

HOW DO YOU COOL THE DREAM: THE PROBLEM OF INTERSTATE LAND SALES

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In this paper we would like to highlight some of the problems faced by the consumer in the context of interstate land sales, then suggest several legislative actions which may be advisable to provide the consumer with more adequate protection, and lastly to suggest some good common-sense advice for the consumer.

During the last several years millions of acres of raw land have been subdivided in the West, in Florida, and in other scattered and isolated parts of the United States. Many of these subdivided lands are being sold by mail throughout this country and abroad, through the V.I.P. dinner programs, or through fly-in programs, each of which will be briefly discussed. Many purchasers are buying land for building retirement homes or second homes, but a larger number are purchasing for speculating investment. The potential purchasers are too often deluded by capricious claims of delightful surroundings and extensive development. If the past is any indication, the major portion of these subdivided lands will never be improved.

Both state and federal governments have recognized the problems, (associated with people buying land they never see) and in many cases have enacted legislation to deal with them. Statutes and regulations, such as license laws for sales people, subdivided lands sales acts and disclosure acts, truth in lending legislation, regulations dealing with misleading advertising and fraud, are all directed toward various types of sales and promotion practices and are designed primarily for the benefit of the purchaser and/or the potential customer of the lands. In spite of these enactments, highly questionable sales tactics continue on a vast scale.

It is unfortunate that we have not yet fully recognized that poor design, inadequate improvement, and inadequate protection of the environment in all land subdivisions have a direct impact on all of us. The problem is much greater than protection of individual purchasers. Extraordinary tax burdens, erosion, pollution, and wasting of natural resources affect all of us. Mistakes in planning and development will livewith us for years. They're not easily corrected except at great cost and many may never be corrected. Therefore, in the broader sense, consumer protection should consider not only sales practices but land use controls such as subdivision regulations, zoning, regulations relating to water, sanitation, solid waste disposal as well as the economic feasibility and social need for any given project.

The nature of the problem may be summarized by a comment by a County Commissioner appearing before a Land Use Commission hearing in Alamosa, Colorado, on August 5, 1970: "Twice before the county has been raped by land speculators. For the third time we are again being propositioned. Unless we can get some strong supportive legislation immediately, the inevitable will happen again and it will be innocent local county tax payer that will pay."

The Nature of the Problem

Let us look for a moment at the kinds of problems and activities which are typically associated with the sale and promotion of land on an interstate basis.¹

One concern is that what can be shown in pictures which may not be totally deceptive or fraudulent but is suspect at the very least. Every promotional program will include brochures with delightful pictures of the area surrounding the lot to be owned by the potential purchaser. One brochure of a very large development being promoted nationwide shows a gorgeous view of a mountain range which supposedly typifies the view from the lot purchased by the customer. An on-sight visit to the development reveals that the view in fact does exist but the picture was probably taken with a 40 power lens. The actual land in this case can be best described by the Deputy Clerk and Recorder of the county where it was located. He is quoted as saying, "There's nothing out there except rattlesnakes and sage brush. You couldn't pay me a million dollars to walk through that land in the summer time."

The second problem area arises from statements made by promoters which are fact, but typically deceive the customer. A widely promoted area in Colorado makes a statement about land being bought in the City of Denver for \$200 an acre and then sold for \$20,000. (Implication: You can make a fortune buying Colorado land.) This statement in all probability is fact, but the question must be asked if fact precludes deception. For example, it is possible that an acre in the City of Denver might have been sold for \$200 in 1890, held until 1970, and sold for \$20,000. This would be a return of 5.93 percent on the investment. And, there's no need to debate the point of the fact that there is no water, transportation, industrial base, or market sufficient to cause any reasonable man to speculate that growth comparable to that in Denver would ever occur in places where most of these interstate land developments are taking place. It is also worth noting that in this particular case, which is not unusual, the land being sold for \$400-500 per acre now was purchased as ranch land for about \$14 an acre within the very recent past. Obviously, the major part of the appreciation for years to come has already occurred.

Another area of concern has to be the naivete' of the typical urban customer. The urban consumer has little conception of what it takes to make any area liveable in terms of the services demanded, much less the problems of development associated with the desert and mountain areas or coastal development areas. For example, the investigators research in several areas indicate that obtaining water, if it is available at all, putting in septic tanks, bringing electricity to the site, etc. can easily add \$10,000 to cost of a 1/4 acre lot.

