upon the person claiming it.

**History:** 1973 c 413 s 7; 1984 c 452 s 10; 1984 c 640 s 32; 1984 c 655 art 2 s 8 subd 1

### 83.27 INQUIRY AND EXAMINATION.

The commissioner may investigate any subdivision required to be registered under sections 83.20 to 83.42, 83.43 and 83.44 for the purpose of verifying statements contained in the application for registration or the public offering statement. For the purpose of such investigation, the commissioner may:

(a) use and rely upon any relevant information or data concerning a subdivision obtained by the commissioner from the federal housing administration, the United States veterans administration, or any state or federal agency having supervisory duties over real estate subdivisions which are comparable to those of the commissioner;

(b) require the subdivider to submit reports prepared by an independent licensed or registered engineer concerning any hazard to which, in the opinion of the commis-

sioner, any subdivision offered for disposition is subject, or concerning any other factor which affects the utility of lots, units, parcels, or interests within the subdivision and may require evidence of compliance to remove or minimize all hazards stated by competent engineering reports;

(c) conduct an on-site inspection of each subdivision. The subdivider shall defray all actual and necessary expenses incurred by the inspector in the course of the inspection;

(d) conduct an annual on-site reinspection of each subdivision for each of the three years after registration and thereafter make periodic on site inspections. The developer shall defray all actual and necessary expenses incurred by the inspector in the course of such inspection;

(e) require the subdivider to deposit the expenses to be incurred in any inspection or reinspection, in advance, based upon an estimate by the commissioner of the expenses likely to be incurred. All such deposits shall be paid into the state treasury and credited to the commissioner's investigation fund, from which fund the commissioner shall have power to make disbursements to pay such expenses. Any unexpended portion shall be refunded. On field examinations made by the commissioner or the commissioner's employee away from the office of the commissioner a per diem of \$10 for each such person may be charged in addition to the actual expenses. Where additional technical, expert, or special services are used, the actual cost of such services may be charged in addition to actual expenses;

(f) where an on-site inspection of any subdivision has been made under sections 83.20 to 83.42, 83.43 and 83.44, an inspection of additional subdivided lands for which a subsequent application for registration is filed may be made.

**History:** 1973 c 413 s 8; 1984 c 452 s 11; 1986 c 444

### 83.28 SALES CONTRACT; RESCISSION.

**Subdivision 1. Contract; form restrictions.** Every contract for sale relating to subdivided land shall (1) state clearly the legal description of the lot, unit, parcel, or interest disposed of; (2) contain the disclosure substantially similar to that required by the federal truth in lending act, and the rules promulgated thereunder; and (3) be in recordable form.

**Subd. 2. Voidable.** Any contract or agreement for the sale of a lot, parcel, unit, or interest in a subdivision not exempt under section 83.26, is voidable at the discretion of the purchaser, for a period of three years from the date of the contract or agreement, notwithstanding the delivery of a deed to the purchaser, if the subdivision was not registered under sections 83.20 to 83.42, 83.43 and 83.44 at the time of the sale, or if a current public offering statement was not given to the purchaser in accordance with section 83.24, unless subsequently thereto the subdivision is registered under this chapter and in connection therewith, the purchaser has received a written offer to repurchase the lot, parcel, unit, or interest for cash payable on closing of the repurchase, together with interest thereon from the date of purchase at the legal rate or at the rate charged on any lien paid by the purchaser, whichever is higher, less the amount of any income received from the lot, parcel, unit, or interest, and the purchaser has failed to accept the offer in writing within 30 days of its receipt. No offer of repurchase shall be effective unless a duplicate copy thereof has been filed with the commissioner at least 20 days prior to its delivery to the offeree and the commissioner has not objected to the offer within that time. The offer of repurchase shall be in the form and contain the information the commissioner by rule or order prescribes. If the purchaser no longer owns the lot, parcel, unit, or interest, the purchaser shall be entitled to maintain an action at law, and the damages shall be the consideration paid for the lot, parcel, unit, or interest together with interest thereon as specified above from the date of acquisition to the date of disposition, plus costs and reasonable attorney's fees, less the value received for the lot, parcel, unit, or interest at the date of disposition.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

**Subd. 3. Rescission.** A purchaser has an unconditional right to rescind any contract, agreement, or other evidence of indebtedness, or revoke any offer, at any time prior to or within five days after the date the purchaser actually receives a legible copy of the binding contract, agreement, or other evidence of indebtedness or offer and the public offering statement as provided in section 83.24. Predating of a document does not affect the time in which the right to rescind may be exercised. The burden of proving that the document was not predated is upon the subdivider or lender.

