

ASSEMBLY BILL NO. 197—ASSEMBLYMAN SEGERBLOM

FEBRUARY 19, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Makes certain changes to provisions governing sales of subdivided land. (BDR 10-37)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to real property; clarifying that the provisions governing an offer to sell subdivided land apply similarly to a reservation agreement concerning such land; establishing certain procedures for parties who enter into a reservation agreement; applying certain provisions governing sales of subdivided land to reservation agreements; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides certain requirements and provisions concerning offers to sell subdivided land. (NRS 119.010-119.340) This bill clarifies that the provisions governing offers to sell subdivided land apply similarly to a reservation agreement concerning such land.

Section 1 of this bill defines the term “reservation agreement” to mean an agreement between a purchaser and a developer for the right to make a first offer to purchase an interest in a subdivision. **Section 3** of this bill clarifies the existing definition of “offer” to include a reservation agreement as an inducement, solicitation or attempt to bring about a sale. (NRS 119.060)

Section 6 of this bill amends existing law which provides that a purchaser of a subdivision, lot, parcel, unit or interest may cancel the contract within 5 days after execution of the contract to allow a purchaser of a reservation agreement the same right of cancellation. **Section 6** also requires that a purchaser of a reservation agreement must enter into a contract of sale within 1 year after the execution of the reservation agreement, or the reservation agreement is voidable at the option of the purchaser. (NRS 119.182)

Sections 4, 5 and 7-9 of this bill amend existing law governing the sale of subdivisions, lots, parcels, units or interests therein to provide that a developer



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19 offering such interests, including reservation agreements, must comply with certain
20 requirements for the sale of land, such as obtaining a license, appointing an agent,
21 submitting certain information to the Real Estate Division of the Department of
22 Business and Industry, disclosing the location of rights-of-way and easements to
23 the purchaser, if known, complying with certain provisions governing public
24 offering statements and not making or attempting to make an offer, or attempting to
25 make an offer or accepting a reservation agreement by means of misrepresentation,
26 deceit or fraud. (NRS 119.130, 119.140, 119.1835, 119.1837, 119.330)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 119 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *“Reservation agreement” means an agreement between a*
4 *purchaser and a developer whereby, upon payment of a deposit,*
5 *the purchaser maintains the right to make a first offer to purchase*
6 *a lot, parcel, unit or interest in a subdivision.*

7 **Sec. 2.** NRS 119.010 is hereby amended to read as follows:

8 119.010 As used in this chapter, unless the context otherwise
9 requires, the words and terms defined in NRS 119.015 to 119.112,
10 inclusive, *and section 1 of this act* have the meanings ascribed to
11 them in those sections.

12 **Sec. 3.** NRS 119.060 is hereby amended to read as follows:

13 119.060 “Offer” means every inducement, solicitation or
14 attempt to bring about a sale  , *including, without limitation, a*
15 *reservation agreement.*

16 **Sec. 4.** NRS 119.130 is hereby amended to read as follows:

17 119.130 1. No subdivision or lot, parcel, unit or interest in
18 any subdivision may in any way , *including, without limitation, by*
19 *means of a reservation agreement,* be offered or sold in this State
20 by any person until:

21 (a) He has appointed in writing the Secretary of State to be his
22 agent, upon whom all process, in any action or proceeding against
23 him, may be served, and in this writing he agrees that any process
24 against him which is served on the Secretary of State is of the same
25 legal validity as if served on him and that the appointment continues
26 in force as long as any liability remains outstanding against him in
27 this State. The written appointment must be acknowledged before a
28 notary public and must be filed in the Office of the Secretary of
29 State with a fee of \$10 for accepting and transmitting any legal
30 process served on the Secretary of State. Copies certified by the
31 Secretary of State are sufficient evidence of the appointment and
32 agreement.

33 (b) He has received a license under NRS 119.160.



1 2. Service of process authorized by paragraph (a) of subsection
2 1 must be made by filing with the Secretary of State:

3 (a) Two copies of the legal process. The copies must include a
4 specific citation to the provisions of this section. The Secretary of
5 State may refuse to accept such service if the proper citation is not
6 included in each copy.

