
Interstate Land Sales Full Disclosure Act Update

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The ILSA Rule

A developer using the mail or any means of transportation or communication in interstate commerce to sell lots or condominiums must either register that offering under the Act or qualify for an exemption from the Act.

The Registration Process – Filing a Statement of Record

- Property Report for distribution to prospective buyers
- Additional Information for CFPB files

Ongoing Compliance for Projects that are Not Exempt

- Sale contract requirements
 - Buyer has 7 days after signing to revoke the contract
 - Buyer has **2 YEARS** to rescind the contract unless the sale must close in 180 days or the Buyer is provided with certain notice and cure rights and limitations on damages following the Buyer's default.
- Amendments to filings
- Annual reports to the regulators

The Act's Anti-Fraud Provisions

[15 U.S.C. 1703 (a)(2)]

- Applicable to all projects that are registered
- Applicable to projects qualifying for the exemptions listed under Section 1702(b) (the "Partial Exemptions")
- Not applicable to projects qualifying for the exemptions listed under Section 1702(a) (the "Full Exemptions")

The Consequences of Selling without Registering or Qualifying for an Exemption

- Buyers have two years in which to revoke their contracts—even after closing
- Civil lawsuits by buyers
- Administrative penalties imposed by CFPB
- Criminal prosecution

The Condo Developer's Alternatives to Registering Before March 25, 2015

- Build a project with fewer than 25 units (Full Exemption)
- Complete the project within two years (Full exemption)
- Build a project with fewer than 99 units (Partial Exemption)

The New Condominium Exemption (a Partial Exemption)

- “Condominium Unit” defined: a residential or commercial unit designated for separate ownership under a condominium plan or declaration so that upon conveyance, the buyer owns the unit and undivided interest in the common elements, and the unit is an improved lot
- No registration with CFPB or Property Report disclosures to buyers

The New Condominium Exemption – Anti-Fraud Issues

- *Sales and marketing practices:* The Act's general prohibition against misleading a buyer is supplemented with specific rules in the regulations (12 CFR §§ 1011.10-1011.30)
- *Contract requirements:* If the developer represents that the developer will provide or complete roads, sewers, water, gas or electric service or recreational amenities, then the contract must include that covenant in the sale contract

The New Condominium Exemption – Lingering Issues

- What guidance or pitfalls lie in the requirement that the condominium be an “improved lot”?

The New and Old Exemptions – Lingering Issues

- Claims alleging the Developer has adopted an exemption for the purpose of evasion of the Act
 - Provide that the parties utilize the exemption from the Act for business reasons serving their mutual interests (e.g., lower developer's costs and buyer's purchase price)

Questions?
