

Chapter 58.19 RCW
Land development act

RCW Sections

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58.19.010
Purpose.

The legislature finds and declares that the sale and offering for sale of land or of interests in associations which provide for the use or occupancy of land touches and affects a great number of the citizens of this state and that full and complete disclosure to prospective purchasers of pertinent information concerning land developments, including any encumbrances or liens attached to the land and the physical characteristics of the development is essential. The legislature further finds and declares that delivery to prospective purchasers of a complete and accurate public offering statement is necessary in order to adequately protect both the economic and physical welfare of the citizens of this state. It is the purpose of this chapter to provide for the reasonable regulation of the sale and offering for sale of any interest in significant land developments within or without the state of Washington, so that the prospective purchasers of such interests might be provided with full, complete, and accurate information of all pertinent circumstances affecting their purchase.

[1992 c 191 § 1; 1973 1st ex.s. c 12 § 1.]

58.19.020
Definitions.

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

(1) "Affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer.

(a) A person controls a developer if the person: (i) Is a general partner, officer, director, or employer of the developer; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the developer; (iii) controls in any manner the election of a majority of the directors of the developer; or (iv) has contributed more than twenty percent of the capital of the developer.

(b) A person is controlled by a developer if the developer: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one of [or] more other persons, or through one or more subsidiaries, owns, controls, holds with the power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Blanket encumbrance" shall mean a trust deed, mortgage, mechanic's lien, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be developed or affecting more than one lot or parcel of developed land, or an agreement affecting more than one such lot or parcel by which the developer holds said development under option, contract, sale, or trust agreement. The term shall not include taxes and assessments levied by a public authority.

(3) "Common promotional plan" means an offering of related developed lands in a common promotional plan of disposition. Elements relevant to whether the related developed lands are being offered as part of a common promotional plan include but are not limited to: Whether purchasers of interests in the offered land will share in the use of common amenities, or other rights or privileges; whether the offered lands are known, designated, or advertised as a common unit or by a common name; whether a common broker or sales personnel, common sales office or facilities, or common promotional methods are utilized; and whether cross-referrals of prospective purchasers between sales operations is utilized.

(4) "Developer" means any owner of a development who offers it for disposition, or the principal agent of an inactive owner.

(5) "Development" or "developed lands" means land which is divided or is proposed to be divided for the purpose of disposition into twenty-six or more lots, parcels, or units (excluding interests in camping resorts regulated under chapter 19.105 RCW and interests in condominiums regulated under chapter 64.34 RCW) or any other land whether contiguous or not, if twenty-six or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(6) "Disposition" includes any sale, lease, assignment, or exchange of any interest in any real property which is a part of or included within a development, and also includes the offering of property as a prize or gift when a monetary charge or consideration for whatever purpose is required in conjunction therewith, and any other transaction concerning a development if undertaken for gain or profit.

(7) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage, deed of trust, or real estate contract, or a deed in lieu thereof.

(8) "Improvements" include all existing, advertised, and governmentally required facilities such as streets, water, electricity, natural gas, telephone lines, drainage control systems, and sewage disposal systems.

(9) "Offer" includes every inducement, solicitation, or media advertisement which has as a principal aim to encourage a person to acquire an interest in land.

(10) "Owners association" means any profit or nonprofit corporation, unincorporated association, or other organization or legal entity, a membership or other interest in which is appurtenant to or based upon owing an interest in a development.

(11) "Person" means an individual, corporation, 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.

(12) "Physical hazard" means a physical condition which poses, or may very likely pose, a material risk of either: Material damage to the development and improvements thereon; or material endangerment to the safety and health of persons using the development and improvements thereon.

(13) "Purchaser" means a person who acquires or attempts to acquire or succeeds to any interest in land.

(14) "Related developed lands" means two or more developments which are owned by the same developer or an affiliate or affiliates of that developer and which are physically located within the same five-mile radius area.

(15) "Residential buildings" shall mean premises that are actually intended or used primarily for residential or recreational purposes by the purchasers.

