

CHAPTER 160

SALE OF SUBDIVIDED LAND

H. F. 647

AN ACT relating to subdivided land and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. NEW SECTION. **Definitions.** As used in this Act,
2 unless the context otherwise indicates:

3 1. "Subdivided land" means any improved or unimproved land di-
4 vided or proposed to be divided for the purpose of sale or lease into
5 five or more lots or parcels, or additions thereto, or parts thereof;
6 however, subdivided land does not apply to a subdivision subject to
7 section three hundred six point twenty-one (306.21) or chapter four
8 hundred nine (409) of the Code nor to the leasing of apartments,
9 offices, stores, or similar space within an apartment building, indus-
10 trial building, or commercial building unless an undivided interest in
11 the land is granted as a condition precedent to occupying space in said
12 structure. Subdivided land shall not include any subdivisions of land
13 located within the state of Iowa.

14 2. "Subdivider" means any person, firm, partnership, company,
15 corporation, or association engaging directly or through an agent in
16 the business of selling or leasing subdivided land, or of offering such
17 land for sale or lease, to the public in this state.

18 3. "Commission" means the Iowa real estate commission as estab-
19 lished by chapter one hundred seventeen (117) of the Code.

20 4. "Advertisement" means the attempt by, dissemination, solici-
21 tation, or circulation to induce directly or indirectly any person to
22 enter into any obligation or acquire any title or interest in land of-
23 fered for sale or lease, to the public in this state.

24 5. "Sale" means any sale, offer for sale, or attempt to sell or lease
25 any land, to the public in this state, for cash or on credit.

1 SEC. 2. NEW SECTION. **Provisions governing sale or lease of sub-**
2 **divided lands.** No subdivider shall sell or lease subdivided land, or
3 offer such land for sale or lease, or advertise such land for sale or
4 lease to the public within this state unless he has filed with the com-
5 mission an application which shall include an offering statement. No
6 subdivider shall engage in business in this state until the application
7 and the offering statement have been accepted and he has been reg-
8 istered as a subdivider with the commission. The application shall
9 contain the following:

10 1. The name of the owner and of the subdivider.

11 2. The address of the principal office of the owner and of the sub-
12 divider, wherever situated, and the addresses of the principal office
13 and all branch offices of the owner and of the subdivider within this
14 state.

15 3. The name of the person, firm, partnership, company, corpora-
16 tion, or association holding legal or equitable title to the land for
17 sale or lease for the purpose of offering such land or part thereof to
18 the general public.

19 4. A statement as to whether the owner or the subdivider, or if
20 such owner or subdivider be other than an individual, the name of

21 any partner, principal, officer, director, or branch manager thereof
22 or any owner of more than a five percent interest in the business,
23 who has been convicted of any criminal offense in connection with
24 any transaction involving the sale or lease, or offer for sale or lease,
25 of subdivided land, or who has been enjoined or restrained by order
26 of any court from selling or leasing, or offering for sale or lease, any
27 subdivided land in any state or county, or who has been enjoined or
28 restrained by any court from continuing any practices in connection
29 therewith.

30 5. The complete description of the land offered for subdivision by
31 lots, plots, blocks, or sales, with or without streets, together with
32 plats certified to by a duly registered land surveyor accompanied by
33 a certificate attached thereto showing the date of the completion of
34 the survey and of the making of the plat and the name of the subdivi-
35 sion for the purpose of identification of the subdivided land or any
36 part thereof.

37 6. Copies of plats of all of the land being filed by the subdivider
38 which plats must have already been recorded by the proper recording
39 office in the state in which the land is located.

40 7. An opinion of an attorney admitted to practice law in this state,
41 a policy of title insurance issued by a title insurer licensed to do busi-
42 ness in the state where the subdivided land is located, or an opinion
43 of an attorney admitted or licensed to practice law in the state where
44 the lands are situated, reciting in detail all of the liens, encum-
45 brances, and clouds upon the title to such land, and any other defects
46 of title, which may render the title to such land unmarketable.