7 (b) A fee of \$10.

8 ➔ The Secretary of State shall forthwith forward one copy of the
9 legal process to the licensee **H** by registered or certified mail
10 prepaid to the licensee.

11 **Sec. 5.** NRS 119.140 is hereby amended to read as follows:

12 119.140 Any person or broker proposing , *including, without*
13 *limitation, by means of a reservation agreement,* to offer or sell
14 any subdivision or lot, parcel, unit or interest therein in this State
15 shall first submit to the Division:

16 1. The name and address of each person owning or controlling
17 an interest of 10 percent or more.

18 2. The name, principal occupation and address of every officer,
19 director, partner, owner, associate or trustee of the subdivider.

20 3. The legal description and area of lands.

21 4. A true statement of the condition of the title to the land,
22 including all encumbrances thereon.

23 5. A true statement of the terms and conditions on which it is
24 intended to dispose of the land and copies of the instruments which
25 will be delivered to a purchaser to evidence his interest in the
26 subdivision and of the contracts and other agreements which a
27 purchaser will be required to agree to or sign.

28 6. A true statement of the provisions, if any, that have been
29 made for public utilities in the proposed subdivision, including
30 water, electricity, gas, telephone and sewerage facilities.

31 7. A true statement of the use for which the proposed
32 subdivision will be offered.

33 8. A true statement of the provisions, if any, limiting the use or
34 occupancy of the parcels in the subdivision.

35 9. A true statement of the maximum depth of fill used, or
36 proposed to be used , on each lot **H** and a true statement on the soil
37 conditions in the subdivision supported by engineering reports
38 showing the soil has been, or will be, prepared in accordance with
39 the recommendations of a licensed civil engineer.

40 10. A true statement of the amount of indebtedness which is a
41 lien upon the subdivision or any part thereof **H** and which was
42 incurred to pay for the construction of any on-site or off-site
43 improvement, or any community or recreational facility, and the
44 names and addresses of the holders of the indebtedness together



1 with an indication of their relationship, if any, to the owner and
2 subdivider.

3 11. A true statement or reasonable estimate, if applicable, of
4 the amount of any indebtedness which has been or is proposed to be
5 incurred by an existing or proposed special district, entity, taxing
6 area or assessment district, within the boundaries of which the
7 subdivision, or any part thereof, is located, and which is to pay for
8 the construction or installation of any improvement or to furnish
9 community or recreational facilities to the subdivision, and which
10 amounts are to be obtained by ad valorem tax or assessment, or by a
11 special assessment or tax upon the subdivision, or any part thereof.

12 12. A true statement describing any agricultural activities or
13 conditions in the area which may adversely affect residents of the
14 subdivision, including any odors, cultivation and related dust,
15 agricultural burning, application of pesticides, or irrigation and
16 drainage.

17 13. Such other information as the owner, his agent or
18 subdivider may wish to present.

19 14. A completed application for a license in such form and
20 containing such additional information as the Division may require
21 on its filing forms.

22 15. The fees prescribed by this chapter.

23 **Sec. 6.** NRS 119.182 is hereby amended to read as follows:

24 119.182 1. The information submitted pursuant to NRS
25 119.140 must be given to and reviewed with each purchaser by the
26 broker or salesman before the execution of any contract for the sale
27 of , *or reservation agreement regarding*, any such property. The
28 broker shall obtain from the purchaser a signed receipt for a copy of
29 the information and, if a contract for ~~disposition~~ *sale or a*
30 *reservation agreement* is entered into, the receipt , and a copy of all
31 contracts and agreements must be kept in the broker's files within
32 the State of Nevada for 3 years or 1 year after final payment has
33 been made on any contract for the sale of property, whichever is
34 longer, and is subject to such inspection and audit as may be
35 prescribed by regulations of the Division.