[1992 c 191 § 2; 1979 c 158 § 208; 1973 1st ex.s. c 12 § 2.]

58.19.030

Exemptions from chapter.

(1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to land and offers or dispositions:

(a) By a purchaser of developed lands for his or her own account in a single or isolated transaction;

(b) If fewer than ten separate lots, parcels, units, or interests in developed lands are offered by a person in a period of twelve months;

(c) If each lot offered in the development is five acres or more;

(d) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

(f) Any lot, parcel, unit or interest if the development is located within an area incorporated prior to January 1, 1974;

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

(a) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(c) A development as to which the director has waived the provisions of this chapter;

(d) Offers or dispositions of securities currently registered with the department of financial institutions;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the department of financial institutions.

[1994 c 92 § 504; 1979 c 158 § 209; 1973 1st ex.s. c 12 § 3.]

58.19.045

Public offering statement — Developer's duties — Purchaser's rights.

(1) A developer shall prepare a public offering statement conforming to the requirements of RCW 58.19.055 unless the development or the transaction is exempt under RCW 58.19.030.

(2) Any agent, attorney, or other person assisting the developer in preparing the public offering statement may rely upon information provided by the developer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or

omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The developer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the developer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(3) Unless the development or the transaction is exempt under RCW 58.19.030, a developer shall provide a purchaser of a lot, parcel, unit, or interest with a copy of the public offering statement and all material amendments thereto before conveyance of that lot, parcel, unit, or interest. Unless a purchaser is given the public offering statement more than two days before execution of a contract for the purchase of a lot, parcel, unit, or interest, the purchaser, before conveyance, shall have the right to cancel the contract within two days after first receiving the public offering statement and, if necessary to have two days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than two days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles. The two-day period shall not include Saturdays, Sundays, or legal holidays.

(4) If a purchaser elects to cancel a contract pursuant to subsection (3) of this section, the purchaser may do so by hand-delivering notice thereof to the developer or by mailing notice thereof by prepaid United States mail to the developer for service of process. If cancellation is by mailing notice, the date of the postmark on the mail shall be the official date of cancellation. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded within thirty days from the date of cancellation.

(5) If a person required to deliver a public offering statement pursuant to subsection (1) of this section fails to provide a purchaser to whom a lot, parcel, unit, or interest is conveyed with that public offering statement and all material amendments thereto as required by subsection (3) of this section, the purchaser is entitled to receive from that person an amount equal to the actual damages suffered by the purchaser as a result of the public offering statement not being delivered. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the lot, parcel, unit, or interest had the undisclosed information been evident to the purchaser before the closing of the purchase.

(6) A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or developer's agent identified in the public offering statement.

[1992 c 191 § 4.]

58.19.055

Public offering statement — Contents.

(1) A public offering statement shall contain the following information:

- (a) The name, and the address or approximate location, of the development;
- (b) The name and address of the developer;
- (c) The name and address of the management company, if any, for the development;
- (d) The relationship of the management company to the developer, if any;
- (e) The nature of the interest being offered for sale;
- (f) A brief description of the permitted uses and use restrictions pertaining to the development and the purchaser's interest therein;
- (g) The number of existing lots, parcels, units, or interests in the development and either the maximum number that may be added to the development or the fact that such maximum number has not yet been determined;
- (h) A list of the principal common amenities in the development which materially affect the value of the development and those that will or may be added to the development;
- (i) The identification of any real property not in the development, the owner of which has access to any of the development, and a description of the terms of such access;
- (j) The identification of any real property not in the development to which owners in the development have access and a description of the terms

of such access;

(k) The status of construction of improvements in the development, including either the estimated dates of completion if not completed or the fact that such estimated completion dates have not yet been determined; and the estimated costs, if any, to be paid by the purchaser;

(l) The estimated current owners' association expense, if any, for which a purchaser would be liable;

(m) An estimate of any payment with respect to any owners' association expense for which the purchaser would be liable at closing;

