

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-407
	:	
of	:	<u>July 10, 1980</u>
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SUBJECT: REQUIREMENT OF FINAL MAP FOR PARCEL OF REAL PROPERTY—A person may not offer to sell or lease a parcel of real property for which a final map is required under the Subdivision Map Act, where such map has not been filed, even though the offer is expressly conditioned upon the map being approved and filed.

The Honorable Marz Garcia, Senator, Tenth District, has requested an opinion on the following question:

May a person offer to sell or lease a parcel of real property for which a final map is required under the Subdivision Map Act, where such map has not been filed but the offer is expressly conditioned upon the map being approved and filed.

CONCLUSION

A person may not offer to sell or lease a parcel of real property for which a final map is required under the Subdivision Map Act, where such map has not been filed, even though the offer is expressly conditioned upon the map being approved and filed.

ANALYSIS

The Subdivision Map Act (Gov. Code §§ 66410–66499.37)¹ (hereinafter the “Act”) requires, with certain exceptions, that a subdivider of property (1) design the subdivision in conformity with applicable general and specific plans (2) construct public purpose improvements such as streets and sewers, and (3) donate land or money for public uses such as parks and schools. (§§ 66439, 66474–66478; 3 Witkin, Summary of Cal. Law (2nd ed. 1973), Real Property §§ 22–24, pp. 1788–1792; 2 Ogden’s Revised Cal. Real Property Law (1975) §§ 25.1–25.2, pp. 1204–1206; *Comment, Land Development and the Environment: The Subdivision Map Act* (1974) 5 Pacific L.J. 55, 86–87.)

While the Act establishes general statewide criteria for land development planning, it delegates to cities and counties the authority to regulate the details of proposed subdivisions. (§§ 66411, 66420, 66473–66479; *Simac Design, Inc. v. Alciati* (1979) 92 Cal. App. 3d 146, 157.)

The requirements of the Act and local ordinances enacted thereunder are enforced by criminal sanctions in connection with a procedure involving the filing of required subdivision maps. In general terms, the filing of a tentative map and a final map is mandatory, for divisions into five parcels or more, while the filing of a parcel map is required for divisions into four or fewer parcels. (§§ 66426, 66428; 4 Miller & Start, Current Law of Cal. Real Estate (1977) §§ 24:33–24:35, pp. 60–68; 9 Hagman & Volpert, Cal. Real Estate Law Practice (1977) §§ 290.20–290.24, pp. 290:12–290:35.) A subdivider must obtain local government approval of the appropriate map before the subdivided parcels may be offered for sale or lease. (§§ 66499.30, 66499.31; *Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 193–194; *Comment, Review of Selected 1974 California Legislation* (1175) 6 Pacific L.J. 125, 357–360.)

The question presented for analysis concerns the construction of the language used by the Legislature in subdivision (a) of section 66499.30:

“No person shall offer to sell or lease, to contract to sell or lease, to sell or lease, or to finance any parcel or parcels of real property or to commence construction of any building for sale, lease or financing thereon, except for model homes, or to allow occupancy thereof, for which a final map is required by the division or local ordinance, until such map thereof in full compliance with the provisions of this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.” (Emphasis added.)

¹ All unidentified statutory references hereinafter are to the Government Code.

We are asked whether a person comes within the prohibitory terms of the statute where although a final map has not been filed the offer to sell or lease is expressly conditioned upon the approval and filing of the final map. We conclude that such an offer is prohibited by section 66499.30.

In interpreting subdivision (a) of section 66499.30, we are guided by several principles of statutory construction. The cardinal rule is to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) Legislative intent is discerned by looking first to the language used, giving the words their ordinary and common meaning. (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) The provisions of a statute are to be construed in context and harmonized wherever possible. (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 844.) The plain and unambiguous meaning of statutory language may be ignored only where it would frustrate the manifest purposes of the legislation as a whole or lead to absurd results. (*Younger v. Superior Court* (1978) 21 Cal. 3d 102, 113–114.)

With these principles in mind, we note first that the Act’s primary goals may be summarized as follows: (1) facilitation of orderly community development, (2) insuring that the areas within the subdivision that are dedicated for public purposes will be properly improved by the subdivider so that they will not become an undue burden on the community, and (3) protection of the buying public from fraud and exploitation. (*Simac Design, Inc. v. Alciati, supra*, 92 Cal. App. 3d 146, 157–158; *Bright v. Board of Supervisors, supra*, 66 Cal. App. 3d 191, 195–196; *City of Tiburon v. Northwestern Pac. R.R.* (1970) 4 Cal. App. 3d 160, 182; *Pratt v. Adams* (1964) 229 Cal. App. 2d 602, 606; Taylor, *Current Problems in California Subdivision Control* (1962) 13 Hasting L.J. 344, 346.)

The key word to be defined in subdivision (a) of section 66499.30 is “offer.” While the term has not been judicially defined for purposes of the statute, its ordinary and common meaning is: to present or hold out for consideration and acceptance. (Webster’s New Internat. Dict. (3d ed. 1966) p. 1566; see *People v. Blake* (1960) 179 Cal. App. 2d 246, 253.)

With specific reference to real property transactions, an offer has been characterized as a definite undertaking or promise (to sell or lease) that carries out a present intent by the offeror to be bound by his communication; the existence of the intent is measured by the reasonable belief of the offeree and not by the actual intent of the offeror. The present

intent test is used to distinguish an offer from a proposal that is merely a part of the preliminary negotiations. (1 Miller & Start, *supra*, at pp. 10–12; see *Laks v. Coast Fed. Sav. Loan Assn.* (1976) 60 Cal. App. 3d 885, 891; *Fowler v. Security-First Nat. Bank* (1956) 146 Cal. App. 2d 37, 47.)

In the question presented, an “offer” has been made, although not unconditionally. Nevertheless, a conditional offer meets the test of creating in the offeree the power to bind the offeror in contract. It constitutes more than the preliminary negotiation of uncertain terms. We would have little difficulty in concluding that the Legislature intended to include conditional offers in its use of the word “offer” in section 66499.30, where the conditions were unrelated to the requirements of the Act. For example, an offer to sell a parcel on condition that X becomes the next President of the United States would require a map to be filed before the offer may be made. We are not prepared to say that an offer conditioned upon approval and filing of a final subdivision map should be treated differently in light of the plain language of the statute.

Accordingly, a person may not offer to sell or lease a parcel of real property for which a final map is required under the Act, where such map has not been filed, even though the offer is expressly conditioned upon the map being approved and duly filed.
