

AMENDED IN ASSEMBLY JANUARY 5, 1998

AMENDED IN ASSEMBLY APRIL 1, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 759

Introduced by Assembly Member McClintock

February 26, 1997

An act to ~~add Section 11000.15 to~~ amend Sections 11000.1, 11010.2, 11010.4, 11018.3, and 11018.12 of the Business and Professions Code, relating to subdivided lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 759, as amended, McClintock. Real estate: subdivisions.

Existing law provides for the regulation of real estate transactions, including subdivided lands transactions.

This bill would delete obsolete references to a section that was repealed on January 1, 1997, relating to subdivided lands.

~~Existing law defines the terms "subdivided lands" and "subdivision" for purposes of regulation of subdivided lands transactions to include improved or unimproved land or lands, a lot or lots, or a parcel or parcels, of any size, in which, for the purpose of sale or lease or financing, whether immediate or future, 5 or more undivided interests are created or are proposed to be created. Certain types of undivided interests in land are exempt from that definition, as specified.~~

~~This bill would, with respect to regulation of sales of subdivided lands, exempt the sale of undivided interest in unimproved land to 25 or fewer persons if certain conditions are met. The bill would make related changes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11000.15 is added to the Business~~
2 *SECTION 1. Section 11000.1 of the Business and*
3 *Professions Code is amended to read:*

4 11000.1. (a) “Subdivided lands” and “subdivision,” as
5 defined by Sections 11000,~~11000.5~~, and 11004.5, also
6 include improved or unimproved land or lands, a lot or
7 lots, or a parcel or parcels, of any size, in which, for the
8 purpose of sale or lease or financing, whether immediate
9 or future, five or more undivided interests are created or
10 are proposed to be created.

11 (b) This section does not apply to the creation or
12 proposed creation of undivided interests in land if any
13 one of the following conditions exists:

14 (1) The undivided interests are held or to be held by
15 persons related one to the other by blood or marriage.

16 (2) The undivided interests are to be purchased and
17 owned solely by persons who present evidence
18 satisfactory to the Real Estate Commissioner that they are
19 knowledgeable and experienced investors who
20 comprehend the nature and extent of the risks involved
21 in the ownership of these interests. The Real Estate
22 Commissioner shall grant an exemption from this part if
23 the undivided interests are to be purchased by no more
24 than 10 persons, each of whom furnishes a signed
25 statement to the commissioner that he or she (1) is fully
26 informed concerning the real property to be acquired
27 and his or her interest therein including the risks involved
28 in ownership of undivided interests, and (2) is purchasing
29 the interest or interests for his or her own account and
30 with no present intention to resell or otherwise dispose of



1 the interest for value, and (3) expressly waives
2 protections afforded to a purchaser by this part.

3 (3) The undivided interests are created as the result of
4 a foreclosure sale.

5 (4) The undivided interests are created by a valid
6 order or decree of a court.

7 (5) The offering and sale of the undivided interests
8 have been expressly qualified by the issuance of a permit
9 from the Commissioner of Corporations pursuant to the
10 Corporate Securities Law of 1968.

11 (6) The real property is offered for sale as a time-share
12 project as defined in Section 11003.5.

13 *SEC. 2. Section 11010.2 of the Business and*
14 *Professions Code is amended to read:*

15 11010.2. (a) As used in this section:

16 (1) "Quantitative" means the number and type of
17 documents required to make the filing substantially
18 complete, as defined in the regulations of the
19 commissioner, without regard to the content of those
20 requirements.

21 (2) "Qualitatively complete" means that all
22 deficiencies and substantive inadequacies contained in
23 the documents ~~which~~ *that* were required to make the
24 filing substantially complete have been corrected.

25 (3) "Substantially complete" means that a notice and
26 application contain all requirements as set forth in the
27 regulations of the commissioner.

28 (b) Upon receipt of a notice of intention pursuant to
29 Section 11010 and an application for issuance of a public
30 report, the commissioner shall review the notice and
31 application to determine if the notice and application are
32 substantially complete, with respect to quantitative
33 requirements. The commissioner shall notify the
34 applicant in writing of that determination within 10 days
35 of receipt of the notice and application.

36 (1) If the notice and application are not substantially
37 complete with respect to the quantitative requirements
38 pursuant to this subdivision, the notification shall specify
39 the information needed to make the notice and
40 application substantially complete. Upon receipt of any



1 resubmittal of a notice and application, the commissioner
2 shall notify the applicant in writing of that determination
3 within 10 days of receipt of the notice and application.