47 8. The provisions, covenants, terms, and conditions upon which it
48 is the intention of the owner and the subdivider to sell or lease such
49 subdivided land, accompanied by proposed forms of contracts con-
50 templated for execution and delivery upon the consummation of sales
51 or leases.

52 9. If the subdivided land sought to be filed comes within the pur-
53 view of the Interstate Land Sales Full Disclosure Act (Title 15,
54 United States Code Section 1701 et seq.) the subdivider must furnish
55 a copy of the accepted report filed with the department of housing
56 and urban development. If the subdivision comes under the regula-
57 tion of the real estate laws of the state where the land is located
58 and that state requires a state offering statement or public report,
59 the subdivider must also include a copy of said state report.

60 10. The subdivider, if a corporation, must register to do business
61 in the state of Iowa as a foreign corporation with the secretary of
62 state and furnish a copy of the certificate of authority to do busi-
63 ness in the state of Iowa. If not a corporation, the subdivider must
64 comply with the provisions of chapter five hundred forty-seven (547)
65 of the Code, by filing a proper trade name with the Polk county re-
66 corder. The provisions of this subsection shall also apply to any
67 person, partnership, firm, company, corporation, or association, other
68 than the subdivider, which is engaged by or through the subdivider
69 for the purpose of advertising or selling the land involved in the
70 filing.

71 11. Such other information as the commission may require, which
72 shall be filed pursuant to the provisions of this Act.

73 12. The offering statement must contain all of the following:

- 74 a. The names, addresses, and business background of the subdivi-
75 vider as required in subsections one (1), two (2), three (3) and four
76 (4) of this section. If such subdivider is a partnership or corpora-
77 tion, the names, addresses, and business background of each of the
78 partners, officers, and principal stockholders, the nature of their fidu-
79 ciary relationship and their past, present, or anticipated financial
80 relationship to the subdivider.
- 81 b. A complete description of the land and copies of the plat in
82 which the land is located as required in subsections five (5) and six
83 (6) of this section and a certified financial statement by a certified
84 public accountant of the assets and liabilities of the subdivider as
85 of a date not more than six months prior to the date of the filing, in
86 such detail as the commission may require.
- 87 c. Information concerning public improvements, including without
88 limitation, streets, storm sewers, street lighting, water supply, and
89 sewage treatment and disposal facilities in existence or planned on
90 the subdivision, and the estimated cost, date of completion, and re-
91 sponsibility for construction of improvements to be made which are
92 referred to in connection with the sale or lease, or offering for sale
93 or lease, of the subdivision or any unit or lot thereon.
- 94 d. Each of the terms and conditions under which each such unit
95 or lot is offered for sale and such opinion or certificates as required
96 in subsections seven (7) and eight (8) of this section.
- 97 e. A statement as to the exact terms of any guarantees or prom-
98 ises of refund or exchange which are to be used by the subdivider.
99 The guarantee or promise of refund or exchange, if any, must be con-
100 tained in the body of any contracts used by the subdivider and cannot
101 be in any separate document. Said guarantee or promise of refund
102 or exchange must appear in bold-faced type in the contract.
- 103 f. If the refund privilege, pursuant to paragraph e of this subsec-
104 tion, is predicated in any way upon the requiring by the subdivider
105 of an inspection by the purchaser prior to requesting a refund or
106 exchange pursuant to the guarantee provisions, the offering state-
107 ment and the sale contract itself must set out in detail all pertinent
108 information in regard to the inspection trip and in regard to claim-
109 ing a refund or exchange pursuant to the guarantee after the in-
110 spection trip.
- 111 g. Such additional information as the commission may require as
112 being necessary or appropriate in the public interest or for the pro-
113 tection of purchasers or lessees.
- 114 h. A vicinity sketch of sufficient scale to show the entire tract of
115 land, surrounding property ownership, and road access.

