

**OPINION  
74-320**

May 13, 1974 (OPINION)

Mr. Dennis Schulz, Secretary  
North Dakota Real Estate Commission  
Box 727  
410 East Thayer Avenue  
Bismarck, ND 58501

Dear Mr. Schulz:

This is in response to your letter of April 22, 1974, wherein you request an opinion of this office relative to section 43-23.1-02 of the North Dakota Century Code, as amended. You submit the following for our consideration:

"The North Dakota Real Estate Commission requests an opinion of your office with regard to whether or not out-of-state condominiums offered for sale to residents of North Dakota are required to be registered under chapter 43-23.1 of the North Dakota Century Code commonly referred to as the 'Subdivided Lands Disposition Act'.

"We wish to call you attention to that portion of the statute which provides as follows:

'43-23.1-02. DEFINITIONS. 7. 'Subdivision' and 'subdivided lands' means any land situated outside the state of North Dakota which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also includes any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.'

"The question has arisen on several occasions as to whether the use of the word 'interest' includes interests held in the ownership of condominium type property."

In the first instance we must note from the subject statute which you have quoted that the terms "subdivision" and "subdivided lands" "means any land situated outside the State of North Dakota which is divided or is proposed to be divided" (specifically) "for the purpose of disposition into five or more \* \* \* units, or interests and also includes any land, whether contiguous or not, if five or more \* \* \* units, or interests are offered as a part of a common promotional plan of advertising and sale." (emphasis supplied) Accordingly, the issue presented by our question is whether units or apartments in a condominium type housing development or program constitute a "unit" or "interest" in land or real property contemplated by the statute, whether the interest or interests in a condominium unit are by reference to the word "interests", such that they constitute subdivision or subdivided lands as specified by the statute; and, whether the unit or units in condominium houses, apartments, etc., are by reference to the word "units", such that they constitute

subdivision or subdivided lands as specified by the statute. We think so.

While we would recognize that the laws of other states and jurisdictions may have varying provisions relative to the nature and extent of ownership of the lands upon which condominiums or condominium type of structures or units may be constructed, it appears that the general law upon the subject is uniform to the extent that a sole ownership is held as to the particular apartment, unit or dwelling area but that other areas which are common to all owners of the condominium group are held in some form of concurrent interest, either as tenants in common or similar joint ownership of the whole. We note the following from 15 American Jurisprudence, 978, Section 1:

"Both standard and legal dictionaries recognize that the term 'condominium' refers to joint ownership of real property. In recent years, however, 'condominium' has come to refer specifically to multiunit dwelling, each of whose residents (unit owners) enjoys exclusive ownership of his individual apartment or unit, holding a fee simple title thereto, while retaining an undivided interest, as a tenant in common in the common facilities and areas of the building and grounds which are used by all residents of the condominium." (emphasis supplied)

We would further note the major characteristics of a condominium as set forth by the same source, as follows:

"The major characteristics of a condominium have been said to be the following (1) individual ownership of a unit or apartment, (2) an undivided interest in certain designated common elements which serve all the units in the condominium and (3) an agreement among the unit owners regulating the administration and maintenance of the property. Consequently, the condominium has been characterized as a 'welding of two distinct tenures, one in severalty and the other in common.'" (emphasis supplied)

Chapter 47-04.1 of the North Dakota Century Code, as amended, relating to condominium ownership of real property in this state defines condominium in section 47-04.1-01 (1), as follows:

1. 'Condominium' is an estate in real property consisting of an undivided interest or interests in common in a portion of a parcel of real property together with a separate interest or interests in space in a structure, on such real property;"

It appears clear that an inherent principle of condominium plans or condominium type apartments is the ownership in severalty of the particular unit or units while the balance of the realty is held in common by individual unit owners or members. It also appears clear that the interests or tenures held by the individual owners are real property interests in the structure and land regardless of the fact that land itself and the condominium structure may be owned in common. The ownership or title to the individual unit must draw on

the interest of the portions of the common property in order to render such severalty interests possible. To the extent that the statute provides that it shall apply to "land" \* \* \* "which is to be divided or is proposed it appears clear to us that is such condominium projects constitute five or more units or apartments, we believe the statute has application to such condominium type of plan.

Accordingly, and in direct response to your inquiry, it is the opinion of this office that the word "units" and "interests" as used in section 43-23.1-02 of the North Dakota Century Code, as amended, include and contemplate interests held in the ownership of condominium type property.

Sincerely yours,

Allen I. Olson

Attorney General