4 (2) If the commissioner determines that the notice
5 and application are substantially complete with respect to
6 the quantitative requirements pursuant to this
7 subdivision, the commissioner shall provide the applicant
8 with a list of all deficiencies and substantive inadequacies
9 necessary for the notice and application to be
10 qualitatively complete, within 60 days of that
11 determination, in the case of subdivisions specified in
12 Section 11000.1, ~~11000.5~~, or 11004.5, and within 20 days of
13 that determination, in the case of other subdivisions.

14 (c) Upon receipt of all documents, materials, writings,
15 and other information submitted in response to the list in
16 paragraph (2) of subdivision (b), the commissioner shall
17 notify the applicant whether the notice and application
18 are qualitatively complete within 30 days, in the case of
19 subdivisions specified in Section 11000.1, ~~11000.5~~, or
20 11004.5, and within 20 days of receipt, in the case of other
21 subdivisions. If the application and notice are not
22 qualitatively complete, the notification shall include a list
23 of any remaining deficiencies and substantive
24 inadequacies. Upon receipt of any resubmittal of
25 documents, materials, writings, and other information in
26 response to a list of any remaining deficiencies and
27 substantive inadequacies, the commissioner shall provide
28 notification within the time limits specified in this
29 subdivision.

30 (d) The commissioner shall issue a public report
31 within 15 days, in the case of a subdivision specified in
32 Section 11000.1, ~~11000.5~~, or 11004.5, or 10 days, in the case
33 of other subdivisions, after the notice and application are
34 determined to be qualitatively and substantially
35 complete, and submittal of recorded or filed instruments
36 and evidence of financial arrangements required by the
37 commissioner.

38 (e) The commissioner shall adopt regulations, in
39 accordance with Chapter 3.5 (commencing with Section
40 11340) of *Part 1* of Division 3 of Title 2 of the Government



1 Code,—~~which~~ *that* define “substantially complete” and
2 ~~which~~ *that* list all the requirements necessary for a notice
3 of intention and application to be considered
4 “substantially complete”~~”; complete.”~~

5 (f) The commissioner may adopt emergency
6 regulations, in accordance with Chapter 3.5
7 (commencing with Section 11340) of *Part 1 of* Division 3
8 of Title 2 of the Government Code, to *increase*, as set forth
9 below,—~~increase~~ those time periods specified in
10 subdivisions (b), (c), and (d), upon a showing that the
11 number of notices of intention and applications for a
12 subdivision public report filed with the department for
13 any immediately preceding six-month period has
14 increased by more than 15 percent over the monthly
15 average number of notices and applications filed for the
16 base period commencing July 1, 1983, and ending June 30,
17 1986:

18 (1) The time for issuing the notice provided in
19 subdivision (b) shall increase to 15 days.

20 (2) The time for providing the listing required by
21 paragraph (2) of subdivision (b) shall increase to 90 days,
22 in the case of subdivisions specified in Sections 11000.1;
23 ~~11000.5~~; and 11004.5, and to 30 days ~~for~~, *in the case of* other
24 subdivisions.

25 (3) The time period provided in subdivision (c) for
26 responding to receipt of documents intended to correct
27 deficiencies shall be 30 days without regard to the type of
28 subdivision being processed.

29 (4) The time periods provided in subdivision (d)
30 within which the commissioner is required to issue a
31 public report in the case of subdivisions specified in
32 Sections 11000.1,~~11000.5~~ and 11004.5, shall increase to 30
33 days and in the case of other subdivisions shall increase to
34 15 days.

35 This section does not apply to filings made exclusively
36 under Section 11010.1. Nothing in this section requires
37 the commissioner to issue a public report where grounds
38 for denial exist, provided that issuance of a public report
39 shall not be denied for inadequate information if the



1 cause thereof is the commissioner's failure to comply with
2 this section.

3 Notwithstanding other provisions of this section, the
4 commissioner shall not be required to issue a public
5 report if grounds for denial exist under Section 11018 or
6 11018.5. However, the commissioner may not base the
7 denial of a public report on the lack of adequate
8 information if the commissioner has not acted within the
9 time periods prescribed in this section.

10 *SEC. 3. Section 11010.4 of the Business and*
11 *Professions Code is amended to read:*

12 11010.4. The notice of intention specified in Section
13 11010 is not required for a proposed offering of
14 subdivided land ~~which~~ *that* satisfies all of the following
15 criteria:

16 (a) The owner, subdivider, or agent has complied with
17 Sections 11013.1, 11013.2, and 11013.4, if applicable.

18 (b) The subdivided land is not a subdivision as defined
19 in Section 11000.1, ~~11000.5~~, or 11004.5.

20 (c) Each lot, parcel or unit of the subdivision is located
21 entirely within the boundaries of a city.