**Subd. 4. Document labeling.** Each contract, agreement, or other evidence of indebtedness shall be prominently labeled and captioned that it is a document taken in connection with a sale or other disposition of lands under sections 83.20 to 83.42, 83.43 and 83.44.

**Subd. 5. Notice to purchaser.** The first contract, agreement, or other evidence of indebtedness shall prominently contain upon its face the following notice in bold type, which shall be at least 4 point type larger than the body of the document, stating, in one of the following forms:

(a) Registration by notification: "Notice to Purchaser" — "You are entitled to rescind this agreement for any reason within five days from the date you actually received a legible copy of this document signed by all parties. The rescission must be in writing and mailed to the subdivider or subdivider's agent or the lender at the address stated in this document. Upon rescission you will receive a refund of all money paid." or;

(b) Registration by qualification: "Notice to Purchaser" — "You are entitled to rescind this agreement for any reason within five days from the date you actually received a legible copy of this document signed by all parties and a public offering statement. The rescission must be in writing and mailed to the subdivider or subdivider's agent or the lender at the address stated in this document. Upon rescission you will receive a refund of all money paid."

The contract, agreement, or other evidence of indebtedness shall contain sufficient space upon its face in immediate proximity to the above notice for the signature of each purchaser obligated under such instrument, acknowledging that such purchaser has read the notice.

**Subd. 6. Rescission notice.** Rescission occurs when the purchaser gives written notice of rescission to the subdivider or subdivider's agent or the lender at the address stated in the contract, agreement, or other evidence of indebtedness. Notice of rescission, if given by mail is effective when it is deposited in a mailbox properly addressed and postage prepaid. A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract, agreement, or other evidence of indebtedness.

**Subd. 7. Waiver prohibited.** No act of a purchaser shall be effective to waive the right to rescind as provided in this section.

**History:** 1973 c 413 s 9; 1984 c 452 s 12; 1984 c 640 s 32; 1986 c 444

## 83.29 NOTICE OF FILING AND REGISTRATION.

**Subdivision 1.** Upon compliance with all the provisions of sections 83.20 to 83.42 applicable to the application for registration and with the requirements of the commissioner, and if the commissioner finds no grounds for denial of the application, the commissioner shall register the subdivided lands. The commissioner shall have power to place such conditions, limitations, and restrictions on any registration as may be necessary to carry out the purposes of sections 83.20 to 83.42. Registration shall be by entry in a book called Register of Subdivided Lands, which entry shall show the subdivided lands registered and for whom registered, and shall specify the conditions, limitations, and restrictions upon such registration, if any, or shall make proper reference to a formal order of the commissioner on file showing such conditions, limitations, and restrictions.

Subd. 2. If the commissioner determines upon inquiry and examination:

(1) that any of the requirements of sections 83.20 to 83.42 or the rules promulgated pursuant to sections 83.20 to 83.42 have not been met;

(2) that the proposed promotional plan is or tends to be fraudulent, deceptive, or misleading;

(3) that the sales of the lands would work or tend to work a fraud or deception on the purchasers thereof;

(4) that the sales of the lands would be unfair or inequitable to the purchasers thereof;

(5) that the subdivider has violated any of the provisions of sections 83.20 to 83.42 or any order or rule of the commissioner;

(6) that the subdivider is not in compliance with federal, state, or local environmental quality standards;

the commissioner may issue an order denying the application for registration; provided, however, that nothing in this section shall authorize the commissioner to deny an application based solely on the proposed sale price of the lands. The order shall state the reasons for denial. Every person whose application for registration has been denied shall have the right to a hearing provided a request for such hearing is filed with the commissioner within 30 days of the receipt of the order of denial. The order of denial shall inform the applicant of the right to this hearing.