1 **SEC. 3. NEW SECTION. Offering statement; contents; prohibi-**
2 **tions.**

- 3 1. There may be omitted from the offering statement any of the
4 information required under subsections six (6), nine (9), and ten
5 (10) of section two (2) of this Act which the commission may by a
6 properly promulgated rule and regulation designate as being unnec-
7 cessary or inappropriate for the protection of the public interest or
8 a purchaser.
- 9 2. No offer to sell or lease subdivided land by any means of ad-
10 vertisement shall be made unless a copy of such advertisement has
11 first been filed with the commission. All such advertisements shall

12 state that an offering statement has been filed with the commission
13 and that a copy of such statement is available from the subdivider
14 upon request.

15 3. Except as provided in subsection one (1) of this section, no offer
16 to sell or lease subdivided land shall be made unless such offer is
17 accompanied by a copy of the current offering statement filed pursu-
18 ant to this Act.

19 4. The first page of the offering statement employed in the sale
20 or lease, or offer for sale or lease, of subdivided land shall contain a
21 legible statement printed in at least sixteen point bold type which
22 shall be at least four point type larger than the body of the docu-
23 ment that the filing of the verified statement and offering statement
24 with the commission does not constitute approval of the sale or lease,
25 or offer for sale or lease, by the state, commission or any officer
26 thereof, or that the state, commission or any officer thereof, has in
27 any way passed upon the merits of such offering.

28 5. No sale or lease of subdivided land shall be made unless accom-
29 panied or preceded by the delivery to the prospective purchaser of
30 an offering statement complying with the provisions of this section.

31 6. No offering statement shall be changed or amended unless a
32 copy of such change or amendment has first been filed with the com-
33 mission.

34 7. The subdivider shall, within thirty days after the first day of
35 July of each year, file with the commission a current offering state-
36 ment setting forth all changes which have taken place during the
37 preceding year with respect to any information required to be set
38 forth in such offering statement. Only a current offering statement
39 shall be used to sell or lease, or offer to sell or lease, any subdivided
40 land.

41 8. A fee of one hundred dollars shall be paid, plus ten dollars for
42 each one hundred lots, units, parcels, portions, or interest included in
43 the current offering statement.

1 **SEC. 4. NEW SECTION. Inspection power of commission and at-**
2 **torney general; unlawful practices; penalties.**

3 1. The commission or the attorney general at the request of the com-
4 mission may cause an investigation and inspection to be made of any
5 subdivided land proposed to be offered for sale or lease in this state
6 pursuant to this Act and may make a report of the findings thereon.

7 2. Where an inspection is to be made of subdivided land situated
8 outside of this state and offered for sale in this state, said inspection
9 as authorized by subsection one (1) of this section shall be made at
10 the expense of the subdivider. After the application required by
11 section two (2) of this Act is filed and after the filing fee required
12 by section eight (8) of this Act is received the commission may de-
13 cide whether or not an inspection pursuant to this subsection is to
14 be made. If the commission requires an inspection, the commission
15 or the attorney general at the request of the commission shall so no-
16 tify the subdivider and the subdivider shall remit to the commission
17 an amount equivalent to the round trip cost of travel from this state
18 to the location of the project, as estimated by the commission or the
19 attorney general and a further amount estimated to be necessary to
20 cover the additional expenses of such inspection but not to exceed
21 fifty dollars a day for each day incurred in the examination of the

22 project. The costs of any subsequent inspections deemed necessary
23 shall be paid for by the subdivider. At the completion of any in-
24 spection trip the commission or the attorney general shall furnish
25 the subdivider a statement as to the costs of the inspection trip and
26 should said costs be less than the amount advanced by the subdivider
27 to the commission or the attorney general the remaining balance
28 will be refunded to the subdivider.

29 3. It shall be unlawful for the subdivider to change the financial
30 structure of any offering after the submission thereof to the commis-
31 sion without first notifying the commission in writing of such inten-
32 tion.

