



OFFICE OF THE ATTORNEY GENERAL

PLATTING AND SUBDIVISIONS--REAL ESTATE--CREATION OF SHORT SUBDIVISION BY OFFER TO SELL LAND

Because of the necessity for a legally sufficient description in connection with an offer to sell, or sale of, real property an offer to sell a portion of a larger tract of land, or the execution of a purchase and sale agreement covering such a tract of land, constitutes a "division" of the land under the definition of a "short subdivision" contained in RCW 58.17.020(6) or (7) so as to render applicable the various provisions of chapter 58.17 RCW relating to short plats and short subdivisions.

December 15, 1983

Honorable R. H. "Dick" Barrett
State Representative, Fifth District
North 9819 Nez Perce Court
Spokane, Washington 99208

Cite as: *Barrett*
AGO 1983 No. 31

Dear Sir:

By recent letter you requested our opinion on the following two questions:

"1. Does the unilateral offer to sell a portion of a larger trace of land which portion would ultimately be subject to RCW 58.17.060 constitute a 'division' of land under the definition of 'short sub-division' contained in RCW 58.17.020 (6) or (7)?

"2. Does the execution of a purchase and sale agreement in which a closing is specifically dependent upon the prior recording of a short plat covering the sale parcel constitute a 'division' under RCW 58.17.020 (6) or (7)?"

We answer both questions in the affirmative.

ANALYSIS

In posing the above stated questions you directed our attention to the respective definitions of a "short subdivision" appearing in RCW 58.17.020 as amended by § 1, chapter 292, Laws of

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1981 and by § 2, chapter 293, Laws of 1981. The first of those two definitions reads as follows:

"'Short subdivision' is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease."

The other definition, as set forth in § 2, chapter 293, supra, reads as follows:

"'Short subdivision' is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: PROVIDED, That the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine."

However, it is not necessary--in order to respond to your questions--to determine which of those two versions of the definition would prevail to the extent that they are in conflict. Conversely, if it were necessary to make that determination we would be guided by the following rule of construction as set forth in RCW 1.12.025:

"If at any session of the legislature there are enacted two or more acts amending the same section of the session laws or of the official code, each amendment without reference to the others, each act shall be given effect to the extent that the amendments do not conflict in purpose, otherwise the act last filed in the office of the secretary of state in point of time, shall control: PROVIDED, That if one or more special sessions of the same legislature shall follow any regular session, this rule of construction shall apply to the laws enacted at either, both, any, or all of such sessions."

In this instance, although both chapter 292 and chapter 293, supra, were filed with the Secretary of State on the same day (May 18, 1981), chapter 293 was date stamped as having been received by that office later during the day than chapter 292.

The reason it is unnecessary to proceed any further with that issue, however, is that both definitions coincide on the basic point here involved; namely, that a "short subdivision" occurs whenever the owner of a tract of land divides that land ". . .

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into four or less lots, tracts, parcels, sites or divisions for the purpose of sale." (Emphasis supplied)

Repeated for ease of reference you have asked:

"1. Does the unilateral offer to sell a portion of a larger tract of land which portion would ultimately be subject to RCW 58.17.060 constitute a 'division' of land under the definition of 'short sub-division' contained in RCW 58.17.020 (6) or (7)?

"2. Does the execution of a purchase and sale agreement in which a closing is specifically dependent upon the prior recording of a short plat covering the sale parcel constitute a 'division' under RCW 58.17.020 (6) or (7)?"

Based on the above-quoted definitions of a short division we answer both questions in the affirmative. For, in order for the owner of a tract of land to offer only a portion of that tract for sale, or to enter into a contract for the sale of only a portion of the tract, some sort of legally sufficient description of what is being offered must necessarily be developed; for example, an offer to sell ". . . that portion of Blackacre lying south of Mill Creek and east of Penny Lane." Without such a legal description a meaningful, legally enforceable contract of sale simply could not be executed. As stated by the court in Bigelow v. Mood, 56 Wn.2d 340, 341, 353 P.2d 429 (1960):

"We have held consistently that, in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description. Bingham v. Sherfey (1951), 38 Wn. (2d) 886, 234 P. (2d) 489; Martin v. Seigel (1949), 35 Wn. (2d) 223, 212 P. (2d) 107, 23 A.L.R. (2d) 1; Fosburgh v. Sando (1946), 24 Wn. (2d) 586, 166 P. (2d) 850; Barth v. Barth (1943), 19 Wn. (2d) 543, 143 P. (2d) 542; Martinson v. Cruikshank (1940), 3 Wn. (2d) 565, 101 P. (2d) 604."

But, in turn, under the above-quoted definitions of a "short subdivision" the very act of formulating and then using such a legally sufficient definition of what is to be sold constitutes the creation of a short subdivision where the thing to be sold is a single lot or parcel within a larger tract of land--the remainder

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of which is either to be retained by its owner or later to be sold as a separate parcel or parcels.

Having said that, however, we should next direct your attention to RCW 58.17.040 which exempts certain subdivisions or short subdivisions from the otherwise applicable provisions of chapter 58.17 RCW because of the purpose of the particular division, the size of the lots involved, or because of other factors referred to in that section of the law. In addition, particularly with reference to the approach contemplated by your second question, we would call to your attention the following language of RCW 58.17.205:

"If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded."

The two statutes thus referred to (RCW 58.17.200 and .300), in turn, provide, respectively, for injunctive relief and for the imposition of criminal penalties where land is sold or offered for sale in violation of any of the provisions of chapter 58.17 RCW.

It is hoped that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY
Attorney General



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Senior Deputy Attorney General

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