

Implementing a Shareholder Homesite Land Distribution Program

This outline was produced in the mid-1990's for a presentation I gave at a workshop sponsored by the Alaska Native Foundation. There are some outdated items, but the outline still gives a good representation of tasks needed to develop and distribute shareholder homesites. Village corporations need to work with their attorney and accountant to address legal and tax issues. Bartz Englishhoe and Associates is willing to work with any village interested in developing shareholder homesite distribution and long-term leasing programs.

I. Initial Board of Director

- A. Day long workshop outlining specifics of implementing a Shareholder homesite program
 - 1. Attorney analysis of legal issues
 - 2. Review of financial and tax liabilities by an accountant
 - 3. Land manager discussions relating to subdivision development
- B. Shareholder informational meeting

II. Shareholder Newsletter Coverage of a Shareholder Homesite Distribution Program.

- A. Shareholder homesites as authorized by Section 21(j) of the Alaska Native Claims Settlement Act (ANCSA), which was created by Section 1407 of the Alaska National Interest Lands Conservation Act (ANILCA).
- B. General provisions of implementing a remote shareholder leasing program
- C. Review of a land distribution program that includes both shareholder homesites and remote leases
- D. Description of possible locations for homesite subdivisions and remote leases
- E. Detail general size requirements for homesite lots and remote lease parcels
- F. Analysis of whether subdivision development costs can be fully financed by the corporation
- G. Review the possibility that shareholders may have to pay for developing homesite subdivisions
 - 1. Requiring shareholders to help pay for all or a portion of homesite development
 - a. Determining subdivision development costs
 - b. Monthly payment plans for purchasing homesites
 - c. Interest on land payments, if any
 - d. Allowing shareholders to exchange lots among themselves before distribution
- H. Long-term lease provisions for remote leases
 - 1. Remote locations
 - 2. Outlining who gets to participate in a leasing program
 - 3. Detail development costs
 - 4. Types of buildings to be allowed
- I. Financing the development of a shareholder land distribution program
 - 1. Marketing residential lots to non-shareholders
 - 2. Commercial leasing
- G. Designating green belts, recreational areas and business districts
- H. Homesite restrictive covenants
 - 1. Description of restrictive covenants
 - 2. Examples of long term lease provisions
- I. Development of a shareholder land distribution program questionnaire

III. Land Ownership, Mapping and Platting

- A. Updating Bureau of Land Management Master Title Plats
- B. Review of conveyance documents
- C. Investigation of inholdings such as Native Allotments
- D. Examination of existing aerial photography
- E. Development of land status ownership maps

F. Purchase of aerial photographs/maps

IV. ANCSA Section 21(j) Shareholders Homesite Provisions

A. Definition of shareholder homesites

B. ANCSA 1992 technical amendments

C. Use of a lottery drawing to equitably distribute homesites to shareholders

D. Requiring single family residential use of homesites (including traditional extended family) for a minimum of 10 years

E. Maximum homesite lot size of one and a half (1 1/2) acres

F. Tax liabilities of shareholders receiving a homesite lot

1. Federal non-taxability income tax provisions contained within ANCSA 21(c), as amended by ANILCA 1408
2. Possible federal income tax liabilities associated with selling a homesite
3. Twenty (20) year non-development property taxes exemptions contained within ANILCA Section 904, which was amended ANCSA Section 21(d)
4. Definitions pertaining to "development" of Native land under ANCSA, ANILCA and Alaska statutes
5. Resubdivision of a homesite by a shareholder may cause stockholder to be liable for federal, state and local property taxes, plus interest on reinstated back taxes
6. Receiving title to a homesite may affect shareholders eligibility for federal assistance programs such as food stamps

G. Tax liabilities of a corporation distributing homesite subdivision lots

1. Legal analysis of distributing land within a corporation's annual report
2. Determining the value of lands being distributed for a income tax basis

H. Other corporate issues related to distributing homesites

1. Automatic land protections for undeveloped land authorized by Public Law 100-241
 - a. Adverse possession and similar claims
 - b. Real property taxes
 - c. Judgments from bankruptcy.
 - d. Judgments for debt owned by corporation
 - e. Involuntary dissolution of a corporation
2. Development or subdividing land may cause loss of land protections authorized under Public Law 100-241
3. Automatic land protections terminated only for lands specifically being developed
4. Establishment of a procedure to ensure homesite subdivision lots are approximately equal in monetary value
 - a. State law relating to shareholder equity
 - b. Real estate appraisal services
 - c. Subdivision design
 - d. Wastewater treatment systems
5. Shareholder involvement in land distribution program
 - a. Maximum shareholder participation
 - b. Shareholder informational meetings
 - c. Shareholder advisory vote
 - d. Shareholder motion to distribute homesites
 - e. Shareholder participation on a homesite committee
 - f. Shareholder approval requirements under corporate articles of incorporation and by-laws
6. Distribution of assets by a corporation
 - a. Distribution by declaring shareholder dividends
 - (1) Recommendation of corporate accountant and attorney
 - (2) Corporate resolution authorizing land distribution
 - b. Review of state statutes relating to dividends from net profits

