

Opinion No. 78-19

September 18, 1978

OPINION OF: Toney Anaya, Attorney General

BY: Douglas Meiklejohn, Assistant Attorney General

TO: William H. Darden, Assistant District Attorney, Office of the District Attorney, Eighth Judicial District P.O. Box 1414 Raton, New Mexico 87740

SUBDIVISIONS; SUBDIVISION OF LEASED LAND; SUBDIVISIONS; TITLE TO LAND

The New Mexico Subdivision Act, §§ 47-6-1, **et seq.**, applies both to persons subdividing land which has been leased, from either the State or a private party, and to persons subdividing land which is being purchased under an executory real estate contract which provides for rescission or forfeiture for breach of certain covenants.

QUESTIONS

1. Does the 1973 New Mexico Subdivision Act, sections 70-5-1, **et seq.**, N.M.S.A. (1975 Supp.) apply to land which has been leased from the State of New Mexico for grazing purposes and which is divided into trailer spaces, which are then subleased?
2. Does the 1973 New Mexico Subdivision Act apply to land which has been leased from a private party and is divided by the lessee into parcels which are subleased?
3. Does the definition of a "subdivider" in the 1973 New Mexico Subdivision Act include an individual who is a purchaser under an executory real estate contract which provides for rescission or forfeiture for a breach of certain covenants?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.

ANALYSIS

The issue in all three of your questions is whether the applicability of the 1973 New Mexico Subdivision Act depends upon the nature of the title to, or interest in, the land held by the party dividing the land. The Act defines a subdivision as:

"an area of land within New Mexico, the surface of which has been divided by a subdivider into five or more parcels for the purpose of sale or lease." (§ 70-5-2(I), N.M.S.A. (1975 Supp.))

OPINION

A "subdivider" is:

"any person creating a subdivision, or any person engaged in the sale or lease of subdivided land which is being sold or leased by the owner in the ordinary course of business." (§ 70-5-2(H), N.M.S.A. (1975 Supp.))

The party dividing the land need not, therefore, own the land outright in fee simple in order for him to be a subdivider. He need only be creating a subdivision, which is an area of land, the surface of which has been divided into five or more parcels for the purpose of sale or lease. Neither the condition of his title nor the nature of his interest in the land is material to the issue of whether he is a subdivider.

The divider of the land leased from the State of New Mexico is, therefore, subject to the Act. It is true that the definition of a "subdivision" contains a specific exclusion for "the leasing of land for grazing or farming activities." (§ 70-5-2(I)(6), N.M.S.A. (1975 Supp.)) In the situation which you have described in your first question, however, although the land was originally leased from the State of New Mexico for grazing purposes, it has now been subdivided into parcels for use as trailer spaces, which have been subleased. The exclusion for the leasing of land for grazing and farming activities is not applicable because the division of land in question is for the purpose of creating spaces for trailers. This activity is, therefore, subject to the requirements of the 1973 New Mexico Subdivision Act.

The Act also applies to the land dividers in your second and third questions. Because there is no requirement that the subdivider own the land involved outright in fee simple, the Act applies to land which is leased from a private party or purchased under an executory real estate contract, even if the contract provides for a rescission or forfeiture for a breach of certain covenants. In each case, a subdivider is creating a subdivision, and there must be compliance with the Act's requirements.

ATTORNEY GENERAL

Toney Anaya, Attorney General