

NO. D-1-GV-09-001917

STATE OF TEXAS, and  
EL PASO COUNTY, TEXAS,

Plaintiffs,

v.

HOMERO GALINDO, ROSELLA  
GALINDO, NAHUM PRIETO, and  
ROSELLA PRIETO,

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98<sup>th</sup> JUDICIAL DISTRICT

**ORIGINAL PETITION AND  
REQUEST FOR DISCLOSURE**

The State of Texas, by and through Attorney General Greg Abbott, and El Paso County, Texas, by and through County Attorney José Rodríguez, (“Plaintiffs”) file this original petition. This suit seeks to enforce state laws that promote the safe and sanitary residential subdivision of land.

**1. DISCOVERY CONTROL PLAN**

1.1. Pursuant to Tex. R. Civ. P. 190, Plaintiffs intend that discovery in this case be conducted under Level 2.

**2. PARTIES AND SERVICE**

2.1. Plaintiffs are authorized to bring this suit pursuant to Tex. Local Gov’t Code § 232.037 and Tex. Water Code §§ 16.352-354.

2.2. Defendant Homero Galindo is a resident of El Paso County and may be served with process at 5721 Oak Cliff Drive, El Paso, Texas 79912 or wherever he/she may be found.

2.3. Defendant Rosella Galindo is a resident of El Paso County and may be served with process at 5721 Oak Cliff Drive, El Paso, Texas 79912 or wherever he/she may be found.

2.4. Defendant Nahum Prieto is a resident of El Paso County and may be served with process at 6840 Gato Road, El Paso, Texas 79932 or wherever he/she may be found.

2.5. Defendant Rosella Prieto is a resident of El Paso County and may be served with process at 6840 Gato Road, El Paso, Texas 79932 or wherever he/she may be found.

### **3. JURISDICTION AND VENUE**

3.1. This Court has jurisdiction and venue over this suit pursuant to Tex. Local Gov't Code §§ 232.035(f), 232.037, and Tex. Water Code § 16.3545(3).

### **4. RESIDENTIAL SUBDIVISION REGULATION**

4.1. This suit seeks injunctive relief, civil penalties, attorney's fees, investigation costs, and court costs authorized by statutes adopted by the Texas Legislature to promote the safe and sanitary residential subdivision of land, particularly in the counties along the Texas-Mexico border.

4.2. No filing fee or other security for costs is required of Plaintiffs. Tex. Civ. Prac. & Rem. Code § 6.001.

4.3. Texas Local Government Code, Chapter 232, Subchapter B, Sections 232.021-.044 ("Subchapter B"), applies to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of a county located within 50 miles of an international border. Land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities. Tex. Local Gov't Code § 232.022 (a)-(c).

4.4. El Paso County is located within 50 miles of the border dividing the United States and Mexico.

4.5. Texas Local Gov't Code § 232.023(a) requires that a subdivider of Subchapter B land "must have a plat of the subdivision prepared." A subdivision of a tract "includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description."

4.6. Platting insures that minimum state-standard drinking water supplies and wastewater disposal facilities are provided for the lots in a residential subdivision. Texas Local Gov't Code §§ 232.023, .027. Absent proper platting, subdivision lots are ineligible for connection to water, sewer, and electric utilities. *Id.* at § 232 .029.

4.7. Texas Local Gov't Code §§ 232.035(a), (d), prohibit a subdivider from selling lots without an approved plat and impose a civil penalty ranging between \$10,000 and \$15,000 for each violative sale.

4.8. Texas Local Gov't Code § 232.037(a) provides that the Plaintiffs may take any action necessary in a court of competent jurisdiction to enjoin violations, require platting, recover penalties, and recover costs, including attorney's fees.

## 5. BACKGROUND

5.1. The Defendants' unauthorized residential subdivision ("the Subdivision") that is the subject of this lawsuit is located in western El Paso County, Texas, at the intersection of Gardner Road and Baker Lateral. The land that Defendants subdivided is an eight-acre tract described in a warranty deed filed in Document No. 20040097714 in the El Paso County, Texas deed records and further described as a portion of Tract 19E1, Block 15, Upper Valley Surveys, El Paso County, Texas. This land lies outside the corporate limits of any municipality in El Paso County.

5.2. Defendants subdivided this land into four lots and thereby created “the Subdivision.” The lots in the Subdivision range in size from 1.80 acres to 2.11 acres.

5.3. Defendants sold lots from the Subdivision to various buyers, as more particularly described below. The lots are intended primarily for residential use, by statutory presumption, *see* Texas Local Gov’t Code § 232.022(b), and by the intent of the buyers of these lots.

5.4. The Defendants failed to apply for and obtain approval from the El Paso Commissioner’s Court of a plat for the Subdivision.