- c. Distribution by declaring partial liquidation
 - (1) Articles of incorporation provision
 - (2) Shareholder approval requirements
- d. State laws regulating partial liquidation of capital
- e. Federal Tax Form 1099
- 7. Distribution of lots to eligible shareholders
 - a. One lot assigned to each original shareholder
 - b. Distribution to heirs of a deceased shareholder
 - c. New Native participation
- 8. Distribution of lots on an equitable basis
 - a. Allocation of lots to a specific group of shareholders
 - b. Disbursing lots based on need and other factors
 - c. Distribution by land lottery drawing
 - (1) Lottery by individual subdivision lot
 - (2) Lottery by entire subdivision
 - d. Transfer or exchange of lots between land lottery winners

V. Restrictive Covenants for Homesite Subdivisions

- A. Restricting lots to residential use
- B. Lot line restrictions
- C. Restrictions on building size
- D. Sewage and water disposal requirements
- E. Restrictions on business or commercial activities
- F. Prohibiting resubdivision of a lot
- G. Requiring restrictive covenants to be binding on all present and future landowners
- H. Utility installation and maintenance easements for electricity, natural gas, telephone, television cable and sewer and water systems
- I. First "Right-of-Purchase" option for a corporation and the seller's immediate family
- J. Garbage and trash covenants
- K. Declaration of subsurface rights

VI. Planning aspects of developing a Residential Subdivision

- A. Analyzing the results of a shareholder land distribution program questionnaire
- B. Identification of agencies that may need to review development of a homesite subdivision
 - 1. Alaska Department of Environmental Conservation
 - a. New 1990 Wastewater Disposal Regulations-18 AAC 72
 - b. Subdivision compliance checklist
 - 2. Alaska Department of Natural Resources
 - 3. Alaska Division of Governmental Coordination
 - 4. Alaska Department of Fish and Game
 - 5. U.S. Army Corps of Engineers
 - a. Section 404 wetlands permit
 - 6. U.S. Bureau of Indian Affairs
 - 7. U.S. Environmental Protection Agency
 - 8. U.S. Department of Agriculture, Soil Conservation Service
 - 9. Local municipalities and boroughs
 - a. Subdivision platting regulations
 - b. Zoning ordinances
 - 10. Existing land use plans
- C. Review of basic rules relating to subdivision lot and road design
- D. Soliciting bids for independent real estate appraisal services
- E. Contour analysis of land selected for subdivision

- F. Investigation of vegetation and wildlife habitat
- G. Review of 100 year flood plan
- H. Review of existing and proposed road systems and cost analysis of new road construction
- I. Examination of existing utilities services
- J. Identification of possible archaeological, cultural and historical sites
- K. Determining subdivision lot size
 - 1. Subdivisions lot size requirements of municipal codes
 - 2. Remote homesite subdivisions not within a municipality
- L. Selection of land without encumbrances
 - 1. ANCSA Section 14(c)(1)(2)(3) & (4) reconveyances
 - 2. Native Allotments
 - 3. Valid existing rights
 - 4. ANCSA Section 17(b) and other easements
- M. Testing of soil properties and permafrost conditions
 - 1. Soil and percolation testing
 - 2. Water table depth
 - 3. Bedrock depth
 - 4. Mapping elevation contours
- N. Selection of land for possible future expansion
- O. Designation of green belts, recreational areas and commercial area
- P. Developing alternative plans for access and subdivision design
- Q. Location of private and public facilities
 - 1. Public facilities
 - 2. Commercial areas
 - 3. Churches
- R. Preparing "Request for Proposal" bids for subdivision design and development, soil testing, surveying and road and utility construction

VI. Preparation of Homesite Subdivision Conveyance Documents

- A. Type of deeds
 - 1. Warranty deed
 - 2. Quitclaim deed
 - 3. Recording of deeds and covenants with state recorders office
- B. Monthly land payments
 - 1. Payments made directly to a corporation
 - 2. Use of a bank escrow account for receiving land payments
- C. Title agency escrow services
 - 1. Escrow instructions
 - 2. Deed of trust
 - 3. Promissory note
 - 4. Request for full reconveyance
- D. Title insurance.
 - 1. Title insurance for corporation distributing land
 - 2. Title insurance for individual lot owners