Further, the promoters of these interstate land sale developments are experts in enticing and inducing the buyer. A direct mail sales promotion often finds a personal letter from the vice president, including some inducement for prompt action, such as "we can keep your reservation open for only 15 days--the response has been overwhelming." An on-sight visit showed that the developer had put up a mobile home sales office, but that was the extent of the development, with the exception of a bulldozed road of sorts graded across the flat plains. The environmentalists are rightly concerned that there are no provisions in many states requiring adequate construction of roads. Both water and wind erosion on dirt roads has to be considered an environmental hazard, especially in the fragil desert and mountain areas of the West. Promoters are experts in using such tactics as reducing

¹During the original presentation at the ACCI conference, each example to be given was illustrated with slides taken from both on-sight visits and promotional literature.

price to the ridiculous. They will use such phrases as: "Prosperity--50¢ a day" in bold captions in their mail-order literature, or in a V.I.P. dinner continually assuring the potential customer that he can afford the purchase--it only costs 5¢ an hour.

In every promotion campaign there are assurances of the things we have learned to come to expect as good. They will advertise guaranteed investment plans, that there is no interest, no down-payment, and no sales commission. There is typically an appeal centered around why land is so valuable and why it will be more valuable in the future. Many documented sources will be cited showing that land has made more millionaires than any other facet of our economy, but there's a careful omission of the fact that there are more individuals who have lost money on speculative land investment than have made money.

In selling any product by mail or where the customer does not have the opportunity to view it directly, it is imperative that an aura of authenticity be established. For example, great to-do will be made of the fact that the developers are in compliance with the U.S. Truth in Lending Act. This may lead the consumer to draw the implication that the developers are in compliance with all government regulations. Which brings us to another point.

One of the key government regulations is the Interstate Land Sales Registration Act. This act requires that buyers of land sold on an interstate basis receive a property report following a format outlined by the Office of Interstate Land Sales Registration. In theory, the buyer is supposed to receive the property report and have 48 hours to back out of the sales contract if anything in the report causes them to change their minds. This act does not regulate subdivisions or do anything beyond disclosure of pertinent facts. The intent is to prevent fraudulent misrepresentation. It would seem there is a problem between disclosure in words versus misrepresentation in picture. There's no question that our laws governing misrepresentation in advertising are difficult to enforce because the complexity of our economic structure and the fantastic numbers of advertising efforts that take place on a daily basis.

Most of us would think that phrases such as those that we are going to extract from typical property reports would keep any prudent man from ever thinking about purchasing in a land sale propositions where he does not have an opportunity for on-sight inspection before the contract is signed; but they don't.

The property report takes the form of a series of specific questions which the developer must answer. One such question asks: "Are the lots staked?" The reply: ". . . the developers will stake one lot corner of each lot within 8 years from the date of the contract or within 30 days after the final scheduled payment date, whichever occurs later." There is also a question about roads. Again, in another contract the developer states that there will be dirt roads which will be put in thirty days from the scheduled final payment date or in eight years, whichever occurs later. There is a required statement as to the adequacy of water supply. One developer states: "not yet obtained in engineers report. No assurance that a sufficient quantity of water will be available to serve the anticipated population of the area."

Another question asks: "Will the sales contract be recordable?" In some property reports we find that the sales contract will not be recordable. This is a crucial point. Developers use the method of not recording the sales contract to get more time to gain title to the land themselves. Often they are not able

to prove clear title until all of the installments are paid, which will be typically three to eight years. Also the customer runs the risk that the developers creditors or others could acquire title to the property free of any obligation to deliver a deed to the buyer when final payment has been made under the sales contract. So, we may find the situation of a buyer paying installments for eight years and then finding that he doesn't have title to anything. In a moment, we will address ourselves to why a disclosure report such as this one required by the Office of Interstate Land Sales Registration seems to be relatively ineffective in providing the customer with adequate protection.

The V.I.P. dinner programs hold for the unwary customer a special risk of fraud and deception. At these dinners, selected potential customers are invited to a "free, no obligation" steak dinner at a local motel. These dinners are typified by extreme, high pressure sales tactics, including the use of stooges posing as satisfied owners, intimidation for accepting the invitation and then not purchasing, as well as expert plays on mob psychology. It has been the authors experience that if you ask for a property report, you will probably find it difficult to obtain, but even so the dimly lit restaurant atmosphere makes it difficult to read the fine technical language in the reports. Further, in no case have we found sales people willing to allow consultation with a personal lawyer before signing a contract.