(n) The estimated current amount and purpose of any fees not included in any owners' association assessments and charged by the developer or any owners' association for the use of any of the development or improvements thereto;

(o) Any assessments which have been agreed to or are known to the developer and which, if not paid, may constitute a lien against any portion of the development in favor of any governmental agency;

(p) The identification of any parts of the development which any purchaser will have the responsibility for maintaining;

(q) A brief description of any blanket encumbrance which is subject to the provisions of RCW 58.19.180;

(r) A list of any physical hazards known to the developer which particularly affect the development or the immediate vicinity in which the development is located and which are not readily ascertainable by the purchaser;

(s) A brief description of any construction warranties to be provided to the purchaser;

(t) Any building code violation citations received by the developer in connection with the development which have not been corrected;

(u) A statement of any unsatisfied judgments or pending suits against any owners' association involved in the development and a statement of the status of any pending suits material to the development of which the developer has actual knowledge;

(v) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 58.19.045(3), including applicable time frames and procedures;

(w) A list of the documents which the prospective purchaser is entitled to receive from the developer before the rescission period commences;

(x) A notice which states:

"A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or by any person identified in the public offering statement as the declarant's agent";

(y) A notice which states:

"This public offering statement is only a summary of some of the significant aspects of purchasing an interest in this development and any documents which may govern or affect the development may be complex, may contain other important information, and create binding legal obligations. You should consider seeking assistance of legal counsel"; and

(z) Any other information and cross-references which the developer believes will be helpful in describing the development to the recipients of the public offering statement, all of which may be included or not included at the option of the developer.

(2) The public offering statement shall include copies of each of the following documents: Any declaration of covenants, conditions, restrictions, and reservations affecting the development; any survey, plat, or subdivision map; the articles of incorporation of any owners' association; the bylaws of any owners' association; the rules and regulations, if any, of any owners' association; current or proposed budget for any owners' association; and the balance sheet of any owners' association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not yet been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of an interest in the development, the

purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(v), (x), and (y) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

[1992 c 191 § 5.]

58.19.120

Report of changes required — Amendments.

The developer shall immediately amend the public offering statement to include any material changes affecting the development. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made without first making an appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments.

[1992 c 191 § 6; 1973 1st ex.s. c 12 § 12.]

58.19.130

Public offering statement form — Type and style restriction.

No portion of the public offering statement form may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director so requires.

[1973 1st ex.s. c 12 § 13.]

58.19.140

Public offering statement — Promotional use, distribution restriction — Holding out that state or employees, etc., approve development prohibited.

The public offering statement shall not be used for any promotional purposes. It may not be distributed to prospective purchasers before registration of the development and may be distributed afterwards only when it is used in its entirety. No person may advertise or represent that the state of Washington or the director, the department, or any employee thereof approves or recommends the development or disposition thereof.

[1973 1st ex.s. c 12 § 14.]

58.19.180

Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title — Alternatives.

It shall be unlawful for the developer to make a sale of lots or parcels within a development which is subject to a blanket encumbrance which does not contain, within its terms or by supplementary agreement, a provision which shall unconditionally provide that the purchaser of a lot or parcel encumbered thereby can obtain the legal title, or other interest contracted for, free and clear of the lien of such blanket encumbrance upon compliance with the terms and conditions of the purchase agreement, unless the developer shall elect and comply with one of the following alternative conditions:

(1) The developer shall deposit earnest moneys and all subsequent payments on the obligation in a neutral escrow depository, or real estate trust account regulated under *RCW 18.85.310, until such time as all payments on the obligation have been made and clear title is delivered, or any of the following occurs:

(a) A proper release is obtained from such blanket encumbrance;

(b) Either the developer or the purchaser defaults under the sales contract and there is a forfeiture of the interest of the purchaser or there is a determination as to the disposition of such moneys, as the case may be; or

(c) The developer orders a return of such moneys to such purchaser.