Subd. 3. The state environmental quality standards referred to in subdivision 2, clause 6, for the subdivision and development of land in this state shall be established by the environmental quality board. Thereafter, the commissioner shall be required to include such standards in the rules promulgated pursuant to section 83.38.

Subd. 4. A document is filed when it is received by the commissioner and the proper fee is paid.

Subd. 5. No person shall publish or cause to be published in this state any advertisement offering subdivided lands subject to the registration requirements of section 83.23 which is false, misleading, or deceptive.

**History:** 1973 c 413 s 10; 1975 c 271 s 6; 1984 c 452 s 13,14; 1985 c 248 s 70; 1986 c 444; 1988 c 493 s 4,5

### 83.30 ANNUAL REPORT.

Subdivision 1. **Form; due date.** During the period a registration is effective, the subdivider shall file an annual report in a format the commissioner may by rule prescribe. Every annual report shall be due by the 120th day following the end of the subdivider's fiscal year, unless extended in writing by the commissioner for good cause.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

Subd. 2. **Fee.** Every annual report filed pursuant to section 83.23, subdivision 2, shall be accompanied by a fee of \$75. Every annual report filed pursuant to section 83.23, subdivision 3, shall be accompanied by a fee of \$150.

Subd. 3. **Failure to file; effect.** Failure to file the annual report shall be cause for cancellation of the registration. If canceled, the registration may be reinstated at a subsequent date following the filing of the report and payment of the appropriate fees.

**History:** 1973 c 413 s 11; 1974 c 440 s 5; 1977 c 46 s 1; 1984 c 452 s 15; 1984 c 640 s 32; 1987 c 358 s 100

### 83.31 CHANGES SUBSEQUENT TO REGISTRATION.

Subdivision 1. **Report of sales.** The commissioner may by rule or order require the subdivider or subdivider's agent to submit reports of sales.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

Subd. 2. **Report of material changes.** A subdivider or subdivider's agent shall within 30 days report any material changes in the information contained in the application for registration or the exhibits appended thereto on file with the commissioner by submitting an application to amend accompanied by an amendment fee of \$25.

Subd. 3. **Rules; form of amendment.** The commissioner may by rule define what shall be considered a material change and prescribe the format for an application to amend. The amendment shall become effective when ordered by the commissioner.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

**History:** 1973 c 413 s 12; 1984 c 452 s 16; 1984 c 640 s 32; 1986 c 444

### 83.32 INSPECTION OF RECORDS.

All records of a subdivider and the subdivider's agents pertaining to the advertising or disposition of subdivided lands shall be maintained by the subdivider and the subdivider's agents and be subject to inspection by the commissioner. The commissioner shall be promptly notified of any change of address affecting the location of the records of the subdivider and the subdivider's agents.

**History:** 1973 c 413 s 13; 1986 c 444

### 83.33 BLANKET ENCUMBRANCE SALES AND OTHER PROHIBITED ACTS.

Subdivision 1. **Compliance with rules.** A person may not sell lots, units, parcels, or interests within a subdivision subject to a blanket encumbrance without having complied with such rules as the commissioner may promulgate concerning such sales, which rules shall be specific requirements for the protection of the purchaser.

Subd. 2. **Use of prohibited practice.** The act, use, or employment by any person of any prohibited practice as set forth in section 83.24, with the intent that others rely thereon in connection with the offer or sale of subdivided lands not excepted from sections 83.20 to 83.42, 83.43 and 83.44 is a violation of sections 83.20 to 83.42, 83.43 and 83.44, whether or not any person has in fact been damaged thereby.