33 4. Where improvements are to be made in connection with the sale
34 or lease, or offering for sale or lease, of the subdivision or any unit,
35 parcel, or lot thereon, the owner or subdivider shall either furnish to
36 the commission a performance bond executed by a surety company
37 authorized to do business in the state and which has given consent
38 to be sued in this state with sufficient surety for the benefit and pro-
39 tection of purchasers of units, parcels, or lots, in such amount and
40 subject to such terms as the commission deems necessary for the
41 protection of such purchasers with respect to construction of such
42 improvements, or place in an escrow account in a depository accept-
43 able to the commission, that portion of the sums paid or advanced by
44 purchasers which the commission deems necessary for the protection
45 of such purchasers with respect to construction of such improvements.

46 5. Where the land to be subdivided is subject to a mortgage, lien,
47 or encumbrance securing or evidencing the payment of money, other
48 than taxes levied or assessments made, or where the interest of the
49 owner, the subdivider or an agent is held under option or contract
50 of purchase or in trust, it shall be unlawful to sell any land in such
51 subdivision unless a provision in such mortgage, lien, encumbrance,
52 option, contract, or trust agreement, or a provision in an agreement
53 supplementary thereto, enables the vendor to convey valid title to
54 each parcel so sold or leased free of such mortgage, lien, encum-
55 brance, option, contract, or trust agreement upon completion of all
56 payments and the performance of all the terms and conditions re-
57 quired to be made and performed by the vendee under the agreement
58 of sale.

59 Where the consideration price for a lot sold has been amortized
60 to an extent that the balance due and owing thereunder equals an
61 amount required to release such lot or lots from any existing mort-
62 gage, lien, encumbrance, tax, assessment, option, contract, or trust
63 agreement, and the initial cost for said land has not been paid for
64 by the owner or subdivider, all moneys thereafter received by the
65 owner or subdivider shall be segregated and kept in a separate ac-
66 count as a trust which shall be applied toward the clearance of title
67 of the land intended to be conveyed to the purchaser. Certified or
68 verified copies of documents containing such provisions shall be filed
69 with the commission prior to the sale or lease, or offer of sale or
70 lease, or advertisement for sale or lease, of any part of the subdivi-
71 sion.

1 **SEC. 5. NEW SECTION. Penalties.**

2 1. Any person, firm, partnership, corporation, company, or asso-
3 ciation representing in any manner that the state, the commission

4 or any officer thereof has recommended or acquiesced in the recom-
5 mendation of the purchase of any subdivided land offered for sale or
6 lease, in advertising or offering such subdivided land for sale or
7 lease, shall be guilty of a misdemeanor and shall be punished by a fine
8 of not more than one thousand dollars, or by imprisonment in the
9 county jail for not more than one year or by both such fine and im-
10 prisonment.

11 2. Any person, officer, director, agent, or employee of a person,
12 company, firm, partnership, association, or corporation offering to
13 sell or lease, or selling or leasing, subdivided land prior to the filing
14 of the offering statement and the application required by this Act
15 shall be guilty of a misdemeanor and punished by a fine not to ex-
16 ceed two thousand dollars or by imprisonment in the county jail for
17 a term not to exceed one year, or by both such fine and imprisonment.

18 3. Except as provided in subsection two (2) of this section, every
19 person, officer, director, agent, or employee of a person, company,
20 firm, partnership, corporation, or association who authorizes, directs,
21 or aids in the publication, advertisement, distribution, or circulation
22 of any device, scheme, or artifice for obtaining money or property by
23 means of any false pretense, representation, or promise concerning
24 any subdivided land offered for sale or lease, and every person, officer,
25 director, agent, or employee of a company, firm, partnership, corpo-
26 ration, or association who makes or attempts to make fictitious or
27 pretended purchases or sales of subdivided lands in this state, or in
28 any other respect willfully violates or fails to comply with any of the
29 provisions of this Act, or omits or neglects to obey, observe, or com-
30 ply with any order, permit, decision, demand, or requirement of the
31 commission under the provisions of this Act, is guilty of a misde-
32 meanor and shall be punished by a fine not to exceed two thousand
33 dollars or by imprisonment in the county jail for a term not to exceed
34 one year or by both such fine and imprisonment, and if such person
35 is a licensee under chapter one hundred seventeen (117) of the Code,
36 the commission also may revoke or suspend his license in the man-
37 ner provided in such chapter.