22 (d) Each lot, parcel or unit of the subdivision will be
23 sold or offered for sale improved with a completed
24 residential structure and with all other improvements
25 completed that are necessary to occupancy or with
26 financial arrangements determined to be adequate by
27 the city to ensure completion of ~~such~~ *the* improvements.

28 *SEC. 4. Section 11018.3 of the Business and*
29 *Professions Code is amended to read:*

30 11018.3. Any subdivider objecting to the denial of a
31 public report ~~or to denial by the commissioner of~~
32 ~~exemption from special regulation pursuant to Section~~
33 ~~11000.5~~ may, within 30 days after receipt of the order of
34 denial, file a written request for a hearing. The
35 commissioner shall hold the hearing within 20 days
36 thereafter unless the party requesting the hearing ~~shall~~
37 ~~have requested~~ *requests* a postponement. If the hearing
38 is not held within 20 days after request for a hearing is
39 received plus the period of ~~any such~~ *the* postponement or
40 if a proposed decision is not rendered within 45 days after



1 submission and an order adopting or rejecting ~~such~~ *the*
2 proposed decision is not issued within 15 days thereafter,
3 the order of denial shall be rescinded and a public report
4 issued.

5 *SEC. 5. Section 11018.12 of the Business and*
6 *Professions Code is amended to read:*

7 11018.12. (a) The commissioner may issue a
8 conditional public report for a subdivision specified in
9 Section 11004.5 if the requirements of subdivision (e) are
10 met, all deficiencies and substantive inadequacies in the
11 documents that are required to make an application for
12 a final public report for the subdivision substantially
13 complete have been corrected, the material elements of
14 the setup of the offering to be made under the authority
15 of the conditional public report have been established,
16 and all requirements for *the* issuance of a public report set
17 forth in the regulations of the commissioner have been
18 satisfied, except for one or more of the following
19 requirements, as applicable:

- 20 (1) A final map has not been recorded.
- 21 (2) A condominium plan pursuant to subdivision (e)
22 of Section 1351 of the Civil Code has not been recorded.
- 23 (3) A declaration of covenants, conditions, and
24 restrictions pursuant to Section 1353 of the Civil Code has
25 not been recorded.
- 26 (4) A declaration of annexation has not been recorded.
- 27 (5) A recorded subordination of existing liens to the
28 declaration of covenants, conditions, and restrictions or
29 declaration of annexation or escrow instructions to effect
30 recordation prior to the first sale are lacking.
- 31 (6) Filed articles of incorporation are lacking.
- 32 (7) A current preliminary report of a licensed title
33 insurance company issued after filing of the final map and
34 recording of the declaration covering all subdivision
35 interests to be included in the public report has not been
36 provided.
- 37 (8) Other requirements the commissioner determines
38 are likely to be timely satisfied by the applicant,
39 notwithstanding the fact that the failure to meet these

1 requirements makes the application qualitatively
2 incomplete.

3 (b) The commissioner may issue a conditional public
4 report for a subdivision not referred to or specified in
5 Section 11000.1, ~~11000.5~~, or 11004.5 if the requirements of
6 subdivision (e) are met, all deficiencies and substantive
7 inadequacies in the documents that are required to make
8 an application for a final public report for the subdivision
9 substantially complete have been corrected, the material
10 elements of the setup of the offering to be made under the
11 authority of the conditional public report have been
12 established, and all requirements for issuance of a public
13 report set forth in the regulations of the commissioner
14 have been satisfied, except for one or more of the
15 following requirements, as applicable:

16 (1) A final map has not been recorded.

17 (2) A declaration of covenants, conditions, and
18 restrictions has not been recorded.

19 (3) A current preliminary report of a licensed title
20 insurance company issued after filing of the final map and
21 recording of the declaration covering all subdivision
22 interests to be included in the public report has not been
23 provided.

24 (4) Other requirements the commissioner determines
25 are likely to be timely satisfied by the applicant,
26 notwithstanding the fact that the failure to meet these
27 requirements makes the application qualitatively
28 incomplete.

29 (c) A decision by the commissioner to not issue a
30 conditional public report shall be noticed in writing to the
31 applicant within five business days and that notice shall
32 specifically state the reasons why the report is not being
33 issued.

34 (d) Notwithstanding the provisions of Section 11018.2,
35 a person may sell or lease, or offer for sale or lease, lots or
36 parcels in a subdivision pursuant to a conditional public
37 report if, as a condition of the sale or lease or offer for sale
38 or lease, delivery of legal title or other interest contracted
39 for will not take place until issuance of a public report and



1 provided that the requirements of subdivision (e) are
2 met.