Subd. 3. [Repealed; 1984 c 452 s 30]

**History:** 1973 c 413 s 14; 1984 c 452 s 17,18; 1986 c 444

83.34 [Repealed, 1987 c 336 s 47]

### 83.35 ENFORCEMENT; POWERS OF COMMISSIONER.

Subdivision 1. **Registration; revocation or suspension.** After notice and hearing, the commissioner may suspend or revoke a registration on finding that the subdivider or person has:

(1) violated any provision of sections 83.20 to 83.42, 83.43 and 83.44 or any lawful order or rule of the commissioner;

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

(3) made any material change in the advertising, plan of disposition, or development of the subdivided lands subsequent to the order of registration without obtaining prior approval from the commissioner;

(4) offered or sold any subdivided lands which have not been registered with the commissioner unless the subdivided lands or sales thereof are exempt from registration pursuant to section 83.26;

(5) been convicted, or if any of the subdivider's officers, directors, partners, principals, or agents has been convicted, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, subsequent to the time of the filing of the application for registration;

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

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

(8) made misrepresentations or concealed material facts in an application for registration;

(9) permanently or temporarily been enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of land sales; or

(10) failed to pay any filing or inspection fee required by sections 83.20 to 83.42, 83.43 and 83.44.

**Subd. 2. Service of process.** When initiating a proceeding under subdivision 1, the commissioner shall serve upon the subdivider or other person by personal service or by certified mail, a written notice of hearing setting the date, time, and place of the hearing and a statement of the allegations upon which the suspension or revocation will be based.

**Subd. 3.** [Repealed, 1987 c 336 s 47]

**Subd. 4. Amendment; registration suspension.** Upon receipt of an application to amend or other information indicating a material change in the information on file with the commissioner, and, if the commissioner determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, the commissioner may, by order, suspend the registration until satisfied that the subdivider or subdivider's agent has made the proper changes in the public offering statement, advertising, and promotional plan to provide full and fair disclosure of the material change to the public.

**Subd. 5. Hearing.** In the event the commissioner issues an order under subdivision 4, the order shall include in its terms a provision for a hearing within 10 days of the date of the order, specifying a date, time, and place for the hearing. Unless otherwise agreed, within 20 days of the close of the hearing record, the commissioner shall issue an order either vacating, modifying, or continuing the temporary order. If the temporary order is continued or modified the commissioner shall state reasons therefor.

**History:** 1973 c 413 s 16; 1984 c 452 s 20; 1986 c 444

### 83.36 INJUNCTIONS; RECEIVERS.

If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of sections 83.20 to 83.42, 83.43 and 83.44 or order hereunder, the commissioner, with or without prior administrative proceedings, may bring an action in district court to enjoin the acts or practices and to enforce compliance with sections 83.20 to 83.42, 83.43 and 83.44 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 commissioner is not required to post a bond in any court proceedings.

**History:** 1973 c 413 s 17; 1984 c 452 s 21

### 83.37 PENALTIES; CIVIL REMEDIES.

**Subdivision 1. Civil fine.** Any person who violates section 83.23, 83.24, 83.28, 83.29, or 83.44 shall be subject to a fine of not more than \$1,000 for each violation. A fine authorized by this subdivision may be imposed in a civil action brought by the attorney general on behalf of the state of Minnesota, and shall be deposited in the state treasury. Every person, agent, or employee of a person who materially aids in the act or transaction constituting the violation shall be liable jointly and severally with and to the same extent as the person.

**Subd. 2. Misdemeanor penalty.** Any violation of sections 83.20 to 83.42 and any

failure to comply with any provisions of sections 83.20 to 83.42 not enumerated in subdivision 1 shall be a misdemeanor.

**Subd. 3. Failure to pay fees.** Any person who fails to pay the filing or inspection fees required by sections 83.20 to 83.42, 83.43 and 83.44, and continues to dispose of or offers to dispose of subdivided lands, is liable civilly in an action brought by the attorney general on behalf of the commissioner for a penalty in an amount equal to treble the unpaid fees.

**Subd. 4. Prohibited practices; remedies.** In the event of any prohibited practice as set forth in section 83.44, in addition to any other remedies, and whether or not the purchaser has in fact been damaged thereby, the purchaser may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest thereon at the legal rate 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, the purchaser 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 legal rate on that amount from the date of sale.