## 6. VIOLATIONS

6.1. Texas Local Gov’t Code § 232.035(a) contains the following prohibition:

“A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.”

6.2. Texas Local Gov’t Code § 232.031(a) contains the following prohibition:

“[A] subdivider may not sell or lease land in a subdivision first platted or replatted after July 1, 1995, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.”

6.3. The Defendants sold lots from the Subdivision as follows:

<u>Date</u>	<u>Lot</u>	<u>Buyers</u>
09-18-06	“Parcel A”	Alejandro Gabriel Garcia & Marcela Garcia
11-30-07	“Parcel B”	Lewis Roe, Jr. & Silvia Roe
06-02-08	“Parcel D”	Leonel & Lourdes Rodarte

6.4. The Defendants have not yet sold the fourth lot (“Parcel C”) in the Subdivision.

6.5. At the time of these lot sales, the Subdivision was not legally platted as required by Texas Local Government Code, Chapter 232, Subchapter B. Prior to the sale of each of these lots, Defendants had failed to apply for and obtain subdivision plat approval from El Paso County. Each of the Defendants’ sales violated Tex. Local Gov’t Code §§ 232.035(a) and 232.031(a).

## **7. INJUNCTIVE RELIEF**

7.1. Plaintiffs request that Defendants be permanently enjoined from subdividing, advertising, and selling land in violation of Texas Local Government Code, Chapter 232, Subchapter B.

7.2. Plaintiffs further request that Defendants be permanently enjoined (a) to properly plat the Subdivision with the El Paso County Commissioners' Court, to include provision of the required water and wastewater facilities, (b) or in the alternative, to offer and provide full refunds to each lot buyer, or (c) to take the affirmative actions necessary and appropriate to remedy the Defendants' violations so that these lots may be legally eligible for connection to applicable utility services.

7.3. Plaintiffs request additional or alternative injunctive relief as warranted by the facts.

## **8. CIVIL PENALTIES**

8.1. Texas Local Gov't Code § 232.035(d) provides that a subdivider or agent who sells a lot in a subdivision that has not been legally platted is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed. Plaintiffs request that this Court assess a civil penalty within the statutory range for each lot sold in violation of Subchapter B.

## **9. ATTORNEY'S FEES AND COSTS**

9.1. Plaintiffs request their attorney's fees expended in the prosecution of this case, as authorized by Tex. Local Gov't Code §§ 232.035(c), (d), 232.037(a)(3), and Texas Gov't Code § 402.006(c).

9.2. Plaintiffs request recovery of their costs of investigation and court costs expended in the prosecution of this case, as authorized by Tex. Local Gov't Code §§ 232.035(c), (d), 232.037(a)(3), and Texas Gov't Code § 402.006(c).

## 10. REQUEST FOR DISCLOSURE

10.1. Defendants are requested to disclose to Plaintiffs, within 50 days of service of this request, the information and material described in Tex. R. Civ. P. 194.2(a), (b), (c), (e), (f), and (i).

### PRAYER FOR RELIEF

ACCORDINGLY, Plaintiffs respectfully request appropriate injunctive relief, civil penalties, attorney's fees, investigation costs, courts costs, post-judgment interest at the highest legal rate, and all other relief to which they are entitled.

Respectfully submitted,

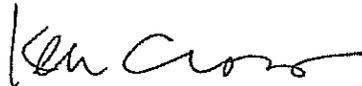
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Chief, Environmental Protection Section

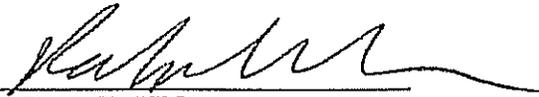


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**AFFIDAVIT**

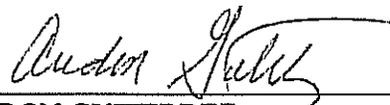
STATE OF TEXAS            }  
  }  
COUNTY OF TRAVIS        }

BEFORE ME, the undersigned authority, on this day personally appeared Audon Gutierrez, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

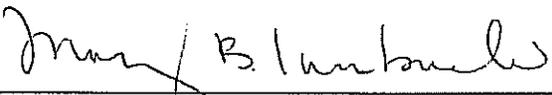
“My name is Audon Gutierrez. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. I make this affidavit on the basis of my personal knowledge and facts I determined upon my investigation of this matter. The statements herein are true and correct.

I am an investigator for the State of Texas. My duties include reviewing subdivision plat applications and investigating compliance with state and county residential subdivision requirements.

I have carefully reviewed the factual allegations in Parts 5 and 6 of the attached *Original Petition and Request for Disclosure*. The factual allegations contained therein are true and correct.”

  
\_\_\_\_\_  
AUDON GUTIERREZ

SWORN TO and SUBSCRIBED before me by Audon Gutierrez on the 6<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: 8.28.2012