(2) The title to the development is held in trust under an agreement of trust until the proper release of such blanket encumbrance is obtained.

(3) The purchaser shall receive title insurance from a licensed title insurance company against such blanket encumbrance.

[1992 c 191 § 7; 1973 1st ex.s. c 12 § 18.]

Notes:

*Reviser's note: RCW 18.85.310 was recodified as RCW 18.85.285 pursuant to 2008 c 23 § 49, effective July 1, 2010.

58.19.185

Requiring purchaser to pay additional sum to construct, complete or maintain development.

It shall be unlawful for the developer to sell a lot or parcel within a development if the terms of the sale require that the purchaser pay any sum in addition to the purchase price for constructing, completing, or maintaining improvements to the development unless the sums are to be paid directly to:

(1) A governmental agency;

(2) A person who is not affiliated with the developer, in trust, and on terms acceptable to the director; or

(3) An association comprised solely of persons who have purchased lots in the development, or their assignees.

The terms which require the payment of any additional sum shall be set forth in the public offering statement.

[1977 ex.s. c 252 § 1.]

58.19.190

Advertising — Materially false, misleading, or deceptive statements prohibited.

No person shall publish in this state any advertisement concerning a development subject to the requirements of this chapter which contains any statements that are materially false, misleading, or deceptive.

[1992 c 191 § 8; 1973 1st ex.s. c 12 § 19.]

58.19.265

Violations — Remedies — Attorneys' fees.

If a developer, or any other person subject to this chapter, fails to comply with any provision of this chapter, any person or class of persons adversely affected by the failure to comply may seek appropriate relief through an action for damages or an injunctive court order. The court, in an appropriate case, may award attorneys' fees.

[1992 c 191 § 9.]

58.19.270

Violations deemed unfair practice subject to chapter 19.86 RCW.

(1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be a matter affecting the public interest for the purpose of applying chapter 19.86 RCW and is not reasonable in relation to the development and preservation of business. A violation of this

chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the attorney general bringing an action in the name of the state under the consumer protection act, pursuant to RCW 19.86.080.

(2) Evidence concerning violations of this chapter may be referred to the attorney general, who may, in his or her discretion, with or without such a reference, in addition to any other action the attorney general might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter. This chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, and the powers and duties of the attorney general as such powers and duties appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter.

(3) Only the attorney general can bring an action under the consumer protection act, chapter 19.86 RCW, pursuant to this section.

[1992 c 191 § 10; 1973 1st ex.s. c 12 § 27.]

58.19.280

Jurisdiction of superior courts.

Dispositions of an interest in a development are subject to this chapter, and the superior courts of this state have jurisdiction in claims or causes of action arising under this chapter, if:

(1) The interest in a development offered for disposition is located in this state;

(2) The developer maintains an office in this state; or

(3) Any offer or disposition of an interest in a development 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.

[1973 1st ex.s. c 12 § 28.]

58.19.300

Hazardous conditions — Notice.

If, before disposition of all or any portion of a development which is covered by this chapter, a condition constituting a physical hazard is discovered on or around the immediate vicinity of the development, the developer or government agency discovering such condition shall notify the purchasers of the affected lands either by transmitting notice through the appropriate county assessor's office or such other steps as might reasonably give actual notice to the purchasers.

[1992 c 191 § 11; 1973 1st ex.s. c 12 § 30.]

58.19.920

Liberal construction.

The provisions of this chapter shall be construed liberally so as to give 58.19.010 effect to the purposes stated in RCW

[1973 1st ex.s. c 12 § 33.]

58.19.940

Short title.

This chapter may be cited as the land development act.

[1992 c 191 § 12; 1973 1st ex.s. c 12 § 35.]

58.19.950

Severability — 1973 1st ex.s. c 12.

If any provision of this 1973 act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this 1973 act are severable.

[1973 1st ex.s. c 12 § 36.]

58.19.951

Severability — 1992 c 191.

If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1992 c 191 § 14.]