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

(b) every person who directly or indirectly controls a subdivider who may be liable under sections 83.20 to 83.42, 83.43 and 83.44, 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 such a person 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.

(c) every person whose name or occupation gives authority to a statement which with the person's consent has been used in an application for registration, public offering statement, or advertising, if the person is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in statements and only if it is proved the person knew or reasonably should have known of the existence of the true facts by reason of which the liability is alleged to exist.

(d) an action shall not be commenced pursuant to this subdivision later than three years from the date the person discovers any prohibited practice set forth in section 83.44.

**Subd. 5. Other remedies.** The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

**History:** 1973 c 413 s 18; 1984 c 452 s 22; 1986 c 444

### 83.38 RULES.

**Subdivision 1.** The commissioner may adopt rules to implement the provisions of sections 83.20 to 83.42. The rules may include but shall not be limited to:

- (a) Provisions for advertising standards to assure full and fair disclosure;
- (b) Provisions for escrow or trust agreement 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;
- (c) Provisions for operating procedures;
- (d) Provisions requiring instruments to be executed in recordable form;
- (e) Provisions relating to apportionment of taxes among purchasers;

(f) Provisions for cooperation with the commissioner of the department of natural resources to ensure compliance with environmental quality standards.

Subd. 2. The commissioner may, upon request and upon the payment of the sum of \$50, grant a request for a written opinion concerning the availability of any exemption in section 83.26 or interpreting any provisions of sections 83.20 to 83.42, 83.43 and 83.44.

Subd. 3. For the purpose of rules and forms, the commissioner may by rule classify subdivisions, persons and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes.

**History:** 1973 c 413 s 19; 1974 c 440 s 6; 1984 c 452 s 23; 1985 c 248 s 70; 1986 c 444

### 83.39 SERVICE OF PROCESS.

Subdivision 1. **Procedure.** Every applicant for registration under sections 83.20 to 83.42, 83.43 and 83.44 shall file with the commissioner, in a format as by rule may be prescribed, an irrevocable consent appointing the commissioner or commissioner's successor to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or a successor, executor, or administrator which arises under sections 83.20 to 83.42, 83.43 and 83.44 or any rule or order thereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (a) the plaintiff, who may be commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at that person's last address on file with the commissioner, and (b) the plaintiff's affidavit of compliance with this subdivision 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.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

Subd. 2. **Service on commissioner.** When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 83.20 to 83.42, 83.43 and 83.44, or any rule or order thereunder, and the person has not filed a consent to service of process under subdivision 1 and personal jurisdiction over this person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner or the commissioner's successor to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the commissioner or the commissioner's successor, executor, or administrator which grows out of that conduct and which is brought under sections 83.20 to 83.42, 83.43 and 83.44 or any rule or order thereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (a) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at that person's last known address or takes other steps which are reasonably calculated to give actual notice, and (b) the plaintiff's affidavit of compliance with this subdivision 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.

Subd. 3. **Continuance.** When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

**History:** 1973 c 413 s 20; 1984 c 452 s 24; 1984 c 640 s 32; 1986 c 444

## **83.40 SCOPE OF SECTIONS 83.20 TO 83.42, 83.43 AND 83.44.**

Subdivision 1. **In-state offer or sale.** The provisions of sections 83.20 to 83.42, 83.43 and 83.44 concerning offers and sales of subdivided lands apply when an offer or sale is made in this state.

Subd. 2. **In-state offer or sale defined.** For the purpose of sections 83.20 to 83.42, 83.43 and 83.44, an offer or sale is made in this state, whether or not either party is then present in this state, when:

- (a) the offer originates from this state, or
- (b) the offer is directed by the offeror to this state and received by the offeree in this state, or
- (c) the subdivided lands are located in this state.

Subd. 3. **Exclusions.** An offer or sale is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or a radio or television program originating outside this state is received in this state.