3 (e) (1) Evidence shall be supplied that all purchase
4 money will be deposited in compliance with subdivision
5 (a) of Section 11013.2 or subdivision (a) of Section
6 11013.4, and in the case of a subdivision referred to in
7 subdivision (a), evidence is given of compliance with
8 paragraphs (1) and (2) of subdivision (a) of Section
9 11018.5.

10 (2) A description of the nature of the transaction shall
11 be supplied.

12 (3) Provision shall be made for the return of the entire
13 sum of money paid or advanced by the purchaser if a
14 subdivision public report has not been issued within six
15 months of the date of issuance of the conditional public
16 report or the purchaser is dissatisfied with the public
17 report because of a change pursuant to Section 11012.

18 (f) A subdivider, principal, or his or her agent shall
19 provide a prospective purchaser a copy of the conditional
20 public report and a written statement including all of the
21 following:

22 (1) Specification of the information required for
23 issuance of a public report.

24 (2) Specification of the information required in the
25 public report ~~which~~ *that* is not available in the conditional
26 public report, along with a statement of the reasons why
27 that information is not available at the time of issuance of
28 the conditional public report.

29 (3) A statement that no person acting as a principal or
30 agent shall sell or lease or offer for sale or lease lots or
31 parcels in a subdivision for which a conditional public
32 report has been issued except as provided in this article.

33 (4) Specification of the requirements of subdivision
34 (e).

35 (g) The prospective purchaser shall sign a receipt that
36 he or she has received and has read the conditional public
37 report and the written statement provided pursuant to
38 subdivision (f).

39 (h) The term of a conditional public report shall not
40 exceed six months, and may be renewed for one



1 additional term of six months if the commissioner
2 determines that the requirements for issuance of a public
3 report are likely to be satisfied during the renewal term.

4 and Professions Code, to read:

5 ~~11000.15. (a) Notwithstanding any other provision of~~
6 ~~this chapter (except as specified in subdivision (b)),~~
7 ~~including, but not limited to, Section 11000.1, the sale of~~
8 ~~undivided interests in unimproved land to 25 or fewer~~
9 ~~persons shall not be subject to this chapter, provided all~~
10 ~~the following conditions are met:~~

11 ~~(1) The sales agreement contains the following~~
12 ~~disclosure, which shall appear in bold type of not less than~~
13 ~~16 point: “The BUYER hereby acknowledges that the~~
14 ~~acquisition of the undivided interest in unimproved~~
15 ~~property is SPECULATIVE and is only appropriate if~~
16 ~~considered as a LONG-TERM investment which can be~~
17 ~~sold only in cooperation with all the other investors in the~~
18 ~~property.”~~

19 ~~(2) The sales agreement is signed by the buyer in at~~
20 ~~least three locations, one of which is immediately below~~
21 ~~the disclosure required by paragraph (1) and one of~~
22 ~~which is immediately below the disclosure required by~~
23 ~~paragraph (4).~~

24 ~~(3) The sales agreement provides for the execution of~~
25 ~~a tenant in common co-tenancy agreements, that, at a~~
26 ~~minimum, contains provisions requiring cooperation in~~
27 ~~selling the property when an appropriate offer is received~~
28 ~~for 100% of the undivided interest, and allows owners to~~
29 ~~dispose of their interest subject to providing co-tenants a~~
30 ~~right of first refusal to buy those interests.~~

31 ~~(4) The sales agreement states that buyer is fully~~
32 ~~informed concerning the real property to be acquired~~
33 ~~and his or her interest therein including the risks involved~~
34 ~~in ownership of undivided interests, and is purchasing the~~
35 ~~interest or interests for his or her own account and with~~
36 ~~no present intention to resell or otherwise dispose of the~~
37 ~~interest.~~

38 ~~(b) Notwithstanding subdivision (a), the following~~
39 ~~provisions of this chapter are hereby made applicable to~~
40 ~~sales described in subdivision (a):~~



1 ~~(1) Section 11000.2.~~

2 ~~(2) Section 11019, but the authority conferred on the~~
3 ~~commissioner therein shall be limited to the enforcement~~
4 ~~of this section.~~

5 ~~(3) Section 11021.~~

6 ~~(4) Section 11022.~~

7 ~~(5) Section 11023 to the extent necessary to enforce~~
8 ~~violations of Section 11022.~~

9 ~~(6) Section 11200.~~

10 ~~(e) In enacting this section, it is the intent of the~~
11 ~~Legislature to remove impediments to investment in~~
12 ~~unimproved real estate by persons of average income so~~
13 ~~they may have access to the kind of investments and~~
14 ~~retirement strategies available to more affluent investors.~~