The fly-in programs are an extension of the V.I.P. dinners. In these cases, selected potential customers are invited to fly free by charter aircraft to the site of the potential development. Where these programs are offered, there is typically somewhat more development than is the case of the V.I.P. dinner programs or in the mail programs. However, the ultimate in high pressure sales tactics occur in these programs. With a closure rate estimated well over seventy per cent, there is evidence that in selected cases people have even been threatened with not having transportation back home if they don't buy.

The evidence of consumer abuse and high pressure sales tactics coupled with outright fraud and deception is evident. So the question must be asked, What can be done?

Action at the Federal Level

The immediate reaction is that we need much stricter enforcement of all regulations dealing with fraud and misrepresentation in advertising. This would be extremely expensive and difficult, but there must at least be attempts at enforcing existing laws.

At the federal level there must be legislation providing for protection and efficient use of natural resources and air, water, noise pollution regulations for the benefit of the consumer and the general public.

A very specific modification should and could be made with respect to the HUD Interstate Land Sales Act (Title XIV Public Law 90-448, 1968). For example, suggested modifications might include:

Section 1404: (a) of said act should provide that the property report must be delivered to the property owner for his retention and examination at least 48 hours before execution of any further contracts. While the intent of the law appears to read that this be done, there are several serious loop holes, at least in practice. They apply especially to the V.I.P. special invitation dinners, the

fly-in programs and on-sight sales. In these cases, the customer may not have access to the report for more than a few minutes and has insufficient time to submit the same to his own legal real estate counselor.

Part (b) of the same section of the law says that no portion of the report shall be underscored, italicized, or printed in larger or bolder type than the balance of the statement. At best, the drab governmental legalistic approach is not designed to attract attention to key consumer interest protection items. The report is all too often sandwiched between luring promotional and legal documents; it is difficult for the consumer to read and comprehend, and it is frequently overlooked or avoided simply because of the length and legal verbage. We would suggest that a summary at the beginning of the property report be prepared by a public official and the same summary from the property report be required in all promotional literature. Such a summary might read as the following which was developed from an eight page property report for a mountain development:

CLOSEST TOWN IS 20 MILES (POPULATION: 711). NEAREST SCHOOLS, MEDICAL FACILITIES AND SHOPPING ARE 20-60 MILES. NEAREST OUTDOOR RECREATIONAL FACILITIES ARE 20-60 MILES. NONE PROVIDED OR CONTEMPLATED BY DEVELOPER. AVERAGE ANNUAL RAINFALL IS 6.5 INCHES. ALL UTILITIES MUST BE PROVIDED BY BUYER AT HIS EXPENSE. NONE PROVIDED OR CONTEMPLATED BY DEVELOPER. NO ASSURANCE THAT EITHER QUANTITY OR QUALITY OF WATER WILL BE SATISFACTORY. NO HOMES OCCUPIED AS OF FEBRUARY, 1972. PURCHASER MAY HAVE TO WAIT AS LONG AS 12 MONTHS AFTER PURCHASE BEFORE HE CAN LOCATE HIS LOT. BUYER'S PAYMENTS WILL NOT BE PLACED IN ESCROW NOR WILL TITLE BE HELD IN TRUST OR ESCROW. DEVELOPER HAS EXPERIENCED OPERATING LOSS IN PAST FISCAL YEAR.

It is also suggested that the following should be printed in large print at the end of the report:

THE PURCHASER IS ADVISED TO CONSULT AN ATTORNEY OF HIS CHOICE, AND WHO NEITHER REPRESENT THE SELLER NOR ANY OF THE LEIN HOLDERS, TO EXAMINE ANY LEGAL DOCUMENTS, INCLUDING THE PROPERTY REPORT, BEFORE HE AGREES TO EXECUTE ANY DOCUMENTS RELATING TO THE PURCHASE OF REAL ESTATE.

Action at the State and Local Level

On a state and local level, consumer groups should be looking to enactment of state subdivided land sales acts to compliment and supplement the Federal Interstate Land Sales Act, particularly in such states as Colorado, Arizona, Southern California, and Florida where environmental damage continues to be a crucial point.

On the state and local level, we should also expect stricter license laws for licensed real estate salesmen, brokers, and subdividers. Strict license laws, capably administered, provide an important and major vehicle for processing consumer complaints. Loss or suspension of a license to operate is a severe penalty because it deprived the individual or corporation of his major source of income. In many of the states, the sales people do not have to be licensed by the state to sell these particular types of real estate properties.

Further, all individuals and corporations engaged in the sale of subdivided tracts should be licensed within the state where the property is located, as well as in those states where they are solicitating customers for out of state land sales. This certainly should include all order takers such as those participating in entertaining at the V.I.P. dinners.