36 2. ~~The~~ *Any purchaser who enters into a reservation*
37 *agreement and any* purchaser of any subdivision or any lot, parcel,
38 unit or interest in any subdivision, not exempted under the
39 provisions of NRS 119.120 or 119.122 , may cancel, by written
40 notice, the *reservation agreement or* contract of sale until midnight
41 of the fifth calendar day following the date of execution of the
42 *reservation agreement or* contract, and the *reservation agreement*
43 *or* contract must so provide. The right of cancellation may not be
44 waived. Any attempt by the developer to obtain such a waiver



1 results in a *reservation agreement or* contract which is voidable by
2 the purchaser.

3 3. *If the parties who entered into a reservation agreement*
4 *have not, within 1 year after entering into the reservation*
5 *agreement, entered into a contract for sale regarding the*
6 *subdivision, lot, parcel, unit or interest that is the subject of the*
7 *reservation agreement, the purchaser may, by written notice,*
8 *cancel the reservation agreement. If the purchaser cancels the*
9 *reservation agreement pursuant to this subsection, the escrow*
10 *company, developer, broker or any other holder of the deposit*
11 *must return the deposit to the purchaser pursuant to subsection 5.*
12 *The right of cancellation may not be waived. Any attempt by the*
13 *developer to obtain such a waiver results in a reservation*
14 *agreement which is voidable by the purchaser.*

15 4. The notice of cancellation *pursuant to subsection 2 or 3*
16 may be delivered personally to the developer or sent by certified
17 mail, return receipt requested, to the business address of the
18 developer.

19 ~~4.1~~ 5. The developer *or any other applicable entity* shall,
20 within 15 days after receipt of the notice of cancellation ~~H~~ *pursuant*
21 *to subsection 2 or 3*, return all payments *or deposits* made by the
22 purchaser.

23 Sec. 7. NRS 119.1835 is hereby amended to read as follows:

24 119.1835 It is unlawful for a developer to sell any lot, parcel,
25 unit or interest in a subdivision *or enter into any reservation*
26 *agreement* without disclosing to the purchaser in writing, before the
27 purchaser signs any binding agreement, the location in the
28 subdivision, and on all land contiguous thereto, of all rights-of-way
29 and easements for transmission lines of public utilities that supply
30 electricity if the developer knows or reasonably should know the
31 locations of such rights-of-way and easements.

32 Sec. 8. NRS 119.1837 is hereby amended to read as follows:

33 119.1837 It is unlawful for a developer to sell any lot, parcel,
34 unit or interest in a subdivision *or enter into any reservation*
35 *agreement* without complying with the provisions of NRS
36 116.4106, if applicable.

37 Sec. 9. NRS 119.330 is hereby amended to read as follows:

38 119.330 1. Except as otherwise provided in subsection 2, a
39 person violating a provision of this chapter, if a natural person, is
40 guilty of a gross misdemeanor, and if a copartnership, association or
41 corporation, shall be punished by a fine of not more than \$10,000
42 for each offense.

43 2. A person who:

44 (a) Sells or attempts to sell in this State , *including, without*
45 *limitation, through a reservation agreement*, any subdivision or



1 any lot, parcel, unit or interest in any subdivision by means of
2 intentional misrepresentation, deceit or fraud; or

3 (b) Obtains or attempts to obtain a license under this chapter by
4 means of intentional misrepresentation, deceit or fraud,

5 ➤ is guilty of a category C felony and shall be punished as provided
6 in NRS 193.130. In addition to any other penalty, the court shall
7 order the person to pay restitution.

8 3. An officer or agent of a corporation, or member or agent of a
9 copartnership or association, who personally participates in or is an
10 accessory to any violation of this chapter by the copartnership,
11 association or corporation, is subject to the penalties prescribed for
12 natural persons in this section.

13 4. This section does not release any person, corporation,
14 association or copartnership from civil liability or criminal
15 prosecution under any other law of this State.

16 5. Upon conviction , the court may revoke the license of the
17 person so convicted, in addition to imposing the other penalties
18 provided in this section.