Subd. 4. **Lien of mortgage.** Notwithstanding any provision of sections 83.20 to 83.42, 83.43 and 83.44 to the contrary, sections 83.20 to 83.42, 83.43 and 83.44 do not apply to or invalidate the lien of a mortgagee, nonaffiliated with the subdivider, when said lien attaches to land pledged as collateral in a transaction negotiated directly with the purchaser.

**History:** 1973 c 413 s 21; 1984 c 452 s 25; 1986 c 444

## **83.41 INTERSTATE RENDITION.**

In the proceedings for extradition of a person charged with a crime under sections 83.20 to 83.42, 83.43 and 83.44, 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.

**History:** 1973 c 413 s 22; 1984 c 452 s 26

## **83.42 STATUTE OF LIMITATIONS.**

The statute of limitations for actions arising under this chapter shall be three years and shall not begin to run with respect to any cause of action under this chapter, other than those set forth in section 83.37, subdivision 4, clause (d), until a conveyance describing such lot or parcel is recorded with the appropriate recording authority. This section does not prohibit the maintenance of any action before the recording of such conveyance.

**History:** 1973 c 413 s 23; 1984 c 452 s 27

## **83.43 CRIMINAL PENALTIES.**

Any person who willfully violates any provision of section 83.23 or 83.44 or any order of the commissioner under sections 83.20 to 83.42, this section, and 83.44 of which the person has notice, may be fined not more than \$10,000 or imprisoned not more than five years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of the offenses shall not bar prosecution or conviction for any other offense.

**History:** 1984 c 452 s 28; 1984 c 628 art 3 s 11; 1986 c 444

## **83.44 PROHIBITED PRACTICES.**

It is unlawful for any person, in connection with the offer or sale of any subdivided land or interests therein, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state material

facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(d) to accept an advance payment for services rendered by an agent in connection with the resale of a time share interest.

**History:** 1984 c 452 s 29; 1988 c 493 s 6

### 83.45 ADVERTISING; SPECIFIC PROHIBITIONS.

The following devices or sales presentations, and the use of those devices or presentations are deceptive or misleading practices:

(1) An advertisement that offers travel, accommodations, gifts, meals, or entertainment published to induce prospective purchasers to visit a subdivision or attend a sales presentation and that:

(i) does not prominently set forth all eligibility requirements;

(ii) describes offers of travel, accommodations, gifts, meals, or entertainment as "prizes," "awards," or by words of similar import or describes prospective purchasers as "winners" or by words of similar import;

(iii) contains the words "free" or "no obligation" or similar terms unless the offer contained in the advertisement is unequivocally without conditions;

(iv) states or implies that prospective purchasers have been specially selected;

(v) does not specifically state that gifts will be provided at the time the prospective purchaser visits the subdivision or attends the sales presentation;

(vi) does not disclose on its face page the retail market value of the travel, accommodations, gifts, meals, or entertainment provided. For purposes of this paragraph, "retail market value" means: the retail price the item sells for in Minnesota; or if the item is not sold in Minnesota, the retail price the item sells for in states contiguous to Minnesota; or if the item is not sold in Minnesota or in any state contiguous to this state, the retail price the item sells for anywhere in the United States;

(vii) does not specifically and prominently disclose that the purpose of the offer of travel, accommodations, gifts, meals, or entertainment is to induce prospective purchasers to visit a subdivision or attend a sales presentation where they will be encouraged to purchase subdivided land;

(viii) does not completely disclose rules and procedures if travel, accommodations, gifts, meals, or entertainment are offered through a "sweepstakes," "giveaway," or similar contest;

(ix) does not specifically disclose the odds, as a fraction, using a common denominator, of a prospective purchaser's receiving each gift if the gift is offered through a "sweepstakes," "giveaway," or similar contest; or

(x) does not clearly and prominently state that gifts may be given to persons outside the state if the advertisement is part of a national advertising campaign.

(2) An advertisement that does not prominently disclose the name, address, and phone number of the subdivider on whose behalf the advertisement is distributed.

(3) An advertisement prepared on the stationery of a person other than the subdivider which creates a likelihood of confusion, misunderstanding, or deception.

**History:** 1987 c 154 s 10