State and local laws should require down payments or deposits to be escrowed or placed in trust accounts and segregated from the funds of the seller or his agent.

Each of us should be concerned with supporting subdivision regulations that can be an effective instrument for land use control by the community and the area. Problems of traffic congestions, school over-crowding, slums, air, water and noise pollution are directly traceable to the manner in which subdivisions were originally laid out and improved. Long run tax and financing problems are the ultimate result of poor planning and lack of adequate controls. Too few customers recognize that areas located too far from fire protection, public transportation and schools are in and of themselves a poor investment, and the cost of extending public utilities is prohibitive.

There are too many examples where excess subdivided lots mean whole areas end up as dead ends, undeveloped and useless as agriculture lands because of the divided ownerships, confused titles, and high tax assessments. Partial development results in extremely high costs to the community for services and improvements. We would argue that an economic justification should be a part of any subdivision approval.

Subdivision regulations should also provide that all promised improvements and those required by any political subdivision either be installed by the developer before any lots can be sold or that suitable bond or cash equivalent equal to at least 100 percent of the estimated cost of the improvements be provided to proper local and state authorities.

Advice to the Customer

The potential customer of any subdivided recreational investment speculative lands should see if there are assurances that all promises of improvements will be made, if the title is clear, and if installment payments are placed in escrow.

The customer should recognize that a second home lot or recreational lot is seldom a good vehicle for speculation or as a hedge against inflation. It yields no cash income until it is resold at a profit. Typically a \$10,000 lot would have to sell for \$30,000 in ten years to gain a ten percent return. This includes a conservative estimate for real estate taxes during the holding period and sales commissions.

In considering purchasing subdivided recreational land, for personal or speculative use, a primary consideration should be the resale possibilities. Except in an established and growing community where local real estate agents have a ready market, how does the purchaser/investor peddle his property? The market he must tap is not local. Local real estate agents do not have access to a wide national market for a vacant lot. The owner does not typically have the resources for the extensive national promotion costs (selling and promotional expenditures of the original promoters typically run from 20 to 40 percent). He cannot afford to mail out thousands of elaborate brochures, nor to pay for countless V.I.P. dinners, nor charter jet flights to inspect one \$10,000 lot.

The customer should always use the services of a reputable licensed real estate agent and an attorney and any other experts that may be needed in providing information on which to base a reasonable and sound decision. The customer should expect to pay for these services, but it will save him money in the long run.

The real problem to which we addressed ourselves is that in many cases these types of developments should never be allowed to get off the ground, and maybe we shouldn't be as interested in protecting the greedy customer from himself as in protecting the community, the general public, and the land from the actions of unscrupulous land developers and his customers. If we don't cool the get-rich-on-land dreams, each of us is going to pay.

Charles Dickens cooled his dream by writing a book, and his words may be applicable today. Dickens, a man of moderate means, purchased Cairo City, Illinois, bonds. This was the result of a promotion by a notorious town jobber named Darius B. Holbrook. He had commissioned large lithographs of a thriving town, had them distributed in Europe, and in a short time sold \$2,000,000 worth of Cairo City bonds in London alone. Dickens visited the United States in 1842, partly to inspect his investment.

Dickens' visit resulted in some bitter prose:

On ground so flat and low and marshy that at certain seasons of the year it is inundated to the housetops, ...lies a breeding place of fever, ague and death, vaunted in England as a mine of Golden Hope, and speculated in, on the faith of monstrous representations, to many people's ruin. A dismal swamp, on which the half-built houses rot away; cleared here and there for the space of a few yard, and teeming with rank unwholesome vegetation, in whose baleful shade the wretched wanderers who are tempted hither, droop and die, and lay their bones; the hateful Mississippi circling and eddying before it, and turning off upon its southern course, a slimy monster hideous to behold; a hotbed of disease, an ugly sepulchre, a grave uncheered by any gleam of promise; a place without one single quality, in earth or air or water, to commend it; such is this dismal Cairo.

"The experience prejudiced Dickens against the U.S. and colored all his comments about the country. He got some satisfaction--and perhaps some of his losses back-- by writing the novel Martin Chuzzlewit in which Cairo is thinly disguised as Eden, and the land jobbers not disguised at all. It was satire of a high order, but it is not likely that the butts of it bothered to read the book; they were too busy drawing maps of new cities."¹

²Lefcoe, Charles. Land Development Law. Bobbs Merrill Company. Inc. 1966, pp. 187-188.