

Act 2014-332

Pre-Sale Agreements for Subdivision Developments

Historical Background

The requirement that subdivision developers obtain approval of proposed projects before construction or the sale or lease of properties within the subdivision is essential to ensuring that roads built within a new subdivision meet proper safety standards and are constructed to minimize future maintenance and repair needs. This is critical because the county will, in most instances, be responsible for the upkeep of the roads once construction is completed. And even where the county does not accept the roads within a privately-developed subdivision, citizens will look to the county commission for help in addressing future problems when the developer does not correct ensuing problems or leaves the area.

Counties have worked hard over the last 25 years – through amendments to the subdivision regulation law – to ensure that counties have strong authority to regulate subdivision development which includes a requirement to obtain permits for developing and to allow inspection of work during construction **and** includes strong enforcement authority aimed at deterring non-compliance. Prohibiting the sale or lease of lots prior to approval of subdivision plats has been an important part of this law – requiring the developer to meet the county’s regulations before any citizens have bound themselves to the purchase or rental of lots within the development is a strong incentive for developers to comply with the law or face tough financial penalties and/or an injunction prohibiting work on the development.

For these reasons, the Association initially opposed legislation introduced early in the 2014 Legislative Session that would have allowed developers to “pre-sell” lots within a proposed development. ACCA staff met with representatives of the Home Builders Association of Alabama, who explained they were seeking a method by which developers could establish to the satisfaction of potential investors and financing institutions that there would be a market for properties within the proposed development once completed. Together, the two organizations “re-wrote” the bill to allow for some ability to obtain pre-sale agreements under limited conditions which include approval from the county and for a limited period of time. The result is Act 2014-332, which adds a new section to the county subdivision regulation law authorizing some flexibility for the developer to seek conditional promises to purchase properties, but only with approval of the county engineer and only provided all aspects of the county’s subdivision regulations are still followed by the developer – including approval of the subdivision plat prior to construction.

The New Section

Act 2014-332 adds a new Ala. Code § 11-24-1.1 to the county subdivision regulation law to authorize the developer to obtain “pre-sale agreements” in limited circumstances where the developer can establish to the satisfaction of the county engineer that:

- (1) The developer has a preliminary plan for the subdivision development that is likely to be approved under the county's subdivision regulations **and**
- (2) The developer has explained to the satisfaction of the county engineer the reasons for requesting authorization to secure pre-sale agreements **and**
- (3) All pre-sale agreements make clear there can be no final sale until a permit to develop is obtained

The authority to obtain “pre-sale agreements” is limited to a six month period beginning from the date approval is granted by the county engineer.

- The law states that the authority is “revoked by operation of law” after six months
- The county engineer may grant an extension under special circumstances
- The developer is required to notify the county engineer in writing when financing has been obtained

The law clearly states that any pre-sale agreements executed in violation of the subdivision regulation law shall be punishable by fines as set out in the law.

The law also clearly states that failure to comply with § 11-24-1.1 shall result in the county engineer revoking the authority granted to secure pre-sale agreements for the proposed development.

Additionally, the authorization to secure pre-sale agreements from prospective buyers of property included in a proposed subdivision development

“shall in no way affect the developer's requirement to comply with the county's subdivision regulations and, in particular, to obtain the permit to develop as provided in § 11-24-2 prior to the actual sale, offering for sale, transfer, or lease of any lots from the subdivision except as specifically authorized in [§ 11-24-1.1]”.

Amendment to County Subdivision Regulations

The passage of Act 2014-322 necessitated minor adjustments to most county's subdivision regulations. A committee of county engineers worked with ACCA staff earlier this summer to develop recommended changes to the model regulations drafted in 2006. The recommended changes were distributed to county engineers in June – and are available from the ACCA office or from the Association's website.

A copy of new Ala. Code § 11-24-1.1 is attached.

Ala. Code §11-24-1.1.

(a) Notwithstanding the provisions of Section 11-24-2, the developer may obtain authorization from the county engineer to secure pre-sale agreements from prospective buyers of property included in a proposed subdivision development prior to obtaining the permit to develop if the developer establishes to the satisfaction of the county engineer that: (1) the developer has a preliminary plan for the subdivision development that is likely to be approved under the county's subdivision regulations and (2) the developer has explained to the satisfaction of the county engineer the reasons for requesting authorization to secure pre-sale agreements.

(b) Upon receiving authorization from the county engineer for the developer to secure pre-sale agreements as provided in subsection (a), the developer shall notify the county engineer in writing when financing has been obtained, and if no such notification is received within six months of the date the authority is granted, the authority shall be revoked by the operation of law and any further efforts on the part of the developer to secure pre-sale agreements shall be a violation of this chapter punishable by fines as set out in Section 11-24-3. The developer may request from the county engineer an extension of the time set forth herein for notification in order to allow the developer additional time to secure pre-sale agreements; provided that no pre-sale agreements may be entered into following the six-month time period until and unless an extension has been granted.

(c) Any pre-sale agreements secured by the developer under authority of this section shall clearly state that any final sale of the property shall not take place until and unless the developer has obtained a permit to develop pursuant to the requirements of Section 11-24-2. Any pre-sale agreements executed in violation of this chapter shall be punishable by fines as set out in Section 11-24-3. Additionally, the failure to comply with this section shall result in the county engineer revoking the authority granted to secure pre-sale agreements for the proposed development.

(d) The authorization to secure pre-sale agreements from prospective buyers of property included in a proposed subdivision development prior to obtaining the permit to develop as provided in this section shall in no way affect the developer's requirement to comply with the county's subdivision regulations and, in particular, to obtain the permit to develop as provided in Section 11-24-2 prior to the actual sale, offering for sale, transfer, or lease of any lots from the subdivision except as specifically authorized in this section.