1 **SEC. 6. NEW SECTION. Sales by brokers.** It shall be unlawful
2 for any subdivider to sell or lease, or offer for sale or lease, any sub-
3 divided land located without this state except through a real estate
4 broker or salesman duly licensed in this state. The provision of sec-
5 tion one hundred seventeen point seven (117.7), subsection one (1)
6 of the Code, exempting regular employees of the owner of real es-
7 tate from the licensing requirements of chapter one hundred seven-
8 teen (117) of the Code, shall not in any way apply to the sale of any
9 subdivided land regulated by this Act and subdividers covered by
10 this Act may not avail themselves of the provisions of section one
11 hundred seventeen point seven (117.7), subsection one (1) of the
12 Code, but must pursuant to this subsection sell only through licensed
13 Iowa brokers and licensed salesmen.

1 **SEC. 7. NEW SECTION. Prosecution.**

2 1. The attorney general shall prosecute all violations of this Act.
3 Prosecutions shall be instituted by the attorney general upon the
4 written request of the commission. In all criminal proceedings the
5 attorney general may appear before any court or any grand jury and

6 exercise all the powers and perform all the duties in respect to such
7 actions or proceedings which the county attorney would otherwise be
8 authorized or required to exercise or perform. In lieu thereof the
9 attorney general may transmit evidence, proof, and information per-
10 taining to such offense to the county attorney of the county in which
11 the alleged violation occurred, and such county attorney shall prose-
12 cute for such violation. In any such proceeding in which the attor-
13 ney general has appeared, the county attorney shall only exercise
14 such powers and perform such duties as are required of him by the
15 attorney general. The attorney general shall, within ten days after
16 a conviction for a violation of any provision of this Act, file with
17 the commission a detailed report showing the date of the conviction,
18 name of the person convicted, and the specific nature of the charge.

19 2. Whenever it appears to the commission that any person, officer,
20 director, agent, or employee of a company, firm, partnership, associ-
21 ation, or corporation offering to sell or lease, or selling or leasing,
22 subdivided land, has committed or is about to commit a violation of
23 this chapter or any rule, regulation, or order issued by the commis-
24 sion hereunder, the commission may apply to the district court of
25 the county in which the principal office of the subdivider is located or
26 if such subdivider has no such office in this state then to the district
27 court of Polk county for an order enjoining such subdivider or such
28 officer, director, agent, or employee thereof from violating or contin-
29 uing to violate this chapter or any such rule, regulation or order, and
30 for such other equitable relief as the nature of the case and the in-
31 terests of the public may require.

32 3. Any false statement contained in any statement filed with the
33 commission pursuant to the requirements of this Act, or in any affi-
34 davit attached thereto, shall constitute a violation of this Act.

35 4. In any action brought under the provisions of this Act, the at-
36 torney general is entitled to recover costs for the use of this state.

1 **SEC. 8. NEW SECTION. Filing fees.** Each initial filing made
2 pursuant to section two (2) of this Act shall be accompanied by a
3 basic filing fee of one hundred dollars, plus twenty-five dollars for
4 every one hundred lots, units, parcels, portions, or interests included
5 in the offering. A registration fee shall be paid with the filing of an
6 application for registration consolidating additional lots with a prior
7 registration and shall be set by rule which shall provide a basic fee of
8 fifty dollars, plus an additional fee of twenty-five dollars for every
9 one hundred lots, units, parcels, portions, or interests included in the
10 offering. A fee shall not be charged for amendments to the property
11 report as a result of amendments to the initial filing, unless the de-
12 partment determines the amendments are made for the purpose of
13 avoiding the payment of a fee, in which event the amendment may
14 be treated as an application for registration consolidating additional
15 lots with a prior registration. The filing fee to be paid with each
16 annual current offering statement is as established by section three
17 (3), subsection eight (8) of this Act.

18 All fees collected under this Act shall be deposited with the trea-
19 surer of state and credited to the general fund.

Approved June 13